

BUFFALO EMS
351 NORTH ADAMS AVE
BUFFALO, WY 82834

Dave Harness, Owner

Telephone 307.684.2251
Email: harness@dharness.com

March 21, 2020,

Johnson County Rural Health Care District
Attn: Marilyn Connolly-President

Re: Contract

Dear President Connolly,

The financial picture for fiscal year 2020-2021 is attached.

I respectfully ask you to carefully consider the following points.

Buffalo EMS fully acknowledges that the total requested allocation of funds may well exceed funds available from collections of the two-mill levy. However as noted in the SafeTech Assessment, RHCD is way under the market in its billing schedule. If adjusted towards market value, that this year's budget, in theory and prayerfully in practice, will balance. That said this amount is the absolute bare bones required upon which to operate at the current level of service to the community of Johnson County. A level of service which has been independently assessed and commended, and to which the community has become accustomed. The anticipated reduction in the collections from the two-mill levy is going to require some very difficult choices. As unpalatable as it may be, RHCD may submit for voter approval a request for additional funding up to 2 additional mills. But this, even if requested is some way off. Until such time sustaining the level of service might need to be made up from reserves.

Buffalo EMS is already experiencing what has been identified as a national trend where less people are interested in volunteering or even entering the profession; more exacting training; and reporting requirements which dissuade or "fatigue" individuals from serving. We are all aware that 'burn out' is a constant challenge to be weathered. In short, running a professional local rural ambulance service is becoming more and more challenging.

Dollars alone will not keep the machine running well but it is a significant factor. Ambulance services are comprised of medical equipment (ambulances and devices) but more than that they are comprised of *people*. People who are not only willing to train to a very high standard, but who are also then willing to take on the role of being a first responder. This means putting the emergency medical needs of others first - this means getting up in the night (often repeatedly), this means being at the front line of trauma and medical need. To keep the desire to do that individuals need to be recognized and remuneration is an important element. Buffalo EMS is confident that its EMT's are rewarded for their service in a manner which is fair and equitable and by no means flagrant with taxpayers' dollars. The amounts awarded to individual EMT's was presented to RHCD on March 12, 2019 but we will share that again with RCHD in a confidential working session if this would be beneficial.

Should RHCD conclude that the requested amount of is unavailable, Buffalo EMS offers to work in collaboration with RHCD to determine the best areas in which to cut funding and provide detail of the consequences of reducing funding in specific areas. Given that a large percentage of funding goes to paying

people and many of the other associated costs are fixed (such as the cost of equipment, etc.), then to cut costs Buffalo EMS will need to consider how to do that and advise RHCD of the consequences.

In simple terms, less funding will result in less service. Should this be the case, Buffalo EMS believes it is incumbent to clearly and collaboratively work with RCHD to explain in detail what the result will be to the level of service. Ultimately it is not Buffalo EMS but the RHCD that is accountable to the community of Johnson County to explain a diminution of services. But it is for Buffalo EMS to advise RHCD of that detail. RHCD and Buffalo EMS will need to make hard choices about the demands placed on the health care professionals who make up our service and have a collective understanding of how the service provided will diminish.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Harness', written in a cursive style.

Dave Harness

Via PDF attachments:

Marilyn Connolly
Robert McBride
Jim Hicks
Mark Haines
Scott McBride

Tucker Ruby
Barry Crago
Shane Schrader
Johnson County Commissioners
Steven F. Freudenthal

EMERGENCY MEDICAL SERVICES (EMS) CONTRACT

This contract hereinafter "Contract" is entered into by and between Johnson County Rural Health Care District (hereinafter referred to as "District"), a Wyoming governmental entity, whose address is 859 N. DeSmet, Buffalo, Wyoming, 82834, and Buffalo EMS, LLC, a Wyoming limited liability company (hereinafter referred to as "Buffalo EMS"), whose address is 351 North Adams, Buffalo, Wyoming, 82834.

W I T N E S S E T H:

WHEREAS, the existing Contract for Services between Johnson County Rural Healthcare District and Buffalo EMS, LLC is scheduled to terminate on September 20, 2020.

WHEREAS, the recently completed "Assessment of Emergency Medical Services in Johnson County Wyoming," (SafeTech Solutions Feb. 2020) ("SafeTech Assessment") generally concluded that the Emergency Services ("EMS") in Johnson County are sustainable, of high quality with significant public support, and an example of a number of best practices for a low volume, rural area.

WHEREAS, the SafeTech Assessment praised the existing contract as ". . . a creative and innovative model to provide two regularly staffed ambulances, with the ability to surge two additional ambulances with fulltime personnel earning competitive living wages. This is done through a unique partnership with another owned business, where part of the labor cost is carried by Buffalo EMS and reimbursed through JCRHCD and part is carried by the other business."

WHEREAS, the SafeTech Assessment further sets forth recommendations to improve EMS in Johnson County:

(1) Since more than 75% of EMS is paid for from public dollars while current charges to the users of EMS are generally one-third or less of average charges nationally, to improve financial sustainability, through "maximize current revenues."

(2) The District and Buffalo EMS to jointly develop a new contract (using mediation if necessary); and

(3) Improve transparency by un-blending the finances and operations between the District and Buffalo EMS (to include separate accounting for Buffalo EMS and Kaycee Ambulance).

WHEREAS, the parties desire to have a new contract begin and end concurrently with the District's fiscal year of July 1 through June 30.

NOW, THEREFORE, THE PARTIES HERETO AGREE as follows:

1. PURPOSE.

1.1 The purpose of this Contract is to establish the terms by which Buffalo EMS will provide ambulance and emergency technician services on behalf of the District in Johnson County, Wyoming within the Service Area defined as north of an imaginary east-west line passing through mile marker 274 on Interstate 25, which mile marker is located south of Buffalo, Wyoming ("Service Area").

2. SCOPE OF SERVICES

2.1 Buffalo EMS to provide twenty-four (24) hour ambulance service, seven (7) days a week, fifty-two weeks a year in the Service Area. This Service Area will extend in any direction without limit if ambulance services are requested by a neighboring ambulance service or county resident.

3. RESPONSIBILITIES OF BUFFALO EMS. Buffalo EMS shall:

3.1 Employ and pay the salary and benefits of an Executive Director whose responsibilities shall be determined by Buffalo EMS but shall include the supervision and direction of all Buffalo EMS employees. The Executive Director shall be the representative to the District, and the Executive Director, or his designee, shall attend all regularly scheduled board meetings of the District.

3.2 Employ qualified and certified personnel sufficient to staff and operate ambulances, provide emergency medical stabilization services and provide emergency medical transportation or transfers in or out of the Service Area, including but not limited to all drivers, emergency medical technicians, nurses and clerical personnel.

3.3 Pay the salaries and benefits, as determined by Buffalo EMS, for such full-time or part-time employees, and in regard to such

employees, shall: (a) comply with all laws regarding its employees; (b) provide its employees with workers compensation insurance; (c) provide its employees with unemployment insurance; (d) withhold FICA and other required tax withholdings from its employees' pay checks; and (e) such other duties as may be reasonable and necessary.

3.4 Provide suitable enclosed and heated garaging for all ambulances, including utilities. In the event that the District decides to build its own ambulance garage, the parties agree that the monthly contract amount for this portion of the overall Contract is ONE THOUSAND TWO HUNDRED FIFTY DOLLARS (\$1,250.00), and such amount will be deducted from the monthly contract amount if the ambulances are no longer garaged at Buffalo EMS' facilities.

3.5 Order all ambulance supplies and equipment, including necessary medical supplies and replacement equipment in or on said ambulances, which supplies and equipment shall be owned by and be the property of the District.

3.6 Supervise the maintenance of all ambulances in top working order including, but not limited to, routine operational maintenance in accordance with the service schedule set forth by the manufacturer in its owner's or operational manual, including but not limited to fuel, oil, filters, tune-ups, tires, replacement parts not covered by insurance, etc., including the repair of any physical damage.

3.7 Notify the District, via email to the Chair of the District Board, of any physical damage to an ambulance within twenty-four (24) hours of such damage.

3.8 Keep and maintain receipts, maintenance logs, and service records for each ambulance.

3.9 Supervise the maintenance and upgrades of all communications equipment.

3.10 Buffalo EMS shall only use the District ambulances to provide ambulance services and such ambulances will not be used to provide county coroner or funeral home services unless the District is reimbursed for the value of such use.

3.11 Provide all necessary documents to the District's billing and collection agent and assist such agent as is reasonably necessary in its billing and collection efforts.

3.12 Buffalo EMS shall perform the services set forth herein in a skillful and competent manner in conformity with the standard of care, skill and diligence normally provided by professionals performing similar services.

3.13 Buffalo EMS shall only employ and allow qualified personnel, who have the required training and certifications, and whose driver's license and EMT certification are in good standing with the State of Wyoming, to operate the ambulances provided by the District.

3.14 Buffalo EMS shall provide the District a written inventory of all supplies and equipment owned by District at least annually. Inventory will show initial cost and expiration date or life expectancy (if applicable) of all items costing over TWO THOUSAND DOLLARS (\$2,000.00).

3.15 Buffalo EMS agrees to provide a monthly activity report with statistical information concerning the services provided pursuant to this Contract. Monthly report shall include total number of calls including cancelled, refusals, times from first call by dispatch until ambulance leaves barn, time taken on call, transfers and nurse transfers with destinations, and classifications as to trauma, medical, standby, Medicare, Medicaid, insurance, private pay, VA and Title 25. In addition, copies of any correspondence from the Office of Wyoming Emergency Medical Services or complaints about services will be made available to the District in the monthly report.

3.16 Implement, maintain, and enforce a comprehensive drug and alcohol policy for its employees, which policy shall include regular random drug and alcohol screening, to ensure that its employees are drug and alcohol free at the work place and when providing the services contemplated by this Contract.

3.17 Obtain all permits and licenses required for Buffalo EMS's performance of Services under this Contract, and to pay all taxes, licenses and fees levied or assessed on Buffalo EMS in connection with or incident to the performance of this Contract by any governmental agency.

3.18 Comply with all laws, rules and regulations of all governmental bodies affecting the Work covered hereby or the employees engaged in such Work, including but not limited to the provisions of the Employer's Liability and Workers' Compensation Laws, and that it will perform the Work safely, properly, and efficiently.

3.19 Procure and maintain during the term of this Contract the following insurance, which insurance coverage shall be carried with insurance companies licensed or otherwise authorized to do business within the State of Wyoming. Upon execution of this Contract, Buffalo EMS will furnish the District with a Certificate of Liability Insurance from the insurance companies evidencing insurance coverage as required by this Contract. The insurance coverage required is as follows: (a) Workers Compensation Insurance and Employer's Liability Insurance (including occupational disease) to cover statutory benefits and limits of the Workers' Compensation laws of the State of Wyoming, and Employer's Liability Insurance with limits of at least one million dollars (\$1,000,000) for trauma, each accident; one million dollars (\$1,000,000) for disease, each person and one million dollars (\$1,000,000) disease, policy limit. (b) Commercial General Liability Insurance with limits of not less than \$1,000,000 per occurrence and \$2,000,000 combined single limit general aggregate. Such insurance coverage shall include the following: (1) Premises/Operations; (2) Independent Buffalo EMS; (3) Personal Injury; (4) Blanket Contractual Liability; and (5) Cross Liability/Severability of Interests. (c) Business Automobile Liability insurance coverage covering all owned, leased and non-owned vehicles used in connection with the Work or services, including, but not limited to the ambulances leased from the District, with not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage. (d) Professional Liability Insurance with not less than \$1,000,000 coverage per occurrence with no less than a twenty-four (24) months discovery period after completion of the Work or Services. (e) Excess or Umbrella Liability with not less than \$2,000,000 combined single limit. Excess or Umbrella liability shall comply with the terms and conditions of the following underlying coverages: (1) Employer's Liability; (2) Commercial General Liability; and (3) Business Automobile Liability.

The following endorsements shall be included in the above-required insurance coverages: (a) Thirty (30) days advance written notice

to the District in the event of cancellation, non-renewal or material change of any policy; (b) The District shall be named as additional insured (except of workers' compensation and professional liability policies); (c) A waiver of subrogation in favor of the District; (d) Severability of Interest or Separation of Insureds; and Buffalo EMS' insurance is primary, and any insurance maintained by the District is considered excess and non-contributory.

3.20 Using District provided hardware and software, act in compliance with HIPPA digital regulation on a day to day basis.

3.21 Such other obligations as may be set forth herein.

4. District Responsibilities. The District shall:

4.1 Promptly pay the contract amounts provided herein.

4.2 Provide as many ambulances as the parties shall in good faith jointly determine are necessary to provide adequate ambulance service in Service Area to Buffalo EMS for its use in fulfilling its obligations under this Contract.

4.3. Implement the SafeTech Assessment recommendation to un-blend the finances and operations between the District and Buffalo EMS (to include separate accounting for Buffalo EMS and Kaycee Ambulance) effective July 1, 2020, the District will conduct its accounting and financial functions through its own employee(s), separately housed from Buffalo EMS to: (1) bill and collect payments for services rendered by the District through Buffalo EMS and Kaycee Ambulance; (2) manage and pay District employees; (3) maintain separate revenue and expense records for Buffalo EMS and Kaycee Ambulance; (4) perform HIPPA compliance; (5) maintain the District's documents in compliance with the Wyoming Public Records Act; and (5) perform such other functions as determined by the Board. Buffalo EMS will provide the district with financial data arising under this Contract necessary to perform these functions.

4.4 Prior to July 1 of each year and after notice and public hearing, establish fee schedules and rates to be paid to the District for services rendered under this Contract. The fee schedules and rates shall be provided to Buffalo EMS prior to July 1 of each year in order for Buffalo EMS to provided billing information to the District.

4.5 Using the information provided to the District pursuant to section 3.11, bill and collect on behalf of the District fees for services rendered under this Contract. All collections are the sole property of the District.

4.6 In order for all parties to comply with digital data privacy regulations required by HIPPA, the District will provide necessary hardware, software and required annual audit to ensure all digital records are handled and recorded in accordance with HIPPA regulations.

4.7 Provide all communications equipment necessary to the operation of the ambulance service, which equipment shall be owned by and be the property of the District.

4.8 Perform such other obligations as may be set forth herein.

5. ANNUAL CONTRACT AMOUNT

5.1 For the initial fiscal year commencing July 1, 2020 and ending June 30, 2021 ("Base Year"), for services described herein, the District shall pay to Buffalo EMS the total sum of SEVEN HUNDRED TWENTY THOUSAND DOLLARS (\$720,000.00) on the first day of each month in twelve equal installments of SIXTY THOUSAND DOLLARS (\$60,000.00).

5.2 The District shall either pay directly or reimburse Buffalo EMS not to exceed a total amount of ONE HUNDRED AND FOUR THOUSAND NINE HUNDRED DOLLARS (\$104,900.00) with the approximate amounts set forth by category as set forth on Exhibit A, attached hereto and incorporated by reference.

5.3 Prior to April 1 of the Base Year and each fiscal year thereafter, Buffalo EMS shall propose to the District a contract amount for the next succeeding fiscal year. Unless there has been a material reduction in the volume of services provided (a decline of more than five percent (5%) year over year), the contract and reimbursement amounts for the next succeeding fiscal year shall be the amounts for the current fiscal year increased or decreased, as the case may be, by the percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers-U.S., Bureau of Labor Statistics ("CPI-W") over the immediately preceding twelve months prior to March 1.

5.4 Prior to April 1, if there has been a material increase or decrease in the volume of services provided (an increase or decrease of more than five percent (5%) preceding 12-month period over the prior 12-month period), either party may request negotiation in the contract and reimbursement amount to reflect the change in volume.

5.5 If the District and Buffalo EMS fail to agree by June 15 on a contract and reimbursement amount for the next succeeding fiscal year under Section 5.4, in order to maintain continuity of emergency services, Buffalo EMS will continue to provide services at the request of the District on a month to month basis through August 31st at the then existing monthly rate and reimbursement to allow the District to contract with another provider.

6. [SECTION 6 INTENTIONALLY LEFT BLANK]

7. TERM AND RENEWALS.

7.1 Term. The term of this Contract will be for an initial period of five (5) fiscal years beginning July 1, 2020 and extending through June 30, 2025. Provided, if the District determines in good faith that it will have insufficient funds from available mill levies and reserves to fund this Contract for the next fiscal year, the District may terminate this Contract effective at the end of the current fiscal year. The District agrees to give written notice of termination to Buffalo EMS at least ninety (90) days prior to the end of its then current fiscal year and will pay to Buffalo EMS all charges incurred through the end of such period.

7.2 Renewals. Beginning during the second year of the Contract, the District may elect to extend the Contract by issuing annual renewal periods of one (1) year. At any time during this contract period, at the sole discretion of the District, the District may grant a renewal that will extend the term of the Contract to include a sixth year. In each subsequent year, the District shall have the option to add another year to the Contract term in recognition of Contract performance exceeding contract expectations with respect to, but not limited to: (a) response time reliability, (b) clinical care, (c) staff quality and licensure and (d) financial records. The District shall notify Buffalo EMS of any earned renewal within one hundred twenty (120) days of the preceding contract fiscal year-end, and the parties

will sign a written amendment mutually agreeing to the extension of the term.

8. General Provisions.

8.1 Amendments. Either party may request changes in this Contract. Any changes, modifications, revisions or amendments to this Contract which are mutually agreed upon by and between the parties to this Contract shall be incorporated by written instrument, executed and signed by all parties to this Contract.

8.2 Applicable Law. The construction, interpretation and enforcement of this Contract shall be governed by the laws of the State of Wyoming. The courts of the State of Wyoming shall have jurisdiction over any action arising out of this Contract and over the parties, and the venue shall be the Fourth Judicial District, Johnson County, Wyoming.

8.3 Relationship of the Parties. Nothing in this Contract shall be construed to create a relationship of employer and employee or principal and agent, partnership, joint venture, or any relationship other than that of independent parties contracting with each other solely for the purpose of carrying out the provisions of the Contract. Buffalo EMS shall be free from direction over details of performance of the Contract and function as an independent Contractor for the purposes of this Contract and shall not be considered an employee of the District for any purpose. Buffalo EMS shall assume sole responsibility for any debts or liabilities that may be incurred by Buffalo EMS in fulfilling the terms of this Contract. Nothing in the Contract shall create any rights or remedies in any third party, it being solely for the benefit of the District and Buffalo EMS.

8.4 Assignment. Neither party shall assign or otherwise transfer any of the rights or delegate any of the duties set forth in this Contract without the prior written consent of the other party.

8.5 Inspection of Property. Upon reasonable notice, the District shall have the general right of inspection of any property owned by the District.

8.6 Compliance with Law. The District and Buffalo EMS shall keep informed of and comply with all applicable federal, state, and local laws and regulations in the performance of this Contract.

8.7 Force Majeure. Neither party shall be liable for failure to perform under this Contract if such failure to perform arises out of causes beyond the control and without the fault or negligence of the nonperforming party. Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. This provision shall become effective only if the party failing to perform immediately notifies the other party of the extent and nature of the problem, limits delay in performance to that required by the event, and takes all reasonable steps to minimize delays. Force majeure specifically includes the failure of the District to have sufficient funds from available mill levies and reserves to pay its obligations hereunder, provided that Buffalo EMS is relieved from performance in the absence of payment.

8.8 Indemnification. The District and Buffalo EMS shall indemnify, defend and hold harmless the other party, and its respective officers, agents, employees, successors and assignees from any and all claims, lawsuits, losses and/or liabilities which are based upon or occur as a result of their breach of this Contract or their negligence.

8.9 Entirety of Contract. This Contract represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations and agreements, whether written or oral.

8.10 Prior Approval. This Contract shall not be binding upon either party unless this Contract has been reduced to writing, signed and approved as to form by the Johnson County Attorney or his representative.

8.11 Severability. Should any portion of this Contract be judicially determined to be illegal or unenforceable, the remainder of the Contract shall continue in full force and effect, and either party may renegotiate the terms affected by the severance.

8.12 Sovereign Immunity. Except with respect to its payment and indemnification obligations herein, the District does not waive its sovereign immunity by entering into this Contract, and fully retains all immunities and defenses provided by law with respect to any action based on or occurring as a result of this Contract.

8.13 Third Party Beneficiary Rights. The parties do not intend to create in any other individual or entity the status of third party beneficiary, and this Contract shall not be construed so as to create such status. The rights, duties and obligations contained in this Contract shall operate only between the parties to this Contract, and shall inure solely to the benefit of the parties to this Contract. The provisions of this Contract are intended only to assist the parties in determining and performing their obligations under this Contract.

8.14 Waiver. The waiver of any breach of any term or condition in this Contract shall not be deemed a waiver of any prior or subsequent breach. Failure to object to a breach shall not constitute a waiver.

8.15 Attorneys' Fees. If either party institutes a suit to enforce any right or obligation against the other party arising from or incidental to this Contract, then the party adjudicated to have substantially prevailed in the suit shall be entitled to recover by court order its attorneys' fees, including those incurred prior to filing suit relevant to enforcement of this Contract, and court costs against the non-prevailing party.

UPON EXECUTION BY ALL PARTIES, THIS CONTRACT IS EFFECTIVE AS OF JULY 1, 2020, AND THE EXISTING CONTRACT IS TERMINATED SUBJECT TO PAYMENT OF ANY AMOUNTS DUE.

JOHNSON COUNTY RURAL HEALTH CARE DISTRICT

MARILYN CONNOLLY, CHAIRMAN

DATE

ATTEST:

APPROVED AS TO FORM:

SECRETARY TO DISTRICT

JOHNSON COUNTY ATTORNEY

BUFFALO EMS, LLC

DAVE HARNESS, MEMBER

DATE

Witness

Exh. A: Buffalo EMS Reimbursables (not to exceed \$100,490)		
Advertising		\$ 500
Cell Phones		\$ 3,000
Educ / Travel / Meals		\$ 3,000
EMT Uniforms		\$ 1,500
Fuel / Oil / Tires		\$ 13,000
Insurance - Liability		\$ 12,000
Misc Other Expense		\$ 3,000
Nurse Labor		\$ 30,000
Repair & Maintenance		\$ 7,500
Supplies: Med Amb.		\$ 18,000
Supplies: Office		\$ 3,000
Supplies: Postage		\$ 300
Vaccinations & Drug Testing		\$ 300
Buffalo Capital Outlay		\$ 5,390
TOTAL		\$ 100,490