

CONTINGENT LEASE AGREEMENT
COUNTY OF EL DORADO

THIS CONTINGENT LEASE Agreement (Agreement) is entered into as of the day _____ of _____, 2018, between the County Of El Dorado, a political subdivision of the State of California, (Lessee), and El Dorado County Emergency Services Authority (hereinafter referred to as Lessor or Contractor).

WHEREAS, Lessor and Lessee have entered into an agreement for ambulance services (Contract #2298), which is incorporated herein for all purposes, which contemplates that the parties would enter into a mutually agreed upon arrangement to facilitate Lessee's "Takeover rights" as described in the Contract; and

WHEREAS, in the event of a "takeover", Lessee desires to lease certain ambulances and certain items of equipment (collectively known as Equipment) specified on Attachment A attached hereto and incorporated herein for all purposes, to Lessee, and Lessee desires to lease the Equipment from Lessor upon the terms and contained in this Agreement and based on the Contract; and

WHEREAS, there are no existing security interests or other encumbrances on the Equipment; and

WHEREAS, Lessor and Lessee agree that this Contingent Lease Agreement shall become effective and the Lessee shall lease the Equipment only upon occurrence of the contingency provided in section 3 hereof in the event of exercise of takeover rights in accordance with the Contract;

NOW, THEREFORE, in consideration of the foregoing and the covenants and agreements contained herein and other good and valuable consideration, the sufficiency of which are hereby acknowledged and confessed, the parties hereto, intending to be legally bound, do hereby represent, warrant, covenant and agree as follows:

- 1) Agreement to Lease: That all matters stated above are found to be true and correct and are hereby incorporated into the body of this Agreement as if copied herein in their entirety. This Agreement sets forth the terms and conditions upon which Lessor agrees to lease to Lessee, and Lessee agrees to lease from Lessor, the Equipment specified on Schedule "A".
- 2) Acceptance: Lessor warrants that the Equipment complies in all respects with the terms and provisions of the Contract. Lessee hereby accepts the Equipment for lease upon and subject

to the terms and conditions of this Agreement "as is" and Lessee hereby agrees to be fully and completely bound by each and all of the terms and conditions hereof.

- 3) Lessee's Performance Rights and "Takeover Rights": This Agreement shall be contingent and effective solely upon the determination by the EI Dorado County Board of Supervisors that a Major Breach as defined in the contract #2298 has occurred and Lessee's "takeover rights" or "performance rights" are activated in accordance with said contract. Once "takeover rights" are activated by Lessee by notice to Lessor that a majority vote of the EI Dorado County Board of Supervisors has been made to effectuate an immediate "takeover" or takeover by Lessee pursuant to and by the Contract, then Lessee shall have the option, at its sole discretion to take possession and control of the Equipment subject to the terms and conditions of this Agreement.

- 4) Rent, Lease Term and Renewal: Upon Lessee exercising its performance rights, Lessee shall pay Lessor or Lessor's assignee or successor monthly rent for the Equipment in an amount equal to the fair market monthly rental value of the Equipment ("Rental Payment"), less any offset for amounts due from Lessor to Lessee under the Contract. One such Rental Payment shall be due and payable during the term of this Agreement on or before the first day of each calendar month succeeding the calendar month in which Lessee exercises its performance rights; provided that in the event the term hereof shall end during a calendar month or a subsequent sublease shall be executed, the rent for any fractional calendar month preceding the end of the term of this Agreement or the effective date of the subsequent sublease agreement, as applicable, shall be prorated by days. In addition, Lessee shall pay rent for the fractional calendar month in which Lessee exercises its performance rights prorated by days commencing with the day Lessee takes possession and control of the Equipment. The term of this Agreement ("Lease Term") shall commence on the exercise of Lessee's performance rights hereunder and shall continue for the same period of time as the Contract, unless sooner terminated pursuant to the provisions hereof. The amount of the fair market monthly rental value ("FMMRV") of the Equipment shall be determined by agreement of the Lessor and Lessee. In the event that the Lessor and Lessee cannot agree upon the fair market monthly rental value of the Equipment within three (3) months of the date when the initial Rental Payment amount or any subsequent adjusted Rental Payment amount becomes due ("Agreement Date"), the fair market monthly rental value of the Equipment shall be determined by the following appraisal process. Within ten (10) days after the FMMRV Agreement Date, each party shall select an appraiser and shall submit in writing the name of the appraiser so selected to the other party. Within twenty (20) days after the FMMRV Agreement Date, the two (2) appraisers so selected by the parties shall select a third, and the three (3) appraisers shall determine the FMMRV of the Equipment and shall submit in writing their determination to both parties within thirty (30) days of the FMMRV Agreement date. The three (3) appraisers' determination of the FMMRV of the Equipment shall be binding upon both Lessor and Lessee when approved by the EI Dorado County Board of Supervisors.

- 5) Payment of Rent: The Rental Payments and any other payments under this Agreement shall be payable only from the current revenues of Lessee or any other funding source Lessee should choose and shall be made to Lessor or to Lessor's assignee or successor at Lessor's

address shown on the signature page hereof, or at such other address as Lessor or Lessor's assignee may designate, in immediately available funds in such coin or currency of the United States of America or other medium of exchange which at the time of payment shall be legal tender for the payment of public and private debts.

- 6) Non-appropriation of Funds: In the event funds are not budgeted and appropriated in any fiscal year of Lessee for Rental Payments due under this Agreement for the then current or succeeding fiscal year of Lessee, this Agreement shall impose no obligation on the Lessee as to such current or succeeding fiscal year of Lessee and this Agreement shall become null and void. No right of action or damage shall accrue to the benefit of Lessor, its successors or assignees, for any further payments. If the provisions of this are utilized by Lessee, Lessee agrees to promptly notify Lessor or Lessor's assignee within a reasonable amount of time that funds are not budgeted and appropriated, and to immediately and peaceably surrender possession of the Equipment to Lessor or Lessor's assignee or the appropriate entity. In all events, Lessee shall pay Rental payments for each month the Equipment is utilized by the Lessee or an agent of the Lessee.

- 7) Purchase Option: In the event Lessee has exercised its performance rights upon thirty (30) days prior written notice from Lessee to Lessor ("Purchase Option Notice"), and provided there is no Event of Default (as defined herein) or Incipient Default (as defined herein) then existing Lessee shall have the right to purchase the Equipment by paying to Lessor, on such date, the Rental Payment then due together with an amount equal to the then Fair Market Value ("Concluding Payment") of the Equipment, Fair Market Value of the Equipment shall be determined by agreement of the Lessor and Lessee. In the Purchase Option notice from the Lessee to the Lessor, the Lessee shall indicate what Lessee believes the Concluding Payment amount should be within ten (10) days after receipt of the Lessee's Purchase Option notice. Lessor shall notify Lessee in writing if Lessor disagrees with the Lessee's Concluding Payment amount as specified in the Lessee's Purchase Option notice ("Lessor's Response Notice"). In the event Lessor fails to deliver Lessee's Response Notice within ten (10) days after Lessor's receipt of the Lessee's Purchase Option notice, Lessor shall be obligated to sell the Equipment to Lessee for the Rental Payment then due together with the Concluding Payment amount set forth in Lessee's Purchase option notice. In the event Lessor delivers the Lessor's Response Notice in a timely fashion, then within ten (10) days after Lessee's receipt of Lessor's Response Notice, each party shall select an appraiser and submit in writing the name of the appraiser so selected to the other party. Within twenty (20) days after Lessee's receipt of Lessor's Response Notice, the two (2) appraisers so selected by the parties shall select a third appraiser, and the three (3) appraisers shall determine the fair market value of the Equipment and shall submit in writing, their determination to both Lessor and Lessee. Such determination by the three (3) appraisers of the fair market value of the Equipment shall be the Concluding Payment amount and shall be binding upon Lessor and Lessee. Upon satisfaction by Lessee of such purchase conditions, Lessor will transfer any and all of its right, title and interest in the Equipment to Lessee as is without warranty express or implied, except that Lessor shall warrant the Equipment is free and clear of any liens created by Lessor. Documentation verifying that any Equipment is free and clear of any liens created by Lessor will be provided to Lessee promptly.

- 8) Statement of Lease: This Agreement shall constitute a lease of personal property, and Lessee agrees to take all action necessary or reasonably requested by Lessor or Lessor's assignee to ensure that the Equipment shall be and remain personal property, and nothing herein shall be construed as conveying to Lessee any interest in the Equipment other than its interest as a Lessee. Lessee shall, at its expense, protect and defend the interests of Lessor or Lessor's assignee in the Equipment against all third party claims as a result of Lessee's negligent act, keep the Equipment free and clear of any mortgage, security interest, pledge, lien, charge, claim or other encumbrance (collectively, "Lien"), except any Lien arising solely through acts of Lessor or Lessee's assignee ("Lessor's Lien"); give Lessor or Lessee's assignee immediate notice of the existence of any such Lien; and defend Lessor or Lessor's assignee against any claim, liability, loss damage or expense arising in connection with any of the foregoing.

- 9) Use: The Equipment set out in Attachment "A" which is incorporated herein for all purposes may be subleased to a sublessee for use and operation pursuant to the Contract. The Equipment will be used for providing ambulance services to the Lessee and operated by Lessee and any sublessee in the ordinary conduct of their business by qualified employees and agents of Lessee and of any sublessee and in accordance with all applicable manufacturer and vendor instructions as well as with all applicable legal and regulatory requirements. Lessee shall not change, or permit any sublessee to change, the location of any of the Equipment from EI Dorado County CSA No. 7 without obtaining Lessor's or Lessor's assignee's prior written consent.

- 10) Maintenance and Alterations: Lessee and any sublessee shall, at its expense, repair and maintain the Equipment so that it will remain in the same condition as when delivered to Lessee, ordinary wear and tear from proper use excepted. Such repair and maintenance shall be performed in compliance with all requirements necessary to enforce all product warranty rights and with all applicable legal and regulatory requirements. Lessee shall enter into and keep in effect during the Lease Term those maintenance agreements with respect to the Equipment required by this Agreement or hereafter required by Lessor or Lessor's assignee. Lessee shall, at its expense, make such alterations ("Required Alterations") to the Equipment during the Lease Term as may be required by applicable legal and regulatory requirements. In addition, Lessee may at its expense, without Lessor's consent, so long as no Event of Default or event which with the passage of time or giving of notice or both, would constitute an Event of Default ("Incipient Default"), has occurred and is continuing, make alterations ("Permitted Alterations") to any of the Equipment which do not impair the commercial value or originally intended function or use of such Equipment and which are readily removable without causing damage to such Equipment. All Required Alterations and Permitted Alterations, if any, shall be made only if permitted by applicable laws and only if made in conformance with applicable laws. Any Permitted Alterations not removed by Lessee prior to the return of such Equipment to Lessor or Lessor's assignee, and all Required Alterations, shall immediately without further action become the property of Lessor or Lessor's assignee and part of such Equipment for all purposes of this Agreement. Other than as provided in this Section hereof, Lessee may make no alterations to any of the Equipment. Any prohibited alterations to any of the Equipment shall, at Lessor or Lessor's assignee's election, immediately become the property of Lessor or Lessor's assignee without further action and

without Lessor or Lessor's assignee thereby waiving any Incipient Default (as defined herein) or Event of Default (as defined herein) .

- 11) Return: Unless Lessee elects to exercise its purchase option as provided in this Contingent Lease Agreement hereof, at the expiration or earlier termination of the Lease Term, Lessee shall, at its expense, return such Equipment to Lessor or Lessor's assignee at Lessor's address unless otherwise agreed in writing by Lessee and Lessor.
- 12) Identification: Lessor shall, at its expense, place and maintain permanent markings on the Equipment evidencing ownership, security and other interests therein, as specified from time to time by Lessor or Lessor's assignee. Lessee shall not place or permit to be placed any other markings on any Equipment which might indicate any ownership or security interest in such Equipment. Any markings on any Equipment not made at Lessor's or Lessor's assignee's request shall be removed by Lessee, at its expense, prior to the return of such Equipment to Lessor or Lessor's assignee in accordance with Section 11 of this Contingent Lease Agreement entitled "Return" hereof.
- 13) Inspection: Upon reasonable prior notice, Lessee shall make the Equipment and all related records available to Lessor or Lessor's assignee or the agents of Lessor or Lessor's assignee for inspection during regular business hours at the location of such Equipment. Lessee acknowledges that at the time of "takeover", if any, Lessee or its agents will fully inspect the Equipment and verify that the Equipment is in good condition and repair and that the Lessee will accept the Equipment as is in accordance with this Contingent Lease Agreement at the paragraph entitled "Acceptance".
- 14) Lessee Sublease or Assignment: Lessee and Lessor agree that Lessee has the right to sublease the Equipment pursuant to a sublease agreement as Lessee's sole discretion may hereafter determine. Lessee shall further have the right, in the event of termination of any sublease agreement, or termination of a subsequent sublease agreement, to sublease the Equipment under the terms and conditions as Lessee shall determine to another sublessee. If Lessor has failed to perform under the terms of this Contingent Lease Agreement or the Contract then Lessor's approval of a sublessee shall not be required. If Lessee elects not to exercise its performance rights, or fails to budget and appropriate funds as provided in the paragraph of this Contingent Lease Agreement entitled "Non-Appropriation of Funds" hereof, this Contingent Lease Agreement shall terminate automatically in accordance with Section 6 hereof entitled "Non-appropriation of Funds".
- 15) Lessor Assignment: Lessor or Lessor's assignee may from time to time, after prior written approval of Lessee, which approval shall not be unreasonably withheld or delayed, assign or otherwise transfer (collectively "Transfer"), in whole or in part, this Agreement, or any of its interests, rights or obligations with respect thereto, including without limitation any Rental Payment and any other sums due or to become due under this Agreement, to one or more persons or entities (hereinafter referred to as "Assignee"). Each Assignee shall have, to the extent provided in any Transfer document, all of Lessor's rights, powers, privileges and remedies provided at law, equity or in this Agreement.

- 16) Liens: Lessee shall not directly or indirectly create, incur, assume or suffer to exist any Lien on or with respect to any Equipment Lessor's or an Assignee's title to any such Equipment, or other interest or right of Lessor or an Assignee with respect thereto, except Lessor's Liens. Lessee, at its expense, shall promptly pay, satisfy and take such other actions as may be necessary or reasonably requested by Lessor or an Assignee to keep the Equipment free and clear of, and to duly and promptly discharge, any such Lien, except for any liens caused by Lessor.
- 17) Risk of Loss: Lessee shall bear all risk of loss, damage, theft, taking, destruction, confiscation or requisition with respect to the Equipment, however caused or occasioned, except where caused by the negligence of Lessor, which shall occur prior to the return of such Equipment in accordance with paragraph 11 in Contingent Lease Agreement entitled "Return". In addition, Lessee hereby assumes all other risks and liabilities, including without limitation personal injury or death and property damage, arising with respect to the Equipment, except where caused by the negligence of Lessor, including without limitation those arising with respect to the manufacture, purchase, ownership, shipment transportation, delivery, installation, leasing, possession, use, storage and return of such Equipment, howsoever arising, in connection with any event occurring prior to such Equipment's return in accordance with paragraph 11 in Contingent Lease Agreement entitled "Return". In no event shall Lessee's liability with respect to the Equipment exceed the fair market value of the Equipment, taking into account the age and condition of the Equipment at the time of the loss, damage, the taking, destruction, confiscation or requisition.
- 18) Casualty: If any of the Equipment shall become lost, stolen, destroyed or irreparably damaged from any cause whatsoever, or shall be taken, confiscated or requisitioned (any such event herein called an "Event of Loss"), Lessee shall promptly notify Lessor of the occurrence of such Event of Loss.
- 19) Insurance: Lessee or any sublessee hereunder shall, at its expense, cause to be carried and maintained for all of the Equipment, commencing at the time any risk shall pass to Lessee as to such Equipment and continuing until the return of such Equipment in accordance with the paragraph 11 in Contingent Lease Agreement entitled "Return", insurance against such risks, under Lessee's self-insurance program or, at Lessee's sole option, some other program mutually agreed to by Lessor and Lessee. If any insurance proceeds are received with respect to an occurrence which does not constitute an Event of Loss, such proceeds shall be applied to payment for repairs. If any insurance proceeds are received by Lessee or any sublessee or an Assignee with respect to an occurrence which constitutes an Event of Loss, such proceeds shall be applied first toward replacement Equipment or applied toward repair of Equipment to a serviceable condition, and then toward the Rental Payments due. Within ten (10) days of Lessee taking possession and control of the Equipment, and, if an insurance policy is issued, on a date not less than thirty (30) days prior to each insurance policy expiration date, Lessee shall deliver to Lessor certificates of insurance or proof of self insurance or other evidence satisfactory to Lessor showing that such insurance coverage is and will remain in effect in accordance with Lessee's obligations under this Section, Lessor shall be under no duty to ascertain the existence of any insurance coverage or to examine any certificate of insurance or other evidence of insurance coverage or to advise Lessee in the event the insurance

coverage does not comply with the requirements hereof. Lessee shall give Lessor prompt notice of any damage, loss or other occurrence required to be insured against with respect to any Equipment.

- 20) Taxes and Fees: Except to the extent exempted by law, Lessee hereby assumes liability for, and shall pay when due all fees, taxes and governmental charges (including without limitation interest and penalties) of any nature imposed upon the Equipment, or the use thereof except any taxes on or measured by Lessor's income or the value of any of Lessor's interest in this Agreement or the Equipment.
- 21) Limited Warranty: Lessor warrants to Lessee that, so long as no Incipient Default or Event of Default has occurred and is continuing, Lessor will not interfere with Lessee's use and possession of the Equipment. Lessor, not being the manufacturer or vendor of the equipment, makes no other representation or warranty, express or implied, as to the suitability or fitness for any particular purpose the quality of the material or workmanship of the equipment.
- 22) Events of Default: Time is of the essence in the performance of all obligations of Lessee. An "Event of Default" shall occur if (a) Lessee fails to make any Rental Payment for which funds have been appropriated and budgeted by Lessee as it becomes due in accordance with the terms of this agreement and any such failure continues for a period of ten (10) days after written notice to Lessee from Lessor, or (b) Lessee violates any covenant, term, or provision of this Agreement, and such violation shall continue unremitted for a period of ten (10) days after written notice to Lessee from Lessor. Failure of Lessee to budget and appropriate funds in any fiscal year of Lessee for Rental Payments due under this Agreement shall not constitute an Event of Default.
- 23) Remedies: If one or more Events of Default shall have occurred and be continuing after the ten (10) day notice period has lapsed, Lessor or Lessor's assignee at its option, may:
 - A) proceed by appropriate court action or actions, either at law or in equity, to enforce performance by Lessee of the applicable covenants of this Agreement or to recover damages for the breach thereof, or
 - B) by notice to Lessee terminate this Agreement, whereupon all rights of Lessee to the possession and use of the Equipment shall absolutely cease and terminate as though this Agreement as to such Equipment had never been entered into; provided, however, Lessee shall nevertheless remain fully and completely liable under this Agreement only for the payment of the outstanding Rental Payments for the balance of the then current month; and thereupon Lessor or Lessor's assignee may without notice, by its agents, enter upon the premises of Lessee where any of the Equipment may be located and take possession of all or any of such Equipment and from that point hold, possess, operate, sell, lease and enjoy such Equipment free from any right of Lessee, its successors and assigns, to use such Equipment for any purposes whatsoever.

The remedies of Lessor referred to in this Section shall be deemed exclusive.

- 24) Information: Lessee agrees to furnish Lessor or an Assignee such information concerning the Equipment as Lessor or an Assignee may reasonably request.
- 25) Late Charges: Any nonpayment of Rental Payment or other amounts payable under this Agreement shall result in Lessee's obligation to promptly pay Lessor or Lessor's assignee as additional rent on such overdue payment, for the period of time during which it is overdue, interest at the highest lawful rate authorized to be paid by municipalities of the State of California.
- 26) Lessor's Right to Perform for Lessee: If Lessee fails to duly and promptly pay (except pursuant to the paragraph in this Contingent Lease Agreement entitled "Non-Appropriation of Funds"), perform or comply with any of its obligations, covenants or agreements under this Agreement, Lessor or an Assignee may itself pay, perform or comply with any of such obligations, covenants or agreements for the account of Lessee, in such event, any amount paid or expense incurred by Lessor or an Assignee in connection therewith shall on demand, together with interest as provided in the paragraph in this Contingent Lease Agreement entitled "Late Charges", be paid to Lessor or an Assignee.
- 27) Notices: Any consent, instruction or notice required or permitted to be given under this Agreement shall be in writing and shall become effective when delivered, or if mailed when deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested, and addressed to Lessor, Lessee or an Assignee, as the case may be, at their respective addresses set forth herein or at such other address as Lessor, Lessee or an Assignee shall from time to time designate to the other party by notice similarly given.
- 28) Miscellaneous: No term or provision of this Agreement may be amended, altered, waived, discharged or terminated except by an instrument in writing signed by a duly authorized representative of the party against which the enforcement of the amendment, alteration, waiver, discharge or termination is sought. This Agreement shall be governed in all respects by, and construed in accordance with, the laws of the State of California. Subject to all of the terms and provisions of this Agreement, all of the covenants, conditions and obligations contained in this Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties. This Agreement, any documents executed and delivered in connection herewith, including but not limited to the Guaranty and any subsequent guaranty, the Non-disturbance Agreement of the Bank, and the Contract and any documents executed in connection with said Contract shall constitute the entire agreement of Lessor and Lessee with respect to the Equipment leased hereby, and shall automatically cancel and supersede any and all prior oral or written understandings with respect hereto. This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original but all such counterparts taken together shall constitute one and the same instrument. The headings in this Agreement shall be for convenience of reference only and shall form no part of this Agreement. Whenever the context requires, the covenants, conditions and obligations contained in this under this Agreement shall survive the delivery and return of the Equipment leased hereunder.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

LESSOR / CONTRACTOR

By: Michael R Hardy
Chief Mike Hardy, Chairperson,
El Dorado County Emergency Services
Authority
Board of Directors
(Contractor)

Dated: May 23, 2018

Attest: Sherrie KELLEY

By: Sherrie Kelley
Corporate Secretary Date: 5.23.18

LESSEE

By: _____
Michael Ranalli, Chair
Board of Supervisors
County of El Dorado

Dated: _____

Attest: *James Mitrison*
Clerk of the Board of
Supervisors

By: _____ Date: _____
Deputy

ATTACHMENT A
LEASE Equipment