

AMENDED AND RESTATED EMS SUPPORT AGREEMENT

This Amended and Restated EMS Support Agreement (the "**Agreement**") is made and entered into effective April 1, 2023 (the "**Effective Date**"), by and between Stephens County, Texas, a political subdivision of the State of Texas ("**County**"), the City of Breckenridge, Texas, a political subdivision of the State of Texas ("**City**"), and Stephens Memorial Hospital District, a political subdivision of the State of Texas ("**District**"). County, City and District are each a "**Party**" and are referred to collectively as the "**Parties**."

RECITALS

WHEREAS, the Parties previously entered into that certain EMS Support Agreement dated and effective April 1, 2017 (the "**Original EMS Support Agreement**");

WHEREAS, the Parties have elected to contract with a new licensed emergency medical service ("**EMS**") provider and now desire to amend and restate the Original EMS Support Agreement as hereinafter set forth;

WHEREAS, subject to the terms and conditions herein provided, County and City desire to continue support District's contracting of ground emergency and non-emergency patient care and transfer ambulance services and emergency medical care (collectively, the "**Services**") for the benefit of County's and City's residents and visitors;

WHEREAS, District represents that it has the capability to contract for such Services; and

WHEREAS, the Parties are authorized to enter into this Agreement pursuant to the Interlocal Cooperation Act, TEXAS GOVERNMENT CODE § 791.001 et seq.

NOW THEREFORE, for and in consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

AGREEMENT

1. **Authority.** County and City hereby grant and authorize District to contract with a licensed EMS provider for the performance all Services within the corporate limits of County (the "**Service Area**"), as may be further reasonable and customary in the industry. District shall maintain EMS service locations as it shall determine in its sole discretion as are necessary to perform Services in accordance with the terms of this Agreement. District shall not be required to provide Services under this Agreement to any portion of the Service Area that is within the boundaries of an emergency services district.

2. **Term and Termination.**

(a) Unless otherwise provided herein, the term of this Agreement shall be for thirty-six (36) months beginning on the Effective Date (the "**Initial Term**"). Upon expiration of the Initial Term, this Agreement shall automatically renew for additional 12-month renewal terms unless otherwise terminated as provide for herein.

(b) This Agreement may be terminated at any time during the Term upon thirty (30) calendar days' prior written notice to the other Parties if a Party to whom such notice is given has materially breached and continues to be in material breach or non-fulfillment of this Agreement. The Party(ies) claiming the right to terminate shall set forth in the notice the facts underlying its claim of such material breach or non-fulfillment and shall expressly state that the notice constitutes a termination notice under this Section 2(b). Should the alleged breach or non-fulfillment of this Agreement be remedied within thirty (30) calendar days

of receipt of such notice (or, if such breach or non-fulfillment cannot be cured within such thirty (30) day period but remedial efforts shall be commenced within such period and diligently pursued, the cure period shall be extended for an additional period as may be necessary to cure such breach or non-fulfillment; however, in no event will such breaching or non-fulfilling Party have more than sixty (60) days to cure such breach or non-fulfillment), this Agreement shall continue without interruption for the remaining term.

(c) This Agreement may be terminated by District in accordance with the provisions of Section 4(b) hereof, which shall not be considered a termination based upon a material breach or non-fulfillment of this Agreement for purposes of Section 2(b) hereof.

3. **District's Responsibilities and Services.**

(a) Provision of Services. During all times that this Agreement is in effect, District covenants and agrees to contract with a licensed EMS provider for the performance all Services within the Service Area (the "**EMS Provider**"). County and City are not a party to the agreement between District and EMS Provider. The agreement between District and EMS Provider is attached hereto as **Exhibit A**.

4. **Financial Arrangements.**

(a) Subsidy and Rates.

(i) District agrees to perform this Agreement for an annual subsidy of Two Hundred thousand Dollars (\$200,000.00) per year, or pro rata portion thereof for any partial year, as follows (the "**Subsidy**"):

(A) County shall pay District \$8,333.33 and \$366.67 (1/3 the cost of the EMS station rent) each calendar month on or before the 1st day of such month, total \$8700.00; and

(B) City shall pay District \$8,333.33 and \$366.67(1/3 the cost of the EMS station rent) each calendar month on or before the 1st day of such month, total \$8700.00.

(b) Rate Review Process.

(i) In the event that at any time during the term hereof District's cost to contract with EMS Provider for the performance all Services within the Service Area under this Agreement increases, District shall provide written notice thereof to County and City. District, County and City agree to work together in good faith during such budgeting process with respect to the payment by County and City of additional funds to District for Services furnished hereunder. In the event that County and City refuse to enter into such negotiations, or such negotiations do not result in funds approved by both County and City that is acceptable to District, in its sole discretion, then District may terminate this Agreement upon sixty (60) days' notice to County and City.

(c) Payments Subject to Future Appropriation.

(i) The Parties understand and agree that all payments or expenditures made by County, City and District under this Agreement are subject to County's, City's, and District's appropriation of funds for such payments or expenditures to be paid in the budget year for which they are made.

(ii) The payments to be made to District or other expenditures under this Agreement, if paid, shall be made solely from annual appropriations from the general funds of County and City

or from such other funds of County and City as may be legally set aside for such purpose, subject to any applicable limitations or procedural requirements.

(iii) The expenses incurred by District for the provision of Services under this Agreement shall be paid solely from annual appropriations from the general funds of District or from such other funds District as may be legally set aside for such purpose, subject to any applicable limitations or procedural requirements.

(iv) In the event County and/or City do not appropriate funds in any fiscal year for payment due or expenditures under this Agreement, County and City shall not be liable to District for such payments or expenditures unless and until appropriation of said funds is made; provided, that District, in its sole discretion, shall have the right but not the obligation to terminate this Agreement and shall have no obligations under this Agreement for the year in respect to which said unappropriated funds relate.

(v) In the event District does not appropriate funds in any fiscal year for Services under this Agreement, District shall not be liable to County and/or City for such Services unless and until appropriation of said funds is made; provided, that District, in its sole discretion, shall have the right but not the obligation to terminate this Agreement and shall have no obligations under this Agreement for the year in respect to which said unappropriated funds relate.

5. **Provisions of General Application.**

(a) Duty to Cooperate. The Parties acknowledge that the Parties' mutual cooperation is critical to the ability of District to perform its duties hereunder successfully and efficiently.

(b) Independent Contractor; Arms' Length Transaction. It is expressly understood and agreed that the relationship between the Parties is that of independent contractors. Nothing herein contained shall in any manner at any time be construed to effect an agreement of partnership or joint venture or render any Party hereto the employee or master of any other Parties and/or its employees, agents or representatives. County, City and District understand and agree that all amounts payable to District under this Agreement represent amounts negotiated between the Parties in arms' length negotiations.

(c) Severability. Each provision of this Agreement is intended to be severable. If any term of provision hereof shall be determined by a court of competent jurisdiction to be illegal or invalid for any reason whatsoever, such provision shall be severed from this Agreement and shall not affect the validity of the remainder of this Agreement.

(d) Waiver; Consents. No consent or waiver, express or implied, by a Party hereto of any breach or default by the other Parties in the performance by the other of its obligations hereunder shall be valid unless in writing, and no such consent or waiver shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such other Party of the same or any other obligations of such Party hereunder. Failure on the part of a Party to complain of an act or failure to act of the other Parties or to declare the other Parties in default, irrespective of how long such failure continues, shall not constitute a waiver by such Party of its rights hereunder. The granting of any consent or approval in any other instance by or on behalf of any Party hereto shall not be construed to waive or limit the need for such consent in any other or subsequent instance.

(e) Dispute Resolution Procedure. The Parties agree to use the dispute resolution process provided for in Chapter 2009 of the TEXAS GOVERNMENT CODE to attempt to resolve all disputes arising under this Agreement. A Party must give written notice to the other Parties of a claim for breach of this Agreement not later than the 180th day after the date of the event giving rise to the claim. By their execution

of this Agreement, the Parties acknowledge and knowingly and voluntarily agree that neither the execution of this Agreement; nor the conduct, act or inaction by any person in the execution, administration, or performance of this Agreement constitutes or is intended to constitute a waiver of the other Parties' immunity from suit with respect to claims of third parties.

(f) Force Majeure. Each Party shall be excused for failures and delays in performance of its respective obligations under this Agreement due to any cause beyond the control and without the fault of such Party, including without limitation, any act of God, war, riot or insurrection, law or regulation, strike, flood, fire, explosion or inability due to any of the aforementioned causes to obtain necessary labor, materials or facilities. This provision shall not, however, release such Party from using its best efforts to avoid or remove such cause and such Party shall continue performance hereunder with the utmost dispatch whenever such causes are removed. Upon claiming any such excuse or delay for non-performance, such Party shall give prompt written notice thereof to the other Parties, provided that failure to give such notice shall not in any way limit the operation of this provision.

(g) Remedies. All rights, powers and remedies granted to either party by any particular term of this Agreement are in addition to, and not in limitation of, any rights, powers or remedies which it has under any other term of this Agreement, at common law, in equity, by statute, or otherwise. All such rights, powers and remedies may be exercised separately or concurrently, in such order and as often as may be deemed expedient by either party. No delay or omission by a Party to exercise any right, power or remedy shall impair such right, power or remedy or be construed to be a waiver of or an acquiescence to any breach or default. A waiver by a Party of any breach or default hereunder shall not constitute a waiver of any subsequent breach or default.

(h) Fraud and Abuse. The Parties enter into this Agreement with the intent of conducting their relationship in full compliance with applicable state, local, and federal law including the Medicare/Medicaid Anti-fraud and Abuse Amendments. Notwithstanding any unanticipated effect of any of the provisions herein, no Parties will intentionally conduct itself under the terms of this Agreement in a manner to constitute a violation of the Medicare and Medicaid fraud and abuse provisions.

(i) Assignment. No Party hereto shall have the right, power or authority to assign this Agreement, or any portion hereof or any monies due or to become due hereunder, without the prior written approval of the other Parties. This paragraph shall not prohibit District from entering into reciprocal agreements as referred to in Section 1.

(j) Successor in Interest. All of the rights, benefits, duties, liabilities, and obligations of the Parties hereto shall inure to the benefit of and be binding upon the Parties and their permitted successors and assigns and nothing expressed or mentioned in this Agreement is intended or shall be construed to give any other person any legal or equitable right, remedy or claim under or in respect of this Agreement or any provisions of this Agreement; this Agreement and conditions and provisions hereof being intended to be and being for the sole and exclusive benefit of such persons and for the benefit of no other person.

(k) Modification of Agreement. This Agreement and any exhibits or schedules attached hereto constitutes the entire agreement between the Parties hereto relating to the subject matter of this Agreement. To be effective, any modification of this Agreement must be in writing and signed by the Parties to be charged thereby.

(l) Headings. The headings of the Sections and Articles of this Agreement are inserted for convenience of reference only and shall not in any manner affect the construction or meaning of anything herein contained or govern the rights or liabilities of the Parties hereto.

(m) Notices. Any notice, request, instruction, demand or other communication to be given hereunder by a Party hereto to the other shall be given in writing and shall be delivered either by hand, by telecopy or similar facsimile means, or by certified mail, postage prepaid, return receipt requested, as follows:

County: Stephens County, Texas
Attn: County Judge
Breckenridge, Texas 76424
Facsimile Number: 254-559-7296
Telephone Number: 254-559-2190

City: City of Breckenridge, Texas
Attn: City Manager
Breckenridge, Texas 76424
Facsimile Number: 254-559-7322
Telephone Number: 254-559-8287

District: Stephens Memorial Hospital District
Attention: CEO
200 South Geneva Street
Breckenridge, Texas 76424
Facsimile Number: 254-559-6536
Telephone Number: (254) 559-2241

or to such other address or number as a Party shall have previously designated by written notice given to the other Parties in the manner hereinabove set forth, Notices shall be deemed given when received, if sent by telecopy or similar facsimile means, and when delivered and receipted for, if hand delivered, and three (3) business days following deposit in the U.S. mail if sent by certified mail.

(n) Nondiscrimination. County, City and District will not discriminate on the basis of race, sex, age, religion, national origin, or handicap in providing services under this Agreement or in the selection of employees or independent contractors,

(o) Counterparts. This Agreement may be executed in exact counterparts and when so executed by the Parties hereto shall be effective in accordance with the terms hereof.

(p) Expenses. If a Party hereto fails to perform its obligations hereunder, and if the other Parties hereto obtains the services of an attorney for enforcement of such obligations and suit is filed to enforce such obligations, or if proceedings are had in any bankruptcy, probate, receivership or other judicial proceedings for the establishment or enforcement of such obligations, of if any amount owing by a Party hereunder is collected through such proceedings, the Parties agree that the losing Party(ies) shall pay the prevailing Party(ies)' reasonable attorneys' fees and expenses in connection with such matter.

(q) Time of the Essence. Time is of the essence in all things pertaining to this Agreement

(r) Public Records. It shall be the independent responsibility of the Parties to comply with the provisions of Chapter 552, TEXAS GOVERNMENT CODE (the "Public Information Act"), as those provisions apply to the Parties' respective information. No Party is authorized to receive public information requests or take any action under the Public Information Act on behalf of another Party.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the Effective Date.

DISTRICT:

Stephens Memorial Hospital District

By: Brian Roland

Name: Brian Roland

Title: Chief Executive Officer

Date: 01/27/2023

COUNTY:

Stephens County, Texas

By: _____

Name: _____

Title: _____

Date: _____

CITY:

City of Breckenridge, Texas

By: _____

Name: _____

Title: _____

Date: _____

Exhibit A

Emergency Ambulance Services Agreement