

ASSET PURCHASE AGREEMENT

BY AND BETWEEN

**DICKINSON AREA AMBULANCE SERVICE, INC. ("SELLER"), AND
BARRET WICKLUND ("SELLER'S SHAREHOLDER")**

AND

CITY OF DICKINSON AND STARK COUNTY (COLLECTIVELY "BUYER")

_____, 2024

EXHIBITS AND SCHEDULES

EXHIBITS

Exhibit A – Non-Competition and Non-Solicitation Agreement

SCHEDULES

Schedule 1(a)(i) – Assets Acquired from DAAS

Schedule 1(a)(ii) – Assets Acquired from DAAS

Schedule 1(b)– Excluded Assets

Schedule 1(c) – Extraordinary Capital Expenditures

Seller's Disclosure Schedule

Buyer's Disclosure Schedule

ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT (this “**Agreement**”) by and between CITY OF DICKINSON, a political subdivision, and STARK COUNTY, a political subdivision, (collectively the “**Buyer**”), and DICKINSON AREA AMBULANCE SERVICE, INC., a North Dakota corporation; (the “**Seller**”), BARRET WICKLUND, a _____ resident (the “**Seller's Shareholder**”), takes effect on _____, 2024 (the “**Effective Date**”). Buyer, Seller, and Seller's Shareholder are referred to collectively as the “**Parties**.”

RECITALS

- A. Seller owns certain assets related to and used in the ambulance and emergency medical services business of Seller with principal offices located at P.O. Box 772, Dickinson, North Dakota (the “**Business**”).
- B. Seller desires to sell, transfer and otherwise convey, and Buyer desires to purchase and assume, all or substantially all of the assets of the Business, on the terms and subject to the conditions of this Agreement.

AGREEMENT

In consideration of the above recitals and the promises set forth in this Agreement, the Parties agree as follows:

1. **Definitions.** The following capitalized terms, when used herein, shall be defined as follows:

“**Acquired Assets**” means all right, title and interest in, to and under all of the personal property and assets, tangible and intangible, of Seller related to, usable, or used in conjunction with, the Business, including without limitation (other than the Excluded Assets): (a) All business records, customer lists, files, records, books, ledgers, documents, correspondence, and lists, along with creative materials, advertising and promotional materials, studies, reports and other materials, in hard copy, electronic or other format; (b) All of the value of Seller and the Business as a going concern and its goodwill; (c) All Seller's right, title, and interest to and in the following, but only to the extent utilized in the Business and the Service Area; (d) All software and proprietary rights, including, without limitation, know-how, processes, methods and trade secrets; (e) All tools, machinery, furnishings, equipment, parts and supplies, computers, motor vehicles set forth on Schedule 1(a)(ii), appliances, and other electronics, inventory and supplies; (f) The assets set forth on **Schedule 1(a)(i) and 1(a)(ii)**; and (g) All other assets to be transferred by Seller to Buyer hereunder.

“**Adverse Consequences**” means all actions, suits, proceedings, hearings, investigations, charges, complaints, claims, demands, injunctions, judgments, orders, decrees, rulings, damages, dues, penalties, fines, costs, amounts paid in settlement, Liabilities, obligations, Taxes, liens, losses, expenses and fees, including court costs and attorneys’ and other third-party fees and expenses.

“**Agreement**” has the meaning set forth in the preface.

“**Business Employee**” means an employee of Seller whose employment relates primarily to the Business. The Business Employees as of the Closing Date are listed on Section 4.8 of Seller’s Disclosure Schedule.

“**Business**” has the meaning set forth in the recitals.

“**Buyer**” has the meaning set forth in the preface.

“**Buyer Parties**” means Buyer and its officers, shareholders, employees, members, and agents.

“**Buyer’s Disclosure Schedule**” has the meaning set forth in Section 5.

“**Closing**” has the meaning set forth in Section 2.5.

“**Closing Date**” means June 30, 2025, or such other date upon which the Parties shall mutually agree.

“**COBRA**” means the requirements of Part 6 of Subtitle B of Title I of ERISA and Code Section 4980B.

“**Code**” means the Internal Revenue Code of 1986, as amended.

“**Confidential Information**” means any information concerning the Business that is not already generally available to the public.

"**DAAS**" means Dickinson Area Ambulance Service, Inc., a North Dakota corporation, a seller hereunder.

"**DAAS Assets**" means the assets owned by DAAS as set forth on **Schedule 1(a)(i)**.

"**DAAS Assets**" means the assets owned by DAAS as described on **Schedule 1(a)(ii)**.

“**Employee Benefit Plan**” means any: (a) nonqualified deferred compensation or retirement plan or arrangement; (b) qualified defined contribution retirement plan or arrangement that is an employee pension benefit plan as defined in ERISA Section 3(2); (c) qualified defined benefit retirement plan or arrangement that is an employee pension benefit plan as defined in ERISA Section 3(2) (including any multiemployer plan as defined in ERISA Section 3(37)); or (d) employee welfare benefit plan, as defined in ERISA Section 3(1), or material fringe benefit or other retirement, bonus or incentive plan or program.

“**ERISA**” means the Employee Retirement Income Security Act of 1974, as amended.

“**Excluded Assets**” means: (a) the organizational charter, qualifications to conduct business as a foreign corporation, arrangements with registered agents relating to foreign qualifications, taxpayer and other identification numbers, seals, minute books, ownership transfer books, blank ownership certificates and other documents relating to the

organization, maintenance and existence of Seller as a corporation; (b) any of the rights of Seller under this Agreement (or under any side agreement between Seller and Buyer entered into on or after the date of this Agreement); (c) all cash, cash equivalents, bank accounts, and investments; (d) all insurance policies, proceeds, and rights thereunder, (e) all accounts receivable and all notes, bonds, and other evidences of indebtedness in favor of Seller and rights of Seller to receive payments arising out of services rendered, and any third-party collection procedures or any other actions or proceedings that have been commenced in connection therewith, together with the proceedings in respect of any of the foregoing; (f) all claims for refund of taxes and other charges levied by any governmental authority; and (g) those assets set forth and disclosed on **Schedule 1(b)**.

“Excluded Liabilities” means any Liability of Seller or Seller's Shareholders including without limitation: (a) any Liability of Seller for Taxes; (b) any Liability of Seller for the unpaid Taxes of any Person under Reg. Section 1.1502-6 (or any similar provision of Law), as a transferee or successor, by contract, or otherwise; (c) any obligation of Seller to indemnify any Person (whether such indemnification is for judgments, damages, penalties, fines, costs, amounts paid in settlement, losses, expenses or otherwise and whether such indemnification is pursuant to any Law, charter document, bylaw, agreement or otherwise); (d) any Liability of Seller for costs and expenses incurred in connection with this Agreement and the contemplated transactions; (e) any Liability or obligation of Seller under this Agreement (or under any side agreement between Seller or Seller's Shareholders and Buyer entered into on or after the date of this Agreement); (f) any Liability or obligation of Seller under any their Employee Benefit Plans or relating to any of Seller's employees except as set forth in this Agreement; (g) any intercompany obligations due Seller or any of Seller's Shareholders; (h) any other obligation or Liability relating to the Business; (i) any Liability of Seller's Shareholders; and (j) any other obligation or Liability of Seller.

“Extraordinary Capital Expenditures” means the capital expenditures made outside the ordinary course of business between the Effective Date and the Closing Date set forth on **Schedule 1(c)**.

“Financial Statements” has the meaning set forth in Section 4.2.

“GAAP” means United States generally accepted accounting principles as in effect from time to time applied on a consistent basis.

“Governmental Authority” means (a) any federal, state, local or foreign governmental, administrative or regulatory authority, court, agency or body, or any division or subdivision, or (b) any arbitration board, tribunal or mediator.

“Income Tax” means any federal, state, local or foreign income tax (or other tax, such as a franchise tax, the computation of which is based upon net income), including any interest, penalty or addition thereto, whether disputed or not.

“Income Tax Return” means any return, declaration, report, claim for refund, or information return or statement relating to Income Taxes, including any schedule or attachment thereto, and including any amendments thereof.

“**Indemnified Party**” has the meaning set forth in Section 8.4.

“**Indemnifying Party**” has the meaning set forth in Section 8.4.

“**IRCA**” means the Immigration Reform and Control Act of 1986, as amended.

“**Knowledge**” means, with respect to Seller, the knowledge of the Seller's Shareholders after reasonable and prudent inquiry.

“**Law**” means any federal, state, local or foreign constitution, law, code, plan, statute, rule, regulation, ordinance, order, writ, injunction, ruling, judgment, decree, charge, restriction or Permit of any Governmental Authority, each as amended and in effect, as of the Closing Date.

“**Liability**” means any debt, liability, obligation, burden, or other legal or equitable responsibility, of any nature, type, or description whatsoever, whenever or however arising (whether known or unknown, whether asserted or unasserted, whether absolute or contingent, whether accrued or unaccrued, whether liquidated or unliquidated, and whether due or to become due), including any liability for Taxes.

“**Material Adverse Effect**” means a material adverse change in the business, financial condition or prospects of the Acquired Assets, the Fixed Assets or the Business, taken as a whole.

“**Non-Competition and Non-Solicitation Agreement**” means Noncompete Agreement by and between Buyer and Seller, and between Buyer and Seller's Shareholder to be attached to this Agreement as **Exhibit A**.

“**Ordinary Course of Business**” means the ordinary course of business consistent with past custom and practice (including with respect to quantity and frequency).

“**Parties**” has the meaning set forth in the preface.

“**Permits**” means any permits, licenses, authorizations, approvals, decisions, zoning orders, franchises, registrations, licenses, filings, certificates, variances or similar rights granted by or obtained from any Governmental Authority.

“**Person**” means an individual, a partnership, a limited liability company, a corporation, an association, a joint stock company, a trust, a joint venture, an unincorporated organization or a Governmental Authority.

“**Prohibited Transaction**” has the meaning set forth in ERISA Section 406 and Code Section 4975.

“**Purchase Price**” has the meaning set forth in Section 2.4.

“**Reportable Event**” has the meaning set forth in ERISA Section 4043.

“**Security Interest**” means any mortgage, pledge, lien, encumbrance, charge, security interest, claim, option, lease, or other title retention agreement, commitment, matters affecting title or other encumbrance of any kind or nature whatsoever.

“**Seller**” has the meaning set forth in the preface.

“**Seller’s Disclosure Schedule**” has the meaning set forth in Section 3.

“**Seller’s Shareholder**” has the meaning set forth in the preface.

“**Service Area**” has the meaning of the geographic territory represented by the assigned primary service area of the Business.

“**Tax**” or “**Taxes**” means any federal, state, local, or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated, or other tax of any kind whatsoever, including any interest, penalty, or addition, whether disputed or not.

“**Tax Return**” means any return, declaration, report, claim for refund, or information return or statement relating to Taxes, including any schedule, attachment or amendment.

“**Third Party Claim**” has the meaning set forth in Section 8.4.

“**Transaction Documents**” means all documents and agreements to be entered into by one or more of the Parties in connection with the transactions contemplated by this Agreement.

2. **Basic Transaction.**

2.1 **Purchase and Sale of Assets.** On the terms and subject to the conditions of this Agreement, Buyer agrees to purchase from Seller, and Seller agrees to sell, transfer, convey and deliver to Buyer the Acquired Assets, free and clear of all Security Interests, at the Closing in exchange for the Purchase Price. In connection with the sale, Seller and Seller’s Shareholder will retain all of Seller’s Accounts Receivable billed as of the date of the Closing and will retain the Excluded Assets.

2.2 **No Assumption of Liabilities.** Buyer shall not assume and become responsible for any Liabilities arising prior to the Closing Date. It is expressly understood that Buyer will not assume or otherwise be obligated for any Liabilities of Seller or Seller's Shareholder.

2.3 **No Assumption of Contracts or Acquired Permits.** Buyer shall not assume nor become responsible for any Contracts and Acquired Permits executed by Seller or Seller’s Shareholder executed and arising prior to the Closing Date. It is expressly understood that Buyer will not assume or otherwise be obligated under any Contracts for Acquired Permits of Seller or Seller's Shareholder. Buyer shall

terminate the radio tower lease/agreement with the Seller as of the Closing Date. Buyer shall also terminate the dispatch services agreement with the Seller as of the Closing Date.

2.4 **Purchase Price of Assets.** Buyer agrees to pay to Seller at Closing a Purchase Price equal to an aggregate sum of Nine Hundred Twenty-Seven Thousand Three Hundred Fifty-Five Dollars and No/100 Dollars (\$927,355.00) to be paid as follows:

a. \$50,000.00 shall be paid upon execution of this Agreement subject to Paragraph 2.8 (“Earnest Money Deposit”)

b. The balance of the Purchase Price shall be paid on the Closing Date.

2.5 **Closing.** The closing of the transactions contemplated by this Agreement (the “Closing”) shall be on or before June 30, 2025. The Closing shall occur at the offices of the City of Dickinson located at 31 1st Street West, Dickinson, North Dakota.

2.6 **Allocation.** The Purchase Price shall be allocated as follows:

\$425,000.00 for Vehicles (tangible assets);

\$445,297.00 for Equipment (tangible assets);

\$57,058.00 consumables and medical supplies;

The parties will file an information statement when and as required by regulations issued pursuant to the Code.

2.7 **Non-Competition and Non-Solicitation.** At the Closing, Seller and Seller's Shareholder, shall execute and deliver to Buyer a Non-Competition and Non-Solicitation Agreement to be attached to this Agreement as Exhibit A. A breach of the Non-Competition and Non-Solicitation Agreement shall constitute a breach by Seller and Seller's Shareholder of this Agreement.

2.8 **Earnest Money Deposits.** As an earnest money deposit, Buyer will pay \$50,000.00 (the "Earnest Money Deposit") to Seller. The Earnest Money Deposit shall be returned to Buyer should Seller or Seller's Shareholder fail to comply with all terms and conditions of this Agreement at or before Closing. In the event any Seller contingencies or closing conditions are not met and satisfied as of Closing, and unless Buyer waives any such requirements or contingencies, and the transaction does not close, the Earnest Money Deposit shall be refunded to Buyer upon Buyer's written direction. If Buyer breaches this Agreement or any Buyer contingencies or closing conditions are not met, Seller shall be entitled to retain the Earnest Money Deposit as liquidated damages.

2.9 **Acquired Assets “AS IS”.** Except as set forth in this Agreement, Buyer acknowledges, understands, and agrees that: (a) Buyer is purchasing the Acquired

Assets on an “AS IS,” “WHERE IS,” and “WITH ALL FAULTS” basis based solely on Buyer’s own investigation and research of the Acquired Assets, (b) Seller and Seller’s Shareholder make no warranty of any kind, either express or implied, by fact or law, and Seller and Seller Shareholder make no warranty of fitness for a particular purpose or warranty of merchantability for the Acquired Assets, and (c) Seller and Seller Shareholder nor any representative of Seller and/or Seller Shareholder have made any warranties, representations, or guarantees, express or implied, and/or statutory, written or oral, with regard to the Acquired Assets. Buyer warrants and acknowledges that Buyer is purchasing the Acquired Assets in an “AS IS,” “WHERE IS,” and “WITH ALL FAULTS” condition and expressly without any warranties, representations, or guarantees, express or implied, statutory, common law, or otherwise, of any kind, nature, or on behalf of Seller and/or Seller Shareholder except as specifically stated in this Agreement.

3. **Seller Representations and Warranties Concerning Seller.** Seller represents and warrants to Buyer that the statements contained in this Section 3 are correct and complete as of the date of this Agreement and as of the Closing Date, except as set forth in the attached disclosure schedule accompanying this Agreement (the “**Seller’s Disclosure Schedule**”). Seller’s Disclosure Schedule will be arranged in sections corresponding to the sections contained in this Section 3.

3.1 **Organization, Qualification and Power.** Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of North Dakota. Seller has full corporate power and authority to carry on the Business, and to own and use the properties owned and used in the Business. Section 3.1 of Seller’s Disclosure sets forth Seller’s Bylaws, Articles of Incorporation, and any other organizational documents which reflect all amendments made thereto at any time prior to the date of this Agreement. All such organizational documents are correct and complete and are in full force and effect.

3.2 **Authorization of Transaction.** Seller has all necessary power and authority to enter into and perform its obligations under this Agreement and the Transaction Documents to which it is a party. All action on the part of Seller and its officers and shareholders necessary for the authorization, execution and delivery of this Agreement and the Transaction Documents and the performance of all obligations of Seller under this Agreement and the Transaction Documents has been or will be taken before the Closing. This Agreement and the Transaction Documents have been duly executed and delivered by Seller and Seller’s Shareholder and constitute the valid and binding obligations of the Seller and Seller’s Shareholder enforceable in accordance with its terms except as enforceability may be limited by equitable principles or by bankruptcy, insolvency or similar creditor’s rights laws.

3.3 **Noncontravention.** Neither the execution and the delivery of this Agreement or the Transaction Documents to which Seller is a party, nor the consummation of the contemplated transactions: (a) will violate any Law to which Seller is subject; (b) will violate any provision of the articles of incorporation, bylaws or other

organizational documents of Seller; or (c) will result in the imposition of any Security Interest upon any of the Acquired Assets.

3.4 **Brokers' Fees.** Seller has no Liability or obligation to pay any fees or commissions to any finder, agent or other broker with respect to the transactions contemplated by this Agreement for which Buyer could become liable or obligated.

4. **Seller's Representations and Warranties Concerning the Business.** Seller represents and warrants to Buyer that the statements contained in this Section 4 are correct and complete as of the date of this Agreement and as of the Closing Date, except as set forth in Seller's Disclosure Schedule. Seller's Disclosure Schedule will be arranged in sections corresponding to the sections contained in this Section 4.

4.1 **Assets.** The Acquired Assets (except for the Excluded Assets) constitute substantially all the equipment, personal property and other tangible and intangible assets that are currently used in and necessary to operate the Business as previously conducted by Seller. Seller has good and marketable title to the Acquired Assets free and clear of any Security Interest or restriction on transfer as of the Closing Date. The Acquired Assets are in good condition and operating order, and Seller does not have knowledge of any material defect in the physical or mechanical condition of the Acquired Assets.

4.2 **Financial Statements.** Attached to Seller's Disclosure Schedule are the following financial statements (collectively, the "**Financial Statements**"): (a) unaudited balance sheet and unaudited statements of income of and for the fiscal year ended June 30, 2024 (which will be attached when completed), and unaudited balance sheets and statements of income as of and for the fiscal years ended June 30, 2023, for Seller, together with sales records for the Business for the fiscal years 2022, 2023, and 2024 (which will be provided when completed). The Financial Statements have been prepared in accordance with GAAP applied on a consistent basis throughout the periods covered, present fairly the financial condition and the results of operations of the Business for those periods, are correct and complete and are consistent with the books and records of Seller (which books and records are correct and complete).

4.3 **Events Subsequent to Most Recent Fiscal Year End.** There have been no changes to the Business that individually or in the aggregate would have a Material Adverse Effect.

4.4 **Liabilities.** Seller has no Liabilities as of the Closing Date.

4.5 **Consents.** Seller does not need to give any notice to, make any filing with, or obtain any authorization, consent or approval of, any Person (including any Governmental Authority) in order for the Parties to consummate the transactions contemplated by this Agreement, except for notices, filings, authorizations, consents or approvals that, if not made or obtained, would not result in a Material Adverse Effect.

- 4.6 **Tax Matters.** Seller has filed all required Tax Returns. All Taxes owed by Seller (whether or not shown on any Tax Return) have been paid. Seller will duly and timely file all Tax Returns required to be filed as a result of the Business, and all such Tax Returns are true, correct and complete in all material respects.
- 4.7 **Litigation.** Except routine customer complaints, no action, suit, claim, demand or other proceeding is pending or threatened against Seller in any court, arbitration tribunal, administrative agency, or otherwise, with respect to the Acquired Assets, Business Employees, and/or the Business or their operations or that questions the validity of this Agreement or of any action taken or to be taken pursuant to or in connection with the provisions of this Agreement.
- 4.8 **Employment Matters.**
- (a) Seller has complied in all material respects with all Laws relating to employment, including without limitation all Laws concerning equal employment opportunity, nondiscrimination, leaves and absences, immigration, wages, hours, benefits, collective bargaining, the payment of social security and similar Taxes, occupational safety and health, and plant closing.
 - (b) Section 4.8 of Seller's Disclosure Schedule contains: a complete and accurate list of each Business Employee and agent working for Seller as of the date of this Agreement, in each case showing the Business Employee's or agent's name, date of hire, and salary as of the date of this Agreement.
- 4.9 **No Severance Obligations.** Seller has not created any severance, stay-bonus or other such obligation that might become payable by Buyer as a result of the transactions contemplated by this Agreement or Seller's termination of the Business Employees as of the Closing Date.
- 4.10 **Other Information.** The information concerning Seller, Seller's Shareholder, the Acquired Assets set forth in this Agreement and the Schedules and Exhibits attached to this Agreement and any statement or certificate of Seller furnished or to be furnished to Buyer pursuant to this Agreement, does not and will not contain any untrue statement of a material fact or omit to state a material fact required to be stated herein or therein or necessary to make the statements and facts contained herein or therein, in light of the circumstances in which they are made, not false or misleading.
- 4.11 **Compliance with Laws.** Seller is not in material violation of or material default under any law, rule, regulation or order applicable to the Seller the effect of which, individually or in the aggregate with such other violations and defaults, could reasonably be expected to have a Material Adverse Effect on the Business. Neither Seller nor Seller's Shareholders has received notice of any violation of any law, rule, regulation or requirement material to the Business.

- 4.12 **Changes.** As of the date of this Agreement and as of the Closing Date, there have not been and will not be:
- (a) Any adverse material change or threatened material adverse change in the financial condition, results of operations, business, business organization or personnel of the Company or in the relationships of the Company with suppliers, customers, or others, other than changes occurring in the ordinary course of business;
 - (b) Any sale or other disposition of any asset owned by Seller after the Effective Date outside of the ordinary course of business;
 - (c) Any material damage, material destruction, material loss or other material change (whether or not insured) materially and adversely affecting the property, assets (including the Acquired Assets), business, prospects, operations, liabilities, earnings or condition (financial or otherwise) of the Business;
 - (d) Any bonus or increase in the compensation, outside the normal course of business, payable or to become payable by Seller to any Business Employee;
 - (e) Any distribution of any assets of Seller to Seller's Shareholder outside the ordinary course of business; or
 - (f) To Seller's knowledge, any other event or condition of any character that has a Material Adverse Effect on the financial condition, results of operations or business assets or prospects of the Business.
- 4.13 **Stock Ownership.** Seller's Shareholder owns all of the issued and outstanding capital stock of each corporation comprising Seller.
- 4.14 **Odometer Mileage.** To Seller's Knowledge, the mileage shown on the odometer of each any acquired motor vehicle is true and correct.
- 4.15 **Absence of Changes.** As of the Closing Date, there will not have been (i) any material adverse change in the financial condition, assets, liabilities, business or properties of Seller, (ii) any material damage to, material destruction of or material loss of property, whether or not covered by insurance, adversely affecting the Business or the Acquired Assets, (iii) any transaction not in the ordinary course of business, or (v) any amendment or termination of any contracts which adversely affects the Business or the Acquired Assets.
- 4.16 **Conduct of the Business.** For the period commencing on the date hereof and ending on the Closing Date, the Seller shall, except as expressly required or expressly provided for hereby and except as otherwise consented to in advance in writing by Buyer:

- (a) conduct the Business only in the ordinary course of business, consistent with the Seller's past practices (the "Ordinary Course"), and not engage in any new line of business or enter into any agreement, transaction or activity, except those in the Ordinary Course and not otherwise prohibited under this Agreement;
- (b) use its commercially reasonable efforts to preserve intact Seller's goodwill and business organization, preserve Seller's relationships and goodwill with customers, distributors, suppliers, employees and other Persons having business relations with it, in each case in the Ordinary Course;
- (c) maintain in existing condition and repair all equipment and other tangible personal property;
- (d) except in the Ordinary Course, not (i) sell or transfer any material asset of Seller, (ii) create, incur or assume any indebtedness secured by any asset of Seller, (iii) grant, create, incur or suffer to exist any encumbrance on any asset of Seller, (iv) incur any Liability (including the guaranty of a Liability or obligation of any other Person), (v) write-down the value of any asset or investment on the books or records of Seller, except for depreciation and amortization, (vi) enter into any material contract;
- (e) maintain supplies at levels that are in the Ordinary Course;
- (f) perform in all material respects all of its obligations under, and not default or suffer to exist any event or condition that with notice or lapse of time or both could constitute a default under, and not enter into, assume or amend any contract; and
- (g) maintain in full force and effect and in the same amounts policies of insurance comparable in amount and scope of coverage to that now maintained by or on behalf of Seller.

5. **Representations and Warranties of Buyer.** Buyer represents and warrants to Seller that the statements contained in this Section 5 are correct and complete as of the date of this Agreement as of the date of this Agreement and as of the Closing Date, except as set forth in the disclosure schedule of Buyer accompanying this Agreement (the "**Buyer's Disclosure Schedule**"). Buyer's Disclosure Schedule will be arranged in paragraphs corresponding to the sections contained in this Section 5.

5.1 **Organization of Buyer.** Buyer is a political subdivision duly organized, validly existing and in good standing under the laws of the State of North Dakota. Buyer has full power and authority to carry on the business in which it is engaged and in which it presently proposes to engage, and to own and use the properties owned and used by it.

5.2 **Authorization of Transaction.** Buyer has necessary power and authority to enter into and perform its obligations under this Agreement and the Transaction

Documents to which it is a party. This Agreement and the Transaction Documents to which it is a party constitute valid and legally binding obligations of Buyer, enforceable in accordance with their respective terms and conditions.

- 5.3 **Noncontravention.** Neither the execution nor the delivery of this Agreement or the Transaction Documents to which Buyer is a party, nor the consummation of the contemplated transactions: (a) will violate any Law to which Buyer is subject; or (b) will violate any provision of the articles of organization, operating agreement or other organizational documents of Buyer.
- 5.4 **Brokers' Fees.** Buyer has no Liability or obligation to pay any fees or commissions to any broker, finder or agent with respect to the transactions contemplated by this Agreement for which Seller could become liable or obligated.
- 5.5 **Buyer Experience.** Buyer has sufficient knowledge and experience in business and financial matters to evaluate the Acquired Assets and the Business and the risk and merits of the transaction contemplated by this Agreement.
- 5.6 **Buyer Acknowledgement.** Buyer acknowledges and agrees that except for the representations contained in this Agreement, neither the Seller nor the Seller Shareholder nor any other Person on behalf of the Seller or the Seller Shareholder make no express or implied representation or warranty with respect to the Business or the Acquired Assets or with respect to any information provided by or on behalf of the Seller or the Seller Shareholder to the Buyer or the Buyer's representatives or agents. Neither Seller, Seller Shareholder, nor any other Person will have, or be subject to, any liability or indemnification obligation to Buyer or any other Person, resulting from any information, documents, projections, forecasts, or other material made available to Buyer as part of any due diligence or part of the sale process or any investigation related to the Business or the Acquired Assets. In connection with any due diligence or investigation by Buyer, Buyer has received, or may receive, from Seller and/or Seller Shareholder certain projections, forward-looking statements, and/or other forecasts and business plans. Buyer acknowledges, understands, and agrees that there are uncertainties inherent in attempting to make estimates, projections, and other forecasts and plans. Buyer is familiar with such uncertainties and Buyer is taking full responsibility and liability for making its own evaluation of the adequacy and accuracy of all estimates, projections and other forecasts and plans (including, but not limited to, the reasonableness of all assumptions underlying such estimates, projections, and other forecasts and plans and Buyer acknowledges that Seller, Seller Shareholder, and no Person on behalf of Seller and/or Seller Shareholder have made any representation, warranty, and/or guarantee with respect to any estimates, projections, forecasts, and/or plans.
6. **Pre-Closing and Post-Closing Covenants.** The Parties agree as follows with respect to the period from the Effective Date to the Closing Date, and with respect to the period following the Closing.
- 6.1 **General.** In case at any time any further action is necessary or desirable to carry out the purposes of this Agreement, the Transaction Documents and the

contemplated transactions, each of the Parties will take such further action (including the execution and delivery of further instruments and documents) as any other Party reasonably may reasonably request, all at the sole cost and expense of the requesting Party (unless the requesting Party is entitled to indemnification therefor under Section 8).

- 6.2 **Litigation Support.** If, and for so long as, any Party is actively contesting or defending against any action, suit, proceeding, hearing, investigation, charge, complaint, claim or demand in connection with (a) any transaction contemplated under this Agreement, or (b) any fact, situation, circumstance, status, condition, activity, practice, plan, occurrence, event, incident, action, failure to act or transaction on or prior to the Closing Date involving the Business, the Parties will cooperate with the contesting or defending Party and its counsel in the contest or defense, make available its personnel, and provide such testimony and access to its books and records as shall be necessary in connection with the contest or defense, all at the sole cost and expense of the contesting or defending Party (unless the contesting or defending Party is entitled to indemnification therefor under Section 8).
- 6.3 **Transition.** Neither Seller nor any of Seller's Shareholders will take any action that is designed or intended to have the effect of discouraging any customer, supplier, lessor, licensor, or other business associate of Seller from maintaining the same business relationships with Buyer as it maintained with Seller prior to the Closing. Seller will refer all customer inquiries relating to the Business to Buyer from and after the Closing.
- 6.4 **Access to Records and Information.** Seller will give Buyer and its attorney, accountants, and other representatives, during normal business hours, access to all properties, books, contracts, documents, records, and other information with respect to the Business and the Seller, and the affairs of the Business and the Seller, as Buyer may reasonably request to conduct due diligence, provided, however, that prior to the Closing Date, Buyer and its advisors shall use such information solely to negotiate and draft the Transaction Documents.
- 6.5 **Transfer of License.** Seller and Seller's Shareholder shall use their best efforts to cooperate with Buyer for Buyer to obtain its license to operate its ambulance service and emergency medical service operations, and for Buyer to obtain an assigned primary service area for the areas served by the Business. Seller shall issue a letter of support in favor Buyer so Buyer may submit said letter to the appropriate licensing agencies.

7. **Closing Deliveries.**

- 7.1 **Seller Closing Deliveries.** At the Closing, Seller will deliver to Buyer the following:
- (a) a certificate of incumbency of Seller, dated as of the date hereof, as to the officers and other personnel of Seller executing this Agreement and any certificate, instrument or document to be delivered by Seller at the Closing;

- (b) a certified copy of Seller's resolutions authorizing the execution and delivery of this Agreement and the consummation of the transactions contemplated by this Agreement;
- (c) Seller will have delivered such assignments, bills of sale, certificates of title, and other documents and instruments as are reasonably necessary or appropriate to effect the consummation of the contemplated transactions or that may be required under any Laws or any agreements to which Seller is a party;
- (d) the Non-Competition and Non-Solicitation Agreement duly executed by Seller and duly executed by each of Seller's Shareholder in form acceptable to Seller and Seller's Shareholder;
- (e) all other certificates, opinions, instruments and other documents required to effect these transactions will be reasonably satisfactory in form and substance to Buyer;
- (f) title certificates to the any titled vehicles, with appropriate assignments;
- (g) evidence of the release of all liens against the Acquired Assets.

7.2 **Buyer Closing Deliveries.** At the Closing, Buyer will deliver to Seller the following:

- (a) the Purchase Price less the Earnest Money Deposit; and
- (b) such other documents and instruments as are reasonably necessary or appropriate to effect the consummation of the contemplated transactions or that may be required under any Laws or any agreements to which Buyer is a party.

7.3 **Contingencies to Close.** It shall be an express precondition to Buyer's obligation to purchase the Acquired Assets that each and every one of the following conditions shall have been satisfied as of the Closing Date (or waived by Buyer).

- (a) **Representations and Warranties.** Seller's representations and warranties in this Agreement shall be true and accurate in all material respects as if made on and as of the Closing Date.
- (b) **Covenants of Seller.** All actions Seller covenant herein to take shall have been materially completed.
- (c) **Permits. No Impediments.** Buyer shall have been able to obtain all permits and licenses necessary to utilize the Acquired Assets on and subsequent to the Closing Date, or such permits shall have been applied for and will be issued in the normal course and the absence thereof will not interfere with the operation of the Business immediately subsequent to the Closing Date.

Buyer shall have been approved by the North Dakota Department of Health and Human Services (Emergency Medical Systems Division) for the ownership and operation of the ambulance and emergency medical service business as presently operated by Seller, and for receipt of an assigned primary service area for the geographic area presently served by the Business. This approval must not contain any special or unusual conditions or contingencies other than agreements or restrictions standard to an ambulance and emergency medical services business. This provision shall be deemed to be a condition subsequent to the execution of this Agreement in that this condition shall not affect the validity or enforceability of this Agreement following the effective date of this Agreement, but, rather, shall be a condition allowing Buyer to rescind this Agreement if Buyer fails to secure such approval prior to the Closing Date and any extensions or modifications of the Closing Date. As requested by Buyer, and to the extent necessary to permit Buyer to obtain permit and licensing from North Dakota Department of Health and Human Services (Emergency Medical Systems Division), Seller and Seller's Shareholder shall sign such waiver, consents, resignations or termination of its license and permits relative to the Business as North Dakota Department of Health and Human Services (Emergency Medical Systems Division) may require.

- (d) **Title.** Buyer shall acquire good and marketable title to the Acquired Assets, free of all liens, Security Interests, restrictions or claims.
- (e) **Failure of Condition.** In the event of the failure of any condition precedent set forth above Buyer, at its sole election, may (a) terminate this Agreement by notice in writing delivered to Seller on or before the Closing Date and receive return of the Earnest Money Deposit with no liability to Seller; (b) waive the condition and proceed to Closing; (c) extend the Closing Date for such additional period of time as may be reasonably required to allow Seller if, and to the extent, requested by Seller, to remedy such failure; or (d) if such failure raises from Seller's breach of this Agreement, avail itself of any remedies provided in Article 8 hereof.

8. Remedies for Breaches of this Agreement.

- 8.1 **Survival of Representations, Warranties and Covenants.** Notwithstanding any investigation made by or on behalf of any of the Parties or the results of any investigation, and notwithstanding the participation of Party in the Closing, the representations and warranties of Seller contained in this Agreement will survive the Closing (even if Buyer or Seller knew or had reason to know of any misrepresentation or breach of warranty at the time of the Closing) and continue in full force and effect for a period of 18 months after the Closing, and will survive the Closing (even if the damaged Party knew or had reason to know of any misrepresentation or breach of warranty at the time of Closing) (subject to any applicable statutes of limitations or shorter period as set forth in this Agreement). The covenants set forth in this Agreement shall survive for 18 months, unless a shorter period of survival is specifically set forth in this Agreement.

8.2 **Indemnification Provisions for Benefit of Buyer.**

- (a) If (i) Seller breaches (or if any third party alleges facts that, if true, would mean that Seller has breached) any representations, warranties or covenants contained in this Agreement, and (ii) if there is an applicable survival period pursuant to Section 8.1, Buyer makes a written claim for indemnification against Seller within the survival period, Seller shall be given 60 days to cure such breach, which can be extended by mutual consent of the parties. To the extent such claim is not cured, then Seller agrees to indemnify Buyer from and against the entirety of any Adverse Consequences any of Buyer may suffer through and after the date of the claim for indemnification up to the survival period resulting from, arising out of, relating to, in the nature of, or caused by such breach (or alleged breach). Notwithstanding the foregoing, Buyer shall not be entitled to indemnification for damages incurred which Seller can prove arose as a result of a delay in receiving reasonable notice.
- (b) Seller agrees to indemnify Buyer from and against the entirety of any Adverse Consequences any of Buyer may suffer through and after the date of the claim for indemnification (including any Adverse Consequences Buyer may suffer up to 18 months after the Closing Date resulting from, arising out of, relating to, in the nature of, or caused by (i) any Liability of Seller (other than the Assumed Liabilities), including without limitation, any Excluded Liability (including any Liability of Seller that becomes a Liability of Buyer under any common law doctrine of de facto merger or successor liability, under Environmental, Health and Safety Requirements, or otherwise by operation of Law) and (ii) any Liability relating to the Business prior to the Closing, including, without limitation, any Liability for any refund or credit to customers.

8.3 **Indemnification Provisions for Benefit of Seller.**

- (a) Only to the extent allowed under North Dakota law, and if (i) Buyer breaches (or if any third party alleges facts that, if true, would mean that Buyer has breached) any representations, warranties or covenants contained in this Agreement, and (ii) if there is an applicable survival period pursuant to Section 8.1, Seller makes a written claim for indemnification against Buyer within the survival period, then Buyer agrees to indemnify Seller from and against the entirety of any Adverse Consequences Seller may suffer through and after the date of the claim for indemnification (including any Adverse Consequences Seller may suffer after the end of any applicable survival period) resulting from, arising out of, relating to, in the nature of or caused by such breach (or alleged breach).
- (b) Buyer agrees to indemnify Seller from and against the entirety of any Adverse Consequences any of Seller may suffer through and after the date of the claim for indemnification (including any Adverse Consequences Seller may suffer after the end of any applicable survival period) resulting

from, arising out of, relating to, in the nature of, or caused by (i) any Liability of Buyer (other than a Liability created by the conduct of Seller or its representatives), and any Liability relating to the Business of the Seller subsequent to the Closing, excepting liabilities caused by the conduct of Seller or its representatives.

8.4 **Matters Involving Third Parties.**

- (a) Subject to the limitation listed in Sections 8.1, 8.2, and 8.3, if any third party shall notify any Party (the “**Indemnified Party**”) with respect to any matter (a “**Third Party Claim**”) that may give rise to a claim for indemnification against any other Party (the “**Indemnifying Party**”) under this Section 8, then the Indemnified Party shall promptly notify each Indemnifying Party in writing. Such notice shall be given within thirty (30) days of receiving written notice by such third party of such possible claim. Delay on the part of the Indemnified Party in notifying any Indemnifying Party shall not relieve the Indemnifying Party from their obligation unless (and then solely to the extent that) the Indemnifying Party is prejudiced.
- (b) Any Indemnifying Party will have the right to defend the Indemnified Party against the Third Party Claim with counsel of its choice reasonably satisfactory to the Indemnified Party so long as (i) the Indemnifying Party notifies the Indemnified Party in writing within 15 days after the Indemnified Party has given notice of the Third Party Claim that the Indemnifying Party will indemnify the Indemnified Party from and against the entirety of any Adverse Consequences the Indemnified Party may suffer resulting from, arising out of, relating to, in the nature of or caused by the Third Party Claim, (ii) the Indemnifying Party provides the Indemnified Party with evidence reasonably acceptable to the Indemnified Party that the Indemnifying Party will have the financial resources to defend against the Third Party Claim and fulfill its indemnification obligations, (iii) the Third Party Claim involves only money damages, will not result in a Security Interest upon Buyer or its assets, including without limitation, the Acquired Assets, or does not seek an injunction or other equitable relief, (iv) settlement of, or an adverse judgment with respect to, the Third Party Claim is not, in the good faith judgment of the Indemnified Party, likely to establish a precedential custom or practice materially adverse to the continuing business interests of the Indemnified Party, and (v) the Indemnifying Party conducts the defense of the Third Party Claim actively and diligently.
- (c) So long as the Indemnifying Party is conducting the defense of the Third Party Claim in accordance with Section 8.4(b), (i) the Indemnified Party may retain separate co-counsel at its sole cost and expense and participate in the defense of the Third Party Claim, (ii) the Indemnified Party will not consent to the entry of any judgment or enter into any settlement with respect to the Third Party Claim without the prior written consent of the

Indemnifying Party (not to be withheld unreasonably), and (iii) the Indemnifying Party will not consent to the entry of any judgment or enter into any settlement with respect to the Third Party Claim without the prior written consent of the Indemnified Party (not to be withheld unreasonably).

- (d) If any of the conditions in Section 8.4(b) is not or is no longer satisfied, (i) the Indemnified Party may defend against, and consent to the entry of any judgment or enter into any settlement with respect to, the Third Party Claim in any manner it reasonably may deem appropriate (and the Indemnified Party need not consult with, or obtain any consent from, any Indemnifying Party), (ii) the Indemnifying Parties will reimburse the Indemnified Party promptly and periodically for the costs of defending against the Third Party Claim (including reasonable attorneys' fees and expenses), and (iii) the Indemnifying Parties will remain responsible for any Adverse Consequences the Indemnified Party may suffer resulting from, arising out of, relating to, in the nature of, or caused by the Third Party Claim to the fullest extent provided in this Section 8.

8.5 **Other Indemnification Provisions.** The above indemnification provisions are in addition to, and not in derogation of, any statutory, equitable or common law remedy (including, without limitation, any such remedy arising under Environmental, Health and Safety Requirements) any Party may have with respect to Seller or the transactions contemplated by this Agreement.

8.6 **Amount Limitations.** Each Party's obligation to indemnify the other pursuant to this Section 8 will be limited to, and capped at an amount not to exceed \$231,838.75 in the aggregate (after which point such Party will have no obligation to indemnify from and against any further losses).

9. **Employee Matters.**

9.1 **Termination.** Effective as of the time immediately prior to the Closing, Seller will terminate the employment of all Business Employees except the station manager who shall remain employed by the Seller until Seller decides to end the relationship.

9.2 **No Obligation to Rehire.** Effective as of the Closing, Buyer will have no obligation to make offers of employment to any Business Employees. Nothing contained in this Agreement, will constitute an agreement or guaranty that any of the Business Employees will be hired as an employee of the City of Dickinson.

9.3 **No Transfer of Seller's Plan Assets or Liabilities.** All of Seller's Employee Benefit Plans and assets retained for the funding of benefits through such plans are specifically excluded from the Acquired Assets.

9.4 **Limitation on Enforcement.** This Section 9 is an agreement solely between Seller and Buyer. Nothing in this Section 9, whether express or implied, confers upon any

employee of Buyer or Seller (including the Business Employees) or any other Person, any rights or remedies, including (a) any right to employment or recall, or (b) any right to claim any particular compensation, benefit or aggregation of benefits, of any kind or nature whatsoever, as a result of this Section 9.

- 9.5 **Other Employee Benefits Matters.** For notices and obligations related to events occurring at or prior to the Closing, including Seller's termination of the Business Employees, Seller shall be responsible for any notices required to be given to employees pursuant to COBRA or any applicable state law providing for continuation coverage under health or life insurance benefit plans, and for any payments or benefits required pursuant to such laws or on account of violation of any requirement of such laws.

10. **Miscellaneous.**

- 10.1 **No Third-Party Beneficiaries.** This Agreement will not confer any rights or remedies upon any Person (including, without limitation, employees of any of Seller) other than the Parties and their respective successors and permitted assigns.
- 10.2 **Entire Agreement.** This Agreement (including the documents referred to in this Agreement) and the Transaction Documents constitute the entire agreement between the Parties and supersede any prior understandings, agreements or representations by or between the Parties, written or oral, to the extent they related in any way to the subject matter of this Agreement.
- 10.3 **Succession and Assignment.** This Agreement will be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. No Party may assign either this Agreement or any of its rights, interests or obligations under this Agreement without the prior written approval of the other Party.
- 10.4 **Counterparts and Facsimile Signatures.** This Agreement may be executed in one or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument, and by facsimile.
- 10.5 **Headings.** The section headings contained in this Agreement are inserted for convenience only and will not affect in any way the meaning or interpretation of this Agreement.
- 10.6 **Notices.** All notices, requests, demands, claims and other communications under this Agreement will be in writing. Any notice, request, demand, claim or other communication under this Agreement will be deemed duly given 2 business days after it is sent by registered or certified mail, return receipt requested, postage prepaid and addressed to the intended recipient as set forth below:

If to Seller:
Dickinson Ambulance Service, Inc.
42 B Ave East
Dickinson, ND 58601

With a Copy to:
Chad Felstul
Pemberton Law
110 N Mill Street
Fergus Falls, MN 56537

If to Buyer:
City of Dickinson
38 1st St. West
Dickinson, ND 58601

With a Copy to:
Christina M. Wenko
Mackoff Kellogg Law Firm
38 2nd Ave East, Ste. A
Dickinson, ND 58601

Stark County
51 3rd St. East
Dickinson, ND 58601

Amanda Engelstad
Stark County State's Attorney's Office
51 3rd St. East
Dickinson, ND 58601

Any Party may send any notice, request, demand, claim or other communication to the intended recipient at the address set forth above using any other means (including personal delivery, expedited courier, messenger service, telecopy, telex, ordinary mail or electronic mail), but no such notice, request, demand, claim or other communication will be deemed to have been duly given unless and until it actually is received by the intended recipient. Any Party may change the address to which notices, requests, demands, claims and other communications hereunder are to be delivered by giving the other Party notice in the manner set forth in this Agreement.

- 10.7 **Governing Law.** This Agreement will be governed by and construed in accordance with the domestic laws of the State of North Dakota without giving effect to any choice or conflict of law provision or rule that would cause the application of the laws of any jurisdiction other than the State of North Dakota.
- 10.8 **Amendments and Waivers.** No amendment of any provision of this Agreement will be valid unless the same is in writing and signed by Buyer and Seller. No waiver by any Party of any default, misrepresentation or breach of warranty or covenant hereunder, whether intentional or not, will be deemed to extend to any prior or subsequent default, misrepresentation or breach of warranty or covenant under this Agreement or affect in any way any rights arising by virtue of any prior or subsequent such occurrence.
- 10.9 **Severability.** Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction will not affect the validity or enforceability of the remaining terms and provisions of this Agreement or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction.
- 10.10 **Expenses.** Each Party will bear its own costs and expenses (including legal fees and expenses) incurred in connection with this Agreement and the contemplated transactions.

- 10.11 **Construction.** The Parties have participated jointly in the negotiation and drafting of this Agreement. If an ambiguity or question of intent or interpretation arises, this Agreement will be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement. The Parties intend that each representation, warranty and covenant have independent significance. If any Party has breached any representation, warranty or covenant in any respect, the fact that there exists another representation, warranty or covenant relating to the same subject matter (regardless of the relative levels of specificity) that the Party has not breached does not detract from or mitigate the fact that the Party is in breach of the first representation, warranty or covenant. The word “including” or words or phrases of similar meaning shall mean “including without limitation.”
- 10.12 **Incorporation of Exhibits and Schedules.** The Exhibits and Schedules identified in this Agreement are incorporated by reference and are made a part of this Agreement.
- 10.13 **Specific Performance.** Each of the Parties acknowledges and agrees that the other Party would be damaged irreparably if any of the provisions of this Agreement are not performed in accordance with their specific terms or otherwise are breached. Accordingly, each of the Parties agrees that the other Party is entitled to an injunction or injunctions to prevent breaches of the provisions of this Agreement and to enforce specifically this Agreement in any action instituted in Stark County, North Dakota, in addition to any other remedy to which it may be entitled, at law or in equity.

The Parties have executed this Agreement as of the date first above written.

BUYER:

CITY OF DICKINSON

By _____
Scott Decker
Its President of Board of City
Commissioners

STARK COUNTY

By _____
Dean Franchuk
Its President of Board of County
Commissioners

SELLER:

DICKINSON AMBULANCE SERVICE,
INC.

By _____
Barret J. Wicklund
Its President

SELLER'S SHAREHOLDER:

Barret J. Wicklund

EXHIBIT A

Non-Competition and Non-Solicitation Agreement

SCHEDULE 1(a)(i)

SPECIFIC ASSETS ACQUIRED FROM DICKINSON AMBULANCE SERVICE, INC.

Schedule 1(a)(ii)

SPECIFIC ASSETS ACQUIRED FROM DICKINSON AREA AMBULANCE, INC.

- 2022 Ford-Horton (52K miles) (remount) \$175,000.00
- 2021 Ford-Horton (92k miles) (remount) \$130,000.00
- 2019 Ford-Horton (133k miles) \$80,000.00
- 2014 Ford-AEV (195k miles) \$28,000.00
- 2008 GMC Yukon K1500 1 \$12,000.00

SCHEDULE 1(b)

Excluded Assets

- (1) Name of Dickinson Ambulance Area Service, Inc.
- (2) Seller's Accounts Receivable Billed as of Closing Date
- (3) Office Furniture & Equipment
- (4) VHF Pagers

Schedule 1(c)

Extraordinary Capital Expenditures

Seller Disclosure Schedule

See Attached

Section 3.1 of Seller's Disclosure sets forth Seller's Bylaws, Articles of Incorporation, and any other organizational documents which reflect all amendments made thereto

Section 4.8 of Seller's Disclosure Schedule contains: a complete and accurate list of each Business Employee and agent working for Seller as of the date of this Agreement, in each case showing

Buyer's Disclosure Schedule