

**NORTH CAROLINA
JACKSON COUNTY**

THIS AGREEMENT FOR AMBULANCE SERVICES (this “Agreement”) is made and entered into this **1st day of September, 2016**, by and between **THE COUNTY OF JACKSON, NORTH CAROLINA**, a body politic and one of the one hundred counties of the State of North Carolina, recognized by N.C.G.S. 153A-10, hereinafter referred to as (“Jackson County”) and **DLP HARRIS REGIONAL HOSPITAL, LLC**, a corporation duly organized and existing under the laws of the State of North Carolina, doing business as Harris Emergency Medical Services, and hereinafter referred to as (“Provider.”)

WITNESSETH:

WHEREAS, Jackson County, pursuant to the authority granted to it by the laws of the State of North Carolina and in particular N.C.G.S. 153A-250, wishes to contract for the provision of ambulance services in Jackson County; and

WHEREAS, Jackson County, by and through its Board of Commissioners, has determined that it is in the best interests of the residents of Jackson County to contract with Provider for such ambulance services and subsidize such services as provided in this Agreement; and

WHEREAS, County desires to engage Provider to service as its sole and exclusive provider of ambulance services to the residents of northern Jackson County on the terms and conditions set for this Agreement;

NOW, THEREFORE, for and in consideration of the premises and the mutual benefits and obligations flowing between the parties as set forth below, the parties hereto do hereby contract and agree as follows:

1. AMBULANCE SERVICES PROVIDED.

- a. Jackson County does hereby authorize and contract with Provider to serve as the sole and exclusive provider of ambulance services to the public at large in northern Jackson County, in those areas designated by Section 2 below, as regulated by the North Carolina Department of Human Resources (the “Ambulance Services,” described in more detail in below). By its acceptance of this Agreement, Provider agrees that it will well and truly provide the Ambulance Services as regulated by the North Carolina Department of Human Resources (“NCDHR”) to the public at large in the areas of Jackson County set forth below.
- b. During the Term of this Agreement, Provider agrees to provide to the public at large in Jackson County in the areas designated herein Ambulance Services, meaning 24-hour paramedic level ambulance service, 365 days a year, and 366 days in leap years, of such quality and nature as prescribed by applicable rules and regulations of the NCDHR.
- c. Provider further agrees at all times to maintain at least two (2) twenty-four hour ambulances, one stationed in Sylva and one stationed in Cullowhee, one (1) prime time ambulance from 9:00am until 9:00pm stationed as a second unit in Sylva and one (1)

prime time ambulance for a twelve hour daily shift to be stationed in Qualla with twelve hour shift to be determined by Provider and shift information to be given to Jackson County Emergency Management Director or his designee, and one (1) "quick response" vehicle from 7:00am until 7:00pm, all in a ready state, as determined by Provider in accordance with any applicable laws, rules, and regulations, with sufficient staff to provide paramedic level of service. If these units are in service and on emergency or non-emergency calls, a back-up response vehicle, with full crew shall be put in a ready state, as determined by Provider in accordance with any applicable laws, rules, and regulations, to serve as a backup ambulance for Jackson County. This back-up response vehicle shall be capable of providing life support service to the patient(s) and provide a medical crew that can provide paramedical level service.

- d. Provider shall provide the minimum number of personnel required to operate the ambulance as specified by the applicable rules and regulations of the NCDHR and verify or provide the necessary training, education, and qualification of such personnel as set forth in the application rules and regulations of the NCDHR. Provider reserves the right to adjust personnel and staffing levels to the extent it deems necessary to provide the services described herein. Provider warrants that it will provide sufficient personnel and staff to carry out its obligations under this Agreement. Provider will be responsible for all management and personnel issues related to EMS employees hired by Provider. EMS personnel shall at all times be employees of Provider and shall be subject to Provider personnel policies and guidelines.
 - e. When requested in writing by Jackson County, Provider will station one of the above-referred ambulances at the location of and for the duration of large publicly sponsored events, subject to emergency call and coverage requirements. Provider has no responsibility hereunder to station an ambulance at any privately sponsored event, but it is not prohibited from doing so as long as it does not jeopardize the provision of the Ambulance Services as required by this Agreement.
 - f. Each party agrees to meet on a quarterly basis to review and assess the operational, financial, and quality improvement aspects of the Ambulance Services furnished pursuant to this Agreement. Provider and Jackson County representatives shall also meet when appropriate to review working relationships between Provider and Jackson County and to make recommendations for improving the contractual agreement between the parties. Any such discussions and recommendations shall be considered advisory to the Provider and Jackson County and not binding upon either party unless a formal amendment to this Agreement or a new agreement between the parties is executed. However, Provider agrees to consult with County during these quarterly meetings before implementing any pay raises or billing forgiveness that will effect a surplus or deficit described in Section 4 below. Notwithstanding the foregoing, Provider shall notify Jackson County in the event the Provider experiences a running deficit exceeding five percent (5%). Upon such notification, Jackson County shall have the right to request a meeting of the parties for the purposes of reviewing the operations and expenditures associated with the Ambulance Services to determine the reason for such deficit.
2. **RESPONSE AREA.** The area in which Provider is authorized to provide the Ambulance Services shall be the County of Jackson in general except for that-area lying from the Thorpe Power dam south to the South Carolina line and the area south from 7000 Cullowhee Mountain

Road to the South Carolina line, as the same is served by the Glenville-Cashiers Rescue Squad. Provider shall provide coverage for all other areas throughout the County of Jackson and shall be the exclusive provider of Ambulance Services in such areas.

3. TERM AND TERMINATION.

- a. Term. The term of this Agreement (the "Term") shall be for three (3) years, from September 1st, 2016 (the "Effective Date") through and including August 31st, 2019. Thereafter, this Agreement will automatically renew for successive twelve month periods.
- b. Termination. Either party may terminate this Agreement without cause by providing ninety (90) days written notice to the other party. Jackson County may terminate this Agreement if Provider fails to provide the Ambulance Services in accordance with the standards, rules and regulations of the NCDHR; provided however, that Jackson County must provide written notice to Provider describing such failure and allow Provider at least thirty (30) days to cure such failure. Provider may terminate this Agreement if Jackson County fails to compensate Provider in accordance with the terms of this Agreement; provided, however, that Provider must provide written notice to Jackson County describing such failure and allow Jackson County at least thirty (30) days to cure such failure.
- c. Disposition of Ambulances Vehicles and Related Equipment Upon Termination. The parties acknowledge and agree that the Provider has born the cost of the ambulance vehicles and related equipment for the sole purpose of providing the Ambulance Services described herein. In the event of termination, Jackson County shall purchase all ambulance vehicles (to the extent such vehicles were purchased by Provider) and related equipment, utilized by Provider at the time of such termination, at a fair market value price, as determined by an independent third party appraiser.

4. COMPENSATION, RATES AND COLLECTION.

- a. Jackson County agrees that Provider will set all rates and charges for the Ambulance Services provided, and all billing and collections for Ambulance Services will be handled and retained as income by Provider. Provider will be solely responsible for billing and collections for all Ambulance Services provided by Provider. Billing and settlement of claims will be at the sole discretion of Provider. Provider reserves the right to pursue claims and debt collection actions consistent with its policies and procedures.
- b. During the Term of the Agreement, Jackson County hereby agrees to pay Provider the amounts set forth below for purposes of offsetting the expenses of providing the Ambulance Services described herein ("Income Guarantee Payment"). Such Income Guarantee Payment shall be due to Provider in equal monthly installments on or before the tenth (10th) of each month during the Term of this Agreement. The Income Guarantee Payment shall be **\$1,155,710.00** per year, payable in equal monthly installments of **\$96,309.17**. The Income Guarantee Payment may be adjusted each year as described below.

- c. The Parties acknowledge and agree that the Income Guarantee Payment that has been negotiated by the parties is intended to represent a fair market value fee payable by Jackson County in exchange for the Ambulance Services provided hereunder. Such Income Guarantee Payment, in addition to the amounts Provider projects to collect directly from patients and third-party payors, is meant to cover Provider's total expenditures for associated with providing the Ambulance Services ("Total Expenditures").

Within 60 days following the end of each contract year as well as upon the expiration or termination of this Agreement, the Parties shall perform a reconciliation and calculate the sum of the amount actually collected by Provider from patients and all third party payors, ("Actual Collections"). Provider shall give to Jackson County, for purposes of this reconciliation, audited financial reports and a copy of Provider's annual budget. If the sum of Actual Collections of Provider and Income Guarantee Payment ("Total Revenues") exceeds the Total Expenditures for the same period, Provider shall repay to Jackson County an amount equal to the difference between the Total Revenues and Total Expenditures; but, in no event shall such repayment exceed the total value of the Income Guarantee Payment paid to Provider during such year. If the Total Revenues of Provider are less than the Total Expenditures, Jackson County agrees to supplement the Income Guarantee Payment by paying Provider an additional amount equal to the difference between the Total Revenues and Total Expenditures. All applicable payments (related to a surplus or deficit) determined to be owed pursuant to this Section 4(c), shall be paid to the applicable party within sixty (60) days following the annual reconciliation.

- d. Annually, the Parties agree to review the Income Guarantee Payment set herein and, if deemed appropriate, adjust such rates prospectively to ensure that the fees charged remain consistent with fair market value for the applicable services provided.
 - e. In the event Jackson County wants to add additional ambulances or medic units, the Income Guarantee Payment will increase by an amount to be negotiated between Provider and the Jackson County.
 - f. If Medicare/Medicaid or commercial payor reimbursement rates are substantially lowered or Provider's cost associated with providing the Ambulance Services substantially increase, Jackson County and Provider agree to renegotiate, in good faith, an increase in the Income Guarantee Payment.
5. **LOCATION.** Provider will maintain an ambulance base in Sylva, Cullowhee and Qualla in Jackson County. The Jackson County Emergency Management Coordinator and the Ambulance Service Provider Director will periodically evaluate the feasibility and the need for establishing other ambulance bases or modifying the current bases throughout Jackson County. The Jackson County Emergency Management Coordinator and the Ambulance Service Provider Director shall report any feasibility studies on ambulance service needs to the Jackson County Board of Commissioners and the Administrators of the Ambulance Service Provider. All costs of adding any ambulance bases, modifying or relocating any existing ambulance bases, or changing any emergency medical services in Jackson County will be discussed and determined by the Administrators of the Ambulance Service Provider and the Jackson County Board of Commissioners.

6. **FIRST RESPONDERS.** Provider has developed and will maintain First Responder Policies and Procedures with which agencies or departments providing first responder services in Jackson County must agree to comply. Provider will use reasonable efforts to coordinate and integrate with all the volunteer and paid emergency agencies that participate and provide first responder service in Jackson County. Provider will maintain the medical equipment that the Jackson County first responders are assigned by the Provider on medical calls in Jackson County. Provider will replenish any medical supplies, within reason, used at any medical call by any Jackson County first responder at no cost.

7. **LIABILITY, INSURANCE COVERAGE, INDEMNITY.**
 - a. Provider shall be responsible for procuring and maintaining auto collision and liability insurance coverage on all vehicles owned and operated by Provider and used to provide Ambulance Services pursuant to this Agreement. Furthermore, Provider agrees to obtain and maintain professional liability insurance for acts and omissions for those persons employed by Provider and furnishing medical services in the amount of at least three million dollars (\$3,000,000) in the annual aggregate.
 - b. Neither party agrees to indemnify or hold harmless the other party. However, to the extent provided by law, each party will be responsible for its own acts or omissions and any and all claims, liabilities, injuries, suits, and demands and expenses of all kinds which may result from or arise out of any alleged malfeasance or neglect caused or alleged to have been caused by that party, its employees or representatives, in the performance or omission of any act of responsibility of that party under this Agreement. In the event that a claim is made against both parties, it is the intent of both parties to cooperate in the defense of said claim and to cause their insurers to do likewise. However, either party shall have the right to take any and all actions they believe necessary to protect their interest, including, without limitation, the right to enforce the obligations of this Agreement against the other party and the right to recover damages caused by the other party arising out of the performance or nonperformance of this Agreement. This provision shall survive the termination of this Agreement.

8. **RELATIONSHIPS OF PARTIES.**
 - a. In performing the Ambulance Services under this Agreement, Provider, and all Provider employees performing services for Provider, shall be at all times acting and performing as independent contractors to Jackson County, and not as agents of Jackson County. Nothing in this Agreement shall be deemed to constitute the parties as joint employers, joint ventures, partners or anything other than independent contractors.
 - b. Neither Jackson County nor Provider shall have or exercise any control, supervision or direction over the professional judgment or methods employed by any physician or medical director retained to support or provides EMS Services.
 - c. The parties expressly agree that nothing in this Agreement will be deemed to prevent Provider or any of its subsidiaries or affiliates from performing EMS and Ambulance Services for any other county, government unit, person or entity, as it may desire from

time to time so long as Provider remains adequately staffed and equipped to carry out its duties and responsibilities under this Agreement.

- d. Jackson County shall not engage in, make or exhibit acts, statements, demeanor or professional conduct, either within or outside of Jackson County, when the same is intended to be detrimental to patient safety or to the delivery of quality patient care, disruptive to Provider operations or impairment to Jackson County confidence in Provider. Jackson County reserves the right to make truthful statements with regard to the quality of services delivered by Provider under this Agreement.
 - e. Jackson County recognizes that Provider is a participant in various third party payment programs including, without limitation, Medicare and Medicaid, as well as various managed care programs, which participation is essential to the ability of Provider to serve the residents of Jackson County. Therefore, Jackson County, as reasonably requested by Provider, agrees to cooperate fully with Provider and provide reasonable assistance for participation and payment associated with such programs in connection with services provided pursuant to this Agreement.
- 9. EXPENSES, MAINTENANCE AND LEASES.** Provider agrees to bear the cost of all expenses associated with the provision of the Ambulance Services, including, but not limited to, expenses associated with personnel, vehicles, equipment, and supplies necessary for the provision of the Ambulance Services. For example, Provider shall bear the cost of gasoline, tires, greasing, oil filters, oil and all salaries and fringe benefits of Provider's employees, including taxes, workers compensation and the professional liability insurance required by this Agreement.
- 10. COMMUNICATIONS.** Jackson County agrees to furnish dispatching services for Provider through the use of normal telephone systems and all emergency radio communications service, it is specifically agreed that the Provider shall not be responsible for provision of any emergency or non-emergency dispatch functions. Jackson County agrees to train and certify its 911 telecommunications personnel as emergency medical dispatchers in accordance with the standards established by the National Academy of Emergency Medical Dispatch and require such personnel to comply with quality assurance standards and participate in quality assurance programs as set forth from time to time by the Emergency Services Medical Director. The Jackson County 911 Communication Center will provide National Academy of Emergency Medical Dispatch Services 24 hours a day, seven days a week.
- 11. NAME.** Provider shall use the name Harris Emergency Medical Services. This name will be displayed on the side of the Provider's ambulances and on identifying insignia of Provider personnel.
- 12. OTHER ACTIVITIES.** Nothing in this Agreement is meant to restrict Provider from providing any other services inside or outside of Jackson County in accordance with the requirements of the North Carolina Office of Emergency Medical Service.
- 13. WAIVER OF BREACH OR VIOLATION NOT DEEMED CONTINUING.** Failure by either party to enforce any rights granted by this Agreement shall not constitute a waiver of such rights and waiver of any provision of this Agreement shall not constitute a waiver of any

other provision. Waiver by either party of a breach or violation of any provision of this Agreement shall not operate as or be construed to be a waiver of any subsequent breach thereof.

14. **NOTICES.** Whenever any notice, demand, approval, consent, request or election is to be given or made pursuant to this Agreement, it shall be in writing and be personally delivered or mailed with postage prepaid, by registered or certified mail, return receipt requested, to the party's last known or such other address as a party may from time to time specify in writing to the other party. If so mailed and also sent by electronic mail or facsimile, the notice will conclusively be deemed to have been received on the next business day beginning at least 24 hours after the later to occur of the deposit in the mail and the sending by telegraphic or facsimile communication of said notice; otherwise, no notice shall be deemed given until it actually arrives at the address in question. Either party hereto may change the address to which notice is to be given to such party by notifying the other party of such new address in accordance with the provisions of this Section.
15. **GOVERNING LAW.** This Agreement shall be interpreted, construed, and governed according to the laws of the State of North Carolina notwithstanding its conflicts of law rules.
16. **SECTION HEADINGS.** The section headings contained in this Agreement are for convenience only and shall in no manner be construed as a part of this Agreement.
17. **COUNTERPARTS.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and together shall constitute one and the same contract.
18. **ASSIGNMENT.** This Agreement may not be assigned by either Party.
19. **ENTIRE CONTRACT.** This Agreement covers all the Ambulance Services to be provided by Provider and subsidized by Jackson County and contains the entire agreement between the parties hereto with respect to the subject matter hereof and there are no representations, inducements, promises, agreements, or undertakings; oral or written, between the parties with respect to the subject matter hereof, other than those set forth herein.
20. **SEVERABILITY.** Should any part of this Agreement be declared invalid, such invalidity shall not affect the validity of any remaining portion hereof and such remaining portion shall continue in full force and effect as if this Agreement had been originally executed without including the invalid part.
21. **MODIFICATIONS.** No changes, alterations, modifications, additions or qualifications to the terms of this Agreement shall be binding on either party hereto unless made in writing and executed by the parties' duly authorized agents in the same manner as this Agreement.
22. **COMPLIANCE WITH LAWS.** In providing the services described herein, Provider agrees to remain in substantial compliance with all laws of the United States; the State of North Carolina; including, but not limited to, the rules and regulations promulgated by the Medical Care Commission of the NC Medical Board; and ordinances and regulations of the County existing as of the date of this Agreement, or hereinafter enacted; provided, however, that if any ordinance or regulation of the County hereinafter enacted causes an increase in the cost of providing the services contracted for hereunder the County shall reimburse Provider the amount of such increased cost when paid and documented by Provider.

23. **ACCESS TO BOOKS AND RECORDS.** If this Agreement is determined to be a "contract between the provider and any of its subcontractors" which is affected by the provisions of the Social Security Acts 42 U.S.C. 1861 (v)(1)(1) as amended from time to time, then Provider shall make available those contracts, books, documents and records necessary to verify the nature and extent of the costs of providing services under this Agreement. Such inspection shall be available for up to four (4) years after the rendering of such services. If Provider carries out any of the duties of this Agreement through a subcontract with a value of \$10,000.00 or more over a twelve (12) month period with a related individual or organization, Provider agrees to include this requirement in any such subcontract. This section is included pursuant to and is governed by the requirements of 42 U.S.C. Section 1395x(v)(1) and the regulations thereto. No attorney-client, accountant-client, or other legal privilege will be deemed to have been waived by Jackson County, Provider by virtue of this Agreement.
24. **MODIFICATION TO COMPLY WITH LAW.** In the event that any one or more of the terms of this Agreement is determined to be unlawful or invalid under state or federal law as the result of an enforcement action brought against any party hereto, or as the result of (or as indicated by) an audit or examination of any party hereto, by the Office of Inspector General of the Department of Health and Human Services, the Internal Revenue Service, the State Department of Revenue, the United States Department of Justice, the North Carolina Attorney General's Office, or any other agency of the state or federal government having jurisdiction over the subject matter of this Agreement, the parties hereto agree to revise and reform this Agreement to eliminate all elements determined by the parties to be potentially illegal or invalid. In the event an enforcement action is brought or threatened against any party hereto, or an audit or examination is commenced with respect to any party hereto, by the Office of Inspector General of the Department of Health & Human Services, the Internal Revenue Service, the North Carolina Department of Revenue, the United States Department of Justice, the North Carolina Department of Revenue, the United States Department of Justice, the North Carolina Attorney General's Office, or any other agency of the state or federal government having jurisdiction over the subject matter of this action or threatened enforcement action, or will facilitate the resolution of the audit or examination in favor of the party being examined or audited, the parties hereto agree to reform this Agreement to eliminate or revise its term or terms in a manner to resolve favorably the enforcement action, threatened enforcement action, audit or examination. "Resolve favorably" means that it will be resolved in such a manner that the agency of state or federal government which is bringing or threatening the enforcement action, audit or examination does not conclude or find that a term of this Agreement (i) is unlawful or invalid under state or federal law. If, after thirty (30) days of the parties attempts to revise or reform the arrangement as set forth above, the parties are unable to reach an agreement as to how or whether this Agreement shall continue, then either party may terminate this Agreement upon thirty (30) days' prior written notice.
25. **E-VERIFY.** Provider shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. Further, if Provider utilizes a subcontractor, Provider shall require the subcontractor to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes.
26. **IRAN DIVESTMENT ACT CERTIFICATION.** As of the effective date of this agreement, the Provider is not listed on the Final Divestment List created by the State Treasurer pursuant to

North Carolina General Statute § 147-86.58. The Provider hereby certifies that he or she is authorized to make the foregoing statement.

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto, by and through their duly authorized officers, have caused these presents to be executed in their names, all by Order of the Jackson County Board of Commissioners and by Order of the Board of Directors of DLP Harris Regional Hospital, LLC, d/b/a Harris Emergency Medical Services, on the day and year first above written in duplicate originals.

THE COUNTY OF JACKSON

By: _____
Brian T. McMachan

Its: Chairman, Board of Commissioners

Date: _____

ATTEST:

Angela M. Winchester, Clerk to the Board of Commissioners

DLP HARRIS REGIONAL HOSPITAL, LLC

By: _____
[Handwritten Signature]

Its: *CEO* _____

Date: *7/27/16* _____

This instrument has been pre-audited in the Manner required by the Local Government Budget and Fiscal Control Act.

This the _____ day of _____ 2016

Finance Officer
Jackson County, North Carolina