

STATE OF NORTH CAROLINA

AGREEMENT FOR  
AMBULANCE SERVICES

COUNTY OF BUNCOMBE

THIS AGREEMENT ("Agreement") is dated as of \_\_\_\_ day of January, 2023, and is by and between Buncombe County, North Carolina, a public body politic and corporate of the State of North Carolina (sometimes referred to herein as "County"), and Mountain Area Ground Non-Emergency Transportation, LLC, a North Carolina limited liability company doing business as "MAGNET" (sometimes referred to herein as "MAGNET").

Whereas, County Ordinances dictate that no person or entity of any kind shall furnish, operate, conduct, maintain, advertise or otherwise be engaged in or profess to be engaged in the business of emergency, nonemergency or convalescent transportation of patients within the County unless the person holds a valid permit for each ambulance used in such business issued by OEMS and has been granted a franchise for the operation of such business or service by the County.

Whereas, MAGNET made application with the County to operate ambulances in the unincorporated areas of Buncombe County, and County legal services, in consultation with County EMS, scheduled a hearing with the MAGNET, by and through its owners, Tony Campbell and Chris Roberts, and held the same on December 7, 2022.

Whereas, a hearing to consider granting a franchise to MAGNET was held before the Buncombe County Board of Commissioners on January 17, 2023 and the Board determined that it would be in order to grant MAGNET a franchise for a one year term provided the company's ambulances passed inspection of North Carolina Office of EMS ("OEMS") and the County and MAGNET enter into a one year contract.

Whereas, County personnel accompanied by a representative of the Western Branch of OEMS inspected in service MAGNET ambulances and found that two (2) units are immediately available and meet OEMS standards for convalescent ambulances.

Whereas, County and MAGNET desire to enter into this agreement for MAGNET to furnish convalescent ambulance services in Buncombe County on an as needed basis.

WHEREAS, pursuant to N.C. Gen. Stat. §153A-11 and N.C. Gen. Stat. § 153A-250, a county has the authority to enter into agreements with third parties and to enter into contracts for ambulance services in all or a portion of a county.

NOW THEREFORE, in consideration of the mutual promises contained herein and other good and valuable considerations, the parties hereto contract and agree as follows:

1. This Agreement shall be valid for a term of one (1) year, effective February 1, 2023. Upon request of MAGNET and upon good cause shown this franchise may be extended for one additional term of up to four (4) years in the discretion of the County provided MAGNET is in good standing with OEMS, County EMS, and all appropriate licenses are maintained.

2. MAGNET will furnish ambulance services and shall provide the necessary equipment, personnel and those things necessary for furnishing such ambulance services for the County and the

Buncombe County EMS System. The services shall be in accordance with minimum standards set forth in this Agreement and as required by federal and State law. Necessary equipment and services provided by MAGNET, and at MAGNET's sole cost and expense, shall include the following:

- MAGNET agrees to maintain response performance rates and quality of care in line with established County EMS Standards;
- MAGNET will provide a level of care consistent with existing EMS standards;
- MAGNET will comply with the terms and conditions of Ch. 22, Emergency Services, Art. II Ambulance Services of the Buncombe County Code of Ordinances, a copy of which is attached hereto; and
- MAGNET will assist County EMS and its Interlocal partners in the event of a major catastrophe or emergency consistent with its licensing.

3. Equipment must comply with the standards established by the County EMS system and the NC Office of EMS. Responsibility for furnishing the necessary equipment to utilize the County EMS system is the sole responsibility of MAGNET and shall be included through the sole cost and expense of MAGNET. Failure to utilize the appropriate equipment will prevent MAGNET from accessing the County EMS system.

4. MAGNET will provide a quarterly report on ambulance services metrics. Metrics will be defined between MAGNET and the County ES Director and may include, but not be limited to, call volume, patient complaints, care issues, etc. The metrics and performance standards shall be in accordance with minimum standards as set forth by OEMS.

5. County may inspect all records, premises and equipment of MAGNET at any time in order to ensure compliance with OEMS standards, County Ordinances, and this Agreement.

6. Except as otherwise provided, if the County determines that MAGNET has failed to render ambulance services as provided in this Agreement and County Ordinances, then the County shall give MAGNET ten (10) days advance notice that the services are subject to suspension. If during the said ten (10) day period, MAGNET makes improvements satisfactory to the County, no suspension shall occur. During the ten (10) day period, MAGNET is not relieved of their responsibility to provide ambulance services in a manner otherwise consistent with the terms of this Agreement. County reserves the right, in its sole discretion, to suspend this Agreement immediately for any reason involving service concerns or public safety.

7. MAGNET shall obtain and keep in force during the term of this agreement the following minimum insurance coverage:

**a. Worker's Compensation** – at the statutory limits in compliance with applicable State and Federal laws. The Contractor shall ensure that any subcontractors also have workers compensation coverage at the statutory limits.

**b. Employer's Liability** - with minimum limits of \$1,000,000 each accident/\$1,000,000 disease each employee/\$1,000,000 disease policy limit.

**c. Commercial General Liability** - covering all operations performed by the Contractor with a minimum limit of \$1,000,000 per occurrence with a \$3,000,000 aggregate.

**d. Professional Health Care Liability** - covering the Contractor's acts, errors, or omissions in the rendering of or failure to render professional health care services with a minimum limit of \$1,000,000 per occurrence with a \$3,000,000 aggregate

**e. Business Automobile Liability** - covering all owned, non-owned, and hired vehicles used in performance of the contract. The minimum combined single limit per occurrence shall be \$1,000,000 and shall include uninsured/underinsured motorist coverage per NCGS 20-279.21.

**f. Excess or Umbrella Liability** – shall extend an additional \$2,000,000 limit / \$2,000,000 aggregate over the underlying commercial general liability, professional health care liability, and business auto liability insurance. Any additional insured under any policy of the underlying insurance will automatically be an additional insured under this insurance.

8. MAGNET shall provide the County with certificates of insurance evidencing the above amounts. The liability certificates shall name Buncombe County as additional insured under the policies. The certificates shall provide that policies shall not be canceled or changed until thirty (30) days written notice has been given to the County. All insurance shall be procured from reputable insurers authorized to do business in North Carolina.

9. Providing and maintaining adequate insurance coverage is a material obligation of MAGNET and is of the essence of this Agreement. MAGNET may meet its requirements of maintaining specified coverage and limits by demonstrating to the County that there is in force insurance with equivalent coverage and limits that will offer at least the same protection to the County. MAGNET shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies, except as they may conflict with existing North Carolina laws or this Agreement. The limits of coverage under each insurance policy maintained by the MAGNET shall not be interpreted as limiting the MAGNET's liability and obligations under the contract.

10. MAGNET shall continuously comply with all applicable laws, ordinances and regulations. In particular, all ambulance services of MAGNET shall comply with all such services requirements of the Department of Health and Human Services as well as pertinent provisions of the North Carolina Administrative Code, Title 10A, Department of Health and Human Services, Chapter 13, NC Medical Care Commission, Subchapter 13P, Emergency Medical Services and Trauma Rules, as same may be updated, amended or replaced from time to time. Also, MAGNET must be continuously in compliance with all County EMS and the North Carolina Office of EMS requirements and retain all necessary licenses and permits from the North Carolina Office of Emergency Medical Services, as applicable.

11. MAGNET shall indemnify, defend and hold harmless the County and its subsidiaries, divisions, officers, directors and employees from all liability, loss, costs, claims, damages, expenses, attorney fees, judgments and awards arising or claimed to have arisen, from any injury caused by, or allegedly caused by, either in whole or in part, the performance of this Agreement or the actions of the MAGNET its officials, employees, or students under this Agreement up to the limits of its insurance. MAGNET shall indemnify the County in all instances except where the County is primarily negligent through an act or omission.

Nothing herein shall be construed as a waiver on the part of the County to any defense of any claim, including, but not limited to the defense of governmental immunity. And, that the County's obligations under this paragraph shall be limited to the extent and manner of recovery pursuant to County's self-insured claim policies and North Carolina law.

12. County shall not make any funds available to MAGNET from any tax levy or its general funds.

13. **Termination for Convenience.** This Agreement may be terminated by either party, for any reason or no reason, at any time by giving written notice of intent to terminate to the other party upon sixty (60) days notice to the other party.

14. **Termination for Cause.** In the event that MAGNET fails to maintain applicable certifications and applicable permits from OEMS then this Agreement may be terminated by County by giving MAGNET ten (10) days advance written notice of termination.

15. **Governing Law.** The parties intend that this Agreement shall be governed by the law of the State of North Carolina as follows:

#### Mediation

- Any claim, dispute, or other matter in question arising out of or related to this Agreement shall be subject to voluntary non-binding mediation as a condition precedent to the institution of legal or equitable proceedings by either party. If the parties are unable to agree upon a certified mediator to hear their dispute, the Buncombe County Resident Superior Court Judge shall name a mediator to hear the matter.
- The parties shall equally share the mediator's fee. The mediation shall be held in Asheville at a location designated by the mediator selected to hear the matter.

#### Legal Proceedings

- Claims, disputes and/or other matters in question between the parties that are not resolved by mediation shall be heard in the North Carolina General Courts of Justice in Asheville, Buncombe County, North Carolina, which said Court shall have jurisdiction to hear any dispute between the parties arising out of this agreement. The Parties hereby agree that this paragraph establishes exclusive and sole jurisdiction for any legal proceeding in Buncombe County, North Carolina.

16. **HIPPA Compliance.** MAGNET acknowledges that it is a covered entity under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and agrees to comply with the HIPAA Administrative Simplification Regulations as applicable to its services in accordance with 45 CFR Part 160, Part 162 and Part 164 to protect the privacy and security of protected health information and to provide individuals with certain rights with respect to their health information. MAGNET assures that it will appropriately safeguard all forms of Health Records and/or Protected Health Information (PHI), as defined by the regulations, which are made available to or obtained by MAGNET in the course of its work. The parties acknowledge that their relationship to patients receiving services hereunder is a "direct treatment relationship" as that term is defined in the Privacy Regulations and that this contractual relationship does not constitute a "business associate" agreement pursuant to the Privacy Rule.

17. **Miscellaneous.** (a) **Notice.** Except as otherwise provided in this Agreement, all notices and communications required to be sent pursuant to the terms of this Agreement shall be in writing and

shall be delivered by hand delivery, certified mail, return receipt requested, or by Federal Express or similar overnight courier service, addressed as follows: County: County Manager, 200 College Street, Asheville, NC 28801. MAGNET: 1095 Hendersonville Road, Suite C5, Asheville, NC 28803. All such notices and other communications, which are addressed as provided in this Paragraph, shall be effective upon receipt. The parties hereto may from time to time change their respective addresses for the purpose of notice to that party by a similar notice specifying a new address, but no such change shall be deemed to have been given until it is actually received by the party sought to be charged with its contents. (b) Whole Agreement. This Agreement contains all of the agreements and representations between the parties with respect to the subject matter hereof. None of the terms of this Agreement shall be waived or modified to any extent, except by written instrument signed and delivered by both parties. (c) Severability/Survival. If any provision of this Agreement shall be declared invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect. The covenants contained in this Agreement, which by their terms require their performance after the expiration or termination of this Agreement, shall be enforceable notwithstanding the expiration or termination of this Agreement. (d) Execution. This Agreement shall only become binding when signed by both MAGNET and County. The parties intend that emailed signatures constitute original signatures and that an email-transmitted Agreement containing signatures of the parties is binding on the parties having signed such email-transmitted Agreement. The parties agree that the Uniform Electronic Transactions Act shall be applicable and enforceable as to such execution and delivery. (e) Duplicate Counterparts. This Agreement may be signed in counterparts by the parties. It is not necessary that the signatures of the parties appear on the same counterpart or counterparts. All counterparts shall collectively constitute a single agreement. Executed counterparts of this Agreement may be delivered by email transmission. (f) Authority. The individuals signing this Agreement personally warrant that they have the right and power to enter into this Agreement on behalf of MAGNET and County, to grant the rights granted under this Agreement, and to undertake the obligations undertaken in this Agreement. (g) Captions. The captions or headings in this Agreement are inserted only as a matter of convenience and for reference and they in no way define, limit, or describe the scope of this Agreement or the intent of any provision hereof. (h) Counterparts. The Parties may execute this Agreement in separate counterparts and the execution of a copy shall have the same effect as the execution of an original. Such execution may be by facsimile or PDF attachment to an email.

Mountain Area Ground Non-Emergency Transportation, LLC

By: \_\_\_\_\_

ATTEST:

BUNCOMBE COUNTY

\_\_\_\_\_  
Lamar Joyner, Clerk to the Board

By: \_\_\_\_\_  
Brownie Newman, Chair  
Buncombe County Commission