

**EMERGENCY RESPONSE RADIO SERVICES TOWER ACCESS  
AGREEMENT FOR PARTICIPANT**

Date: November 27, 2018  
Provider: UT HEALTH EAST TEXAS EMS  
Address: 325 S. Glenwood Blvd. Tyler, Texas 75702  
Participant: Upshur County Sheriff's Department and  
County of Upshur  
Participant's Address: 405 N Titus, Gilmer, Texas 75645  
Term: December 1, 2018 to November 30, 2019  
Annual Fee: Participant to provide landscaping services

FILED  
TERRI ROSS  
COUNTY CLERK  
2019 JAN 11 AM 10:34  
UPSHUR COUNTY, TX.  
BY [Signature] DEPUTY

RECITALS

Provider has implemented a regional radio system utilizing various types of communications equipment to communicate among Provider's ambulances, hospitals and other emergency or governmental entities.

Participant desires to access such radio system infrastructure to better suit its needs.

Participant finds that the items contemplated under this Agreement will serve and improve its services by allowing faster, more efficient and reliable communications.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants and agreements contained herein, the Parties agree as follows:

## **ARTICLE 1. SERVICES**

**1.01 Services.** Provider will provide access to the radio tower located on Barnwell Mountain near Gilmer in Upshur County, Texas, necessary for Participant to support its radio system communications needs for 110 mobile and portable units to include up to 5 dispatch base stations or consolettes.

Access to the tower will include space inside the hardware storage structure located at the base of the tower for sheltering of participant's radio hardware necessary to transmit and/or repeat radio and data broadcasts. The participant is authorized to attach up to two antennas to the tower as part of this agreement. Provider will make appropriate upgrades and improvements to the radio tower and structure located at the base of the tower.

Provider is not responsible for purchase, maintenance, installation nor replacement of any devices or services used to access participant's radio system such as but not limited to: base stations, IP radios, portable radios, mobile radios, antennas, microphones and/or repeaters.

Participant's use of the tower site, tower and hardware storage area shall not interfere with Provider's use and/or other authorized user's use of the radio system nor prevent Provider's and/or authorized user's from expanding or improving their use of the radio system.

## **ARTICLE 2. WARRANTIES**

**2.01 Warranty.** It is specifically agreed that the services acquired under this agreement are sold without any warranty of merchantability. Provider disclaims any warranty of merchantability or fitness for any particular purpose or use whatsoever with respect to the services being acquired under this agreement. To the extent that provider is entitled to any rights of warranty by virtue of its acquisition of any of the goods or products supporting its services, then it assigns all of its rights therein to participant, along with all rights to which it may be entitled by law, in exchange for participant's agreement not to seek any remedies against provider pursuant to any such alleged right, as part of the consideration for this transaction. Participant agrees to accept the rights of this assignment as its sole remedy for any claim upon any implied warranty. Provider has made no affirmation of fact or promise relating to the services or goods being sold that has become any basis of this bargain. Further, Provider has made no affirmation of fact or promise relating to the services or goods being sold that has created or amounted to an express warranty that the services or goods would conform to any such affirmation or promise.

### ARTICLE 3. PRICE

3.01 **Annual Fee.** Participant has agreed to provide landscaping services at no cost to provider in and around the area of the Barnwell Mountain tower. These services are to include any reasonable upkeep of the area immediately below the tower and the area within and between the guy wires and tower, road or access path to the tower/guy wires anchor points, and around the tower guy wires fenced in anchor points. The goal of this landscaping service is to allow for ease of access to the tower, guy wires anchor points, generator and hardware storage building located at the base of the tower. Generally, such landscaping when needed will include but isn't limited to mowing, weed eating, herbicide treatment (if needed) and timber removal if access is inhibited or tower, structure, generator and/or guy wires are at risk of damage from such timber.

### ARTICLE 4. TERM AND TERMINATION

4.01 **Term.** Unless sooner terminated as provided herein, Participant and Provider will be obligated under the terms and conditions of this Agreement for the Term. This Agreement will automatically renew for additional one (1) year terms unless either party gives thirty (30) days written notice to the other party.

4.02 **Termination.** This Agreement may be terminated upon the first to occur of any of the following events:

4.02.1 Termination by Agreement. In the event Provider and Participant shall mutually agree in writing.

4.02.2 Default. In the event any Party shall give written notice to the other that such other Party has substantially defaulted in the performance of any material duty or obligation imposed upon it by this Agreement and such default shall not have been cured within thirty (30) days following the delivery of the written notice, the Party giving such written notice shall have the right to immediately terminate this Agreement unless the defaulting Party shall, within thirty (30) day period, have made a good faith effort to initiate corrective action and it is contemplated that such corrective action will be completed within the following thirty (30) day period.

4.02.3 Bankruptcy. In the event that any Party becomes insolvent, or if any petition under federal or state law pertaining to bankruptcy or insolvency or for a reorganization or arrangement or other

relief from creditors shall be filed by or against any Party and not subsequently dismissed within 60 days thereof, or if any assignment, trust, mortgage, or other transfer shall be made of all or a substantial part of the property of any Party, or if any Party shall make or offer a compromise of its debts with its creditors, or if a receiver, trustee, or similar officer or creditor's committee shall be appointed to take charge of any property of or to operate or wind up the affairs of any Party, then the other Parties may by written notice immediately terminate this Agreement.

4.02.4 Change in Law. Notwithstanding any other provision of this Agreement, if the governmental agency which administer Medicare, any other payor, or any other federal, state or local government or agency passes, issues or promulgates any law, rules, regulation, standard or interpretation, or any court of competent jurisdiction renders any decision or issues any order, at any time while this Agreement is in effect, which prohibits, restricts, limits or in any way substantially changes the method or amount of reimbursement or payment for the services rendered under this Agreement, or which otherwise significantly affects any Party's rights or obligations hereunder, any Party may give the other notice of intent to amend this Agreement to the satisfaction of other Parties, to compensate for such prohibition, restriction, limitation or change. If this Agreement is not so amended in writing within (30) days after said notice was given, this Agreement shall terminate as of midnight on the (30<sup>th</sup>) day after said notice was given.

4.02.5 Effect of Termination. As of the effective date of termination of this Agreement, neither Party shall have any further rights or obligations accruing after the effective date of termination, except for the financial obligation provided for in this Agreement. Notwithstanding the foregoing, the following provisions shall survive the expiration or other termination of this Agreement, regardless of the cause of such termination 2.01, 3.02, and Article 5.

## ARTICLE 5. MISCELLANEOUS

5.01 **Attorney's Fees.** Should any litigation be instituted as a result of any dispute arising out of this Agreement, the interpretation, or the enforcement of the terms and conditions hereof, the prevailing Party shall be entitled to attorney's fees and related expenses as the court may deem reasonable under the circumstances.

5.02 **Force Majeure.** No Party shall be liable or deemed to be in default for any delay or failure in performance under this Agreement or other interruption of service deemed to result, directly or indirectly; from acts of God, civil or military authority, acts of public enemy, war, accidents, fires, explosions, earthquakes,

floods, failure of transportation, commercial unavailability of equipment or supplies, strikes or other work interruptions by any Party's employee, or any other similar cause beyond the reasonable control of either Party.

**5.03 Independent Contractor.** In performing the services or providing the goods herein specified, Provider is acting as an independent contractor with respect to Participant, and no Party, nor its staff, shall be considered employees of the other. It is agreed and acknowledged by the Parties that, as an independent contractor, Provider retains the right to contract with and provide radio system infrastructure services to entities and individuals other than Participant, including but not limited to communications equipment owned by Provider, access to towers, base stations, radios repeaters and other such services, and nothing in this Agreement shall be interpreted as limiting or restricting in any way Provider's right to do so. In no event shall this Agreement be construed as establishing a partnership or joint venture or similar relationship between the Parties hereto, and nothing herein shall authorize any Party to act as agent for the other, except to the extent herein provided. Provider and Participant shall be liable for its own debts, obligations, acts and omissions, including the payment of all required withholding, social security and other taxes and benefits with respect to all such Party's staff. No Party's staff shall be subject to any other Party's policies solely applicable to its employees or be eligible for any employee benefit plan offered by the other Party.

**5.04 Civil Rights.** Provider and Participant shall comply with Title VII of the Civil Rights Act of 1964 and all requirements imposed by or pursuant to regulations of the U.S. Department of Health and Human Services (45 C.F.R. Part 80) issued pursuant to that Title, to the end that, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied for benefits of, or be otherwise subjected to discrimination under any program or activity for which Federal funds are used in support of Provider's or Participant's activities.

**5.05 Entire Agreement; Modification.** This Agreement contains the entire understanding of the Parties with respect to the subject matter hereof and supersedes all prior agreements, oral or written, and all other communications between the Parties relating to such subject matter. This Agreement may not be amended or modified except by mutual written agreement.

**5.06 Applicable Law and Remedies.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. All remedies at law, or in equity, by statute or otherwise, shall be cumulative and may be enforced concurrently herewith or from time to time and the election of any one or more shall not constitute a waiver of the right to pursue other available remedies. Venue of any litigation shall be Smith County, Texas.

**5.07 Counterparts.** This Agreement may be executed in one or more

counterparts, all of which together shall constitute only one Agreement.

**5.08 Notices.** All notices hereunder by either Party to the other shall be in writing, delivered personally, by certified or registered mail (postage prepaid), return receipt requested, or by overnight courier services (charges prepaid), and shall be deemed to have been duly given when delivered personally, when deposited in the United States mail, or delivered to the overnight courier, as shown on the first page of this Agreement or to such other persons or places as either Party may, from time to time, designate by written notice to the other.

**5.09 Waiver.** The waiver by either Party of a breach of any provision of this Agreement shall not constitute a waiver of any subsequent breach or failure to perform.

**5.10 Assignment; Binding Effect.** Provider may assign or transfer, in whole or in part, this Agreement or any of Provider's rights, duties or obligations under this Agreement. Any assignment or transfer of this Agreement, in whole or in part, by Participant without the prior written consent of Provider, shall be null and void. This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their heirs, representatives, successors and permitted assigns.

**5.11 Reproduced copies of Documents.** This Agreement and all documents relating hereto may be reproduced by any means or process including electronic or mechanical means. Any reproduction shall be admissible into evidence as the original itself in any litigation without regard to whether the original is in existence. If a Party signs this Agreement and then transmits an electronic facsimile of the signature page the recipient may rely upon the electronic facsimile as a signed original of this Agreement without modification or change unless same is noted thereon.

**5.12 Time of Essence.** Time shall be of the essence with respect to this Agreement.

**5.13 Consents, Approvals, and Exercise of Discretion.** Except as may be herein specifically provided to the contrary, whenever this Agreement requires any consent or approval to be given by either Party or either Party must or may exercise discretion, the Parties agree that such consent or approval shall not be unreasonably withheld or delayed, and such discretion shall be reasonably exercised in good faith.

**5.14 Severability.** In the event any provision of this Agreement is held to be invalid, illegal, or unenforceable for any reason and in any respect, if the extent of such invalidity, illegality, or unenforceability shall in no event affect, prejudice, or disturb the validity of the remainder of this Agreement, which shall be in full force and effect, enforceable in accordance with its terms as if such provisions had not been included, or had been modified as provided below, as the case may be. To carry out the intent of the Parties hereto as fully as possible,

the invalid, illegal or unenforceable provision(s), if possible, shall be deemed modified to the extent necessary and possible to render such provision(s) valid and enforceable. In the event this Agreement cannot be modified to the satisfaction of the Parties hereto, then either Party may terminate this Agreement upon ten (10) days written notice.

**5.15 Divisions and Headings.** The division of this Agreement into articles, sections, and subsections and the use of captions and headings in connection therewith are solely for convenience and shall not affect in any way the meaning or interpretation of this Agreement.

**5.16 Third Parties.** None of the provisions of this Agreement shall be for the benefit of third parties or enforceable by any third Party. Any agreement to pay an amount and any assumption of a liability herein contained, expressed or implied, shall only be for the benefit of the Parties hereto and such agreement or assumption shall not inure to the benefit of any third Party.

**5.17 Taxes.** The prices set forth in the Agreement are exclusive of any amount for federal, state or local excise, sales, lease, gross income services, rental, use, property, occupation or similar taxes. Participant represents and warrants that it is exempt from all such taxes. If any taxes are determined applicable to this transaction or Provider is required to pay or bear the burden thereof, the Participant agrees to pay to Provider the amount of such taxes and any interest or penalty thereon no later than thirty (30) days after receipt of an invoice therefor.

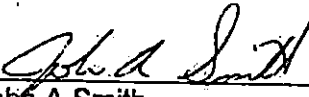
**5.18 Limitation of Liability.** Provider's total liability whether for breach of contract, warranty, negligence, strict liability in tort or otherwise, is limited to the price of the particular services sold hereunder with respect to which losses or damages are claimed. In no event will Provider be liable for any loss of use, loss of time, damages, injuries, inconvenience, commercial loss, lost profits or savings or other incidental, special or consequential damages to the full extent such may be disclaimed by law.

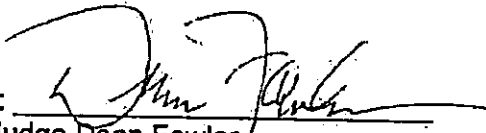
**5.19 Further Assurances.** Parties agree to take such further actions and execute any documents that may be necessary to complete the transactions contemplated by this Agreement.


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

UTHEALTH EAST TEXAS  
EMS

Upshur County, Texas

By:   
John A Smith,  
Chief Executive Officer

By:   
Judge Dean Fowler  
County Judge - Upshur County,  
Texas

FILED  
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2019 JAN 11 AM 10:34  
UPSHUR COUNTY, TX.  
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