

AMENDED AGREEMENT

THIS AMENDED AGREEMENT, made the ___ day of _____, 2020, by and between the **TOWN OF JOHNSBURG, NEW YORK**, a municipal corporation with its principal place of business at 219 Main Street, North Creek, New York 12853 (hereinafter “Town”) and **JOHNSBURG EMERGENCY SQUAD, INC.**, a domestic not-for-profit corporation organized and existing under the laws of the State of New York and maintaining a principal place of business at 624 Peaceful Valley Road, North Creek, New York 12853 (hereinafter “JES”).

WITNESSETH:

WHEREAS, pursuant to Article 12-a of the Town Law, the Town has duly established and created an ambulance district within the Town known as “Ambulance District No. 1 of the Town of Johnsburg” (hereinafter “District”); and

WHEREAS, JES is a not-for-profit corporation which provides prehospital emergency medical treatment, including basic life support and advanced life support, and transportation for sick or injured persons; and

WHEREAS, pursuant to its authority under Town Law § 198(10-f), the Town entered into a contract with JES dated as of December 2016 for the provision of ambulance services to residents of the District and other persons situated therein and is in need of such services for the term of January 1, 2021 through December 31, 2021; and

WHEREAS, the Town and JES desire to enter into this Amended Agreement in order to modify certain of the terms and conditions set forth in their prior Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and conditions herein contained, the Town and JES mutually agree as follows:

1. TERM

1.1 The term of this Amended Agreement shall be for a period of one year commencing on January 1, 2021 and terminating December 31, 2021, unless sooner terminated as herein provided.

1.2 This Agreement shall automatically renew for successive one (1) year periods unless terminated by either party upon written notice provided at least sixty (60) days prior to the expiration of the then-current term, provided that the amounts to be paid to JES pursuant to paragraph 3 shall be subject to the Town’s annual budgeting process.

2. SERVICES TO BE PROVIDED

2.1 JES will provide basic and advanced life support emergency medical and transportation services to sick or injured persons residing in and/or located within the District in accordance with the regulations and requirements of the New York State Department of Health,

Bureau of Emergency Medical Services and/or the applicable Regional Emergency Medical Service Council.

2.2 The Town recognizes that in some cases, only basic life support may be available or apparently necessary based upon the information available. The Town also acknowledges that on some occasions no ambulance may be available due to JES's lack of vehicles and/or personnel to respond to all emergencies for which it has contracted to provide services. The obligation of JES to provide the services described herein shall be subject to, and limited by, the reasonable availability of JES's personnel, equipment, and other resources. As between the Town and JES, but not JES and any third party claims, the Town releases JES from any failure on the part of JES to provide services on occasions when such resources are temporarily unavailable.

2.3 JES shall maintain and hold all required certifications from the New York State Department of Health, Bureau of Emergency Medical Services and/or the applicable Regional Emergency Medical Service Council necessary for JES to operate advanced life support service in the Town and to provide the services under this Agreement, and a loss or suspension of such certifications shall be deemed a material breach of this Agreement by JES.

3. COMPENSATION

3.1 In consideration of the ambulance services provided, the Town shall annually pay to JES the amount of Five Hundred Eighty Seven Thousand Seven Hundred Sixty and 00/100 Dollars (\$587,760.00).

3.2 The annual contract amount shall be paid by the Town to JES in quarterly installments in accordance with the following schedule:

Date of Payment	Payment Amount
February 1, 2021	\$146,940.00
May 1, 2021	\$146,940.00
August 1, 2021	\$146,940.00
November 1, 2021	\$146,950.00

3.3 The annual contract amount payable to JES by the Town for calendar year 2021 shall be reduced by the amount of the credit provided in Section 4.5 below.

3.4 JES shall, at the request of the Town, provide audited financial reports for JES, at JES's expense, and if requested by the Town, the Town may, at its own expense, cause an audit to be performed to verify any financial report provided by JES, or in the event of the failure of JES to provide audited financial reports within 120 days of the Town's request therefore, the Town may cause an audit of the books and records of JES, and deduct the cost of same from any amounts due or owing to JES under this Agreement or any future Agreement.

4. BILLING AND COLLECTIONS

4.1 The Town has established a schedule of user fees to be imposed upon and charged to persons receiving the emergency medical and transportation services described herein.

4.2 JES shall generate billing statements reflecting the total charges due under the Town's fee schedule for emergency medical and/or transportation services provided on behalf of an individual. Such billing statements shall be issued to the person and/or entity financially responsible for such charges, including as appropriate the individual receiving such services, a parent and/or guardian, a private health insurer, and/or Medicare, Medicaid, or other public benefits program.

4.3 All payments collected by or on behalf of JES with respect to emergency medical and/or transportation services performed during the term of this Agreement shall be remitted to the Town at the end of each month, together with a statement itemizing (i) the amounts for services billed in the preceding month, (ii) the amounts for services collected in the preceding month, and (iii) the outstanding amounts receivable to date for services billed but not yet paid.

4.4 JES may contract with a third party to provide the billing and collection services required under this Agreement.

4.5 It is anticipated that during the term of this Agreement JES will receive payments attributable to emergency medical and/or transportation services performed prior to the terms of the original agreement, dated January 1st, 2015, (i.e., payments received in 2017 for services performed in 2014). The Town shall receive a credit against the annual contract amount set forth in Section 3 above in an amount equal to the payments actually collected by JES in 2017 which are attributable to services performed by JES prior to January 1st, 2015.

4.6 The amount of any credit applied against the annual contract amount as provided in Section 4.5 above shall be paid by the Town to JES at the termination of the contract to the extent not previously repaid.

4.7 If, at the end of 2021, the combined amounts collected by the Town in taxes and/or billing revenue exceed the annual contract amount set forth in Section 3, net of any credit provided in Section 4.5, such surplus amounts shall be held and maintained in reserve by the Town. Amounts held in reserve shall be used exclusively for the purpose of (i) repaying to JES, in whole or in part, the amount of the credit provided in Section 4.5, (ii) covering future deficiencies between projected billing revenues and the amount of billing revenues actually collected, and/or (iii) purchasing or repairing vehicles, equipment, or other capital items used by JES in providing services.

4.8 JES and/or a third-party billing and collection service retained on its behalf shall undertake reasonable collection efforts to obtain payment on any unpaid accounts receivable but shall not be obligated to initiate any claim or lawsuit. The Town may, in its discretion and at its

sole cost and expense, initiate a claim or lawsuit to recover any unpaid amounts due and owing from any individual or entity with respect to services provided by JES under this Agreement.

4.9 The amounts due JES under this Agreement shall be a District, and not a Town, charge, payable solely from revenues raised by the taxation of the District.

5. INSURANCE

JES shall procure and maintain during the term of this Agreement liability insurance with limits of liability of not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, and \$1,000,000 in excess/umbrella coverage. JES shall also procure and maintain during the term of this Agreement commercial and/or business vehicle insurance on all vehicles with limits of liability of not less than \$1,000,000 per occurrence and \$1,000,000 in excess/umbrella coverage, and which shall include owned, non-owned, leased and hired vehicles. JES shall keep and maintain statutory workers compensation and employer's liability coverage for all employees, including corporate officers and sole proprietors. JES shall have the Town named as additional insured on a primary, non-contributory basis, on the insurance policies noted above and shall present the Town with certificates of insurance reflecting such coverage. JES acknowledges that the foregoing insurance is intended not only to benefit the Town, but also the Town's current insurance carrier and any future insurance carrier of the Town.

6. NO EMPLOYMENT AND MAINTENANCE

JES and the Town agree that JES is acting as a vendor and independent contractor with respect to the provision of the services described in this Agreement, and nothing herein shall be deemed to create an employment relationship between the Town and JES or its employees/volunteers. JES shall keep and maintain all of its vehicles and equipment in good and working order to perform the services to be provided by JES hereunder.

7. TERMINATION

7.1 This Agreement may be terminated:

a. By either upon at least sixty (60) days written notice of its intent to terminate the contract at the expiration of the then-current term; or

b. By either party in the event of a material breach or failure to perform hereunder on the part of the other, provided that such breach or failure to perform is not cured within thirty (30) days after delivery of written notice to the party in default. A "material breach" as set forth above shall include but not be limited to: (a) failure by JES to keep and maintain any required license(s), training and/or insurance required under this Agreement; (b) failure by the Town to pay, within fifteen days of when due, any amounts to be paid to JES hereunder; (c) failure by JES to respond to calls for service in the Town to be supplied by JES pursuant to this Agreement; (d) any other failure by either party to perform any obligation pursuant to this Agreement.

7.2 Upon expiration or termination of the Agreement, JES shall have no further liability or responsibility for providing services under this Agreement. In the event that all amounts due to JES from the Town as of the date of termination have been duly paid, the Town shall be entitled to a pro rata refund of any excess portion of any quarterly payment made. Any billing revenue received by or on behalf of JES after the date of termination, and which are attributable to services performed prior to the date of termination, shall be remitted to the Town.

8. NOTICES

All notices given pursuant to this Agreement shall be in writing and addressed to the party as set forth on the first page of this Agreement (or such other address as either party may from time to time designate by written notice). Any such notice shall be effective as of the date it is delivered.

9. INDEMNIFICATION

To the fullest extent permitted by law, JES shall indemnify, defend and hold harmless the Town, its officers, employees and agents from and against any and all claims, actions, damages, losses and expenses, including but not limited to attorney's fees, for any actual or alleged injury to any person or persons, including death, or damage to or destruction of property arising out of any act or omission on the part of the JES, its employees, officers, directors, members, agents or subcontractors in connection with any work or services performed by JES pursuant to this Agreement. JES waives the right of subrogation against the Town for any claim under this Agreement.

10. ASSIGNMENT

Neither party shall assign any of the rights and obligations hereunder without the prior written consent of the other party.

11. GOVERNING LAW AND VENUE

This Agreement shall be governed by and constructed in accordance with the laws of the State of New York. Any action or proceeding arising from or relating to this Agreement shall be brought in the New York Supreme Court, Warren County.

12. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement and understanding between The Town and JES and supersedes all prior and contemporaneous verbal and written negotiations, agreements and understandings, if any, between the parties. This Agreement cannot be modified except by a writing signed by each party.

13. SAVINGS CLAUSE

If any term or provision of this Agreement or the application thereof is to any extent held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each term and provision hereof shall be valid and enforced to the fullest extent of the law.

14. COUNTERPARTS

This Agreement may be executed in counterparts and each such counterpart, when taken together, shall constitute a single and binding Agreement.

**THIS SPACE INTENTIONALLY LEFT BLANK
THE NEXT PAGE IS THE SIGNATURE PAGE**

IN WITNESSETH WHEREOF, the parties have set their respective hands as of the date and year first above written.

TOWN OF JOHNSBURG

By: _____

JOHNSBURG EMERGENCY SQUAD, INC.

By: _____