

# ASSET TRANSFER, ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSET TRANSFER, ASSIGNMENT AND ASSUMPTION AGREEMENT (“Agreement”) is made and entered into as of August 5, 2019, by and between NORTH CENTRAL TEXAS TRAUMA REGIONAL ADVISORY COUNCIL, INC. (“NCTTRAC”), and CITY OF MESQUITE THROUGH ITS FIRE DEPARTMENT (“Agency”).

## RECITALS

WHEREAS, Agency may be a member or non-member of NCTTRAC;

WHEREAS, Agency is involved in (i) regional trauma, acute, and emergency healthcare system development and improvement activities; (ii) the Hospital Preparedness Program (“HPP”); and or (iii) the Healthcare Coalition (“HCC”), which supports emergency preparedness and response;

WHEREAS, Agency desires to receive certain assets with respect to Agency’s participation in the HCC;

WHEREAS, NCTTRAC desires to assign, transfer, and deliver, on a temporary or permanent basis, such assets to Agency associated with Agency’s participation in the HCC; and

WHEREAS, NCTTRAC and Agency desire to memorialize their agreement to transfer assets and certain other related matters as set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

## ARTICLE I TRANSFERRED ASSETS

**1.1 Transferred.** Subject to the terms of any applicable underlying agreements between NCTTRAC and the Agency, NCTTRAC hereby assigns and transfers to Agency all of its rights, title and interest to the equipment, supplies, products, materials, and assets, which are described in the Record of Transferred Assets attached hereto as Exhibit A (the “**Transferred Assets**”) in consideration of Agency assuming, as of the Effective Date and thereafter, all liabilities, responsibilities and obligations associated with such Transferred Assets. Agency hereby accepts such assignment and transfer of the Transferred Assets as of the Effective Date (defined below).

**1.2 Assignment of Assets.** NCTTRAC hereby assigns, transfers, and delivers to Agency and Agency hereby obtains from NCTTRAC the Transferred Assets until such Transferred Assets are returned, if ever, to NCTTRAC subject to the terms of any applicable underlying agreements between NCTTRAC and the Agency; provided however, Agency shall not sell, assign, transfer, convey or deliver the Transferred Assets to a third party, or dispose of the Transferred Assets, without NCTTRAC’s prior written consent.

**1.3 Assumed Liabilities and Obligations.** NCTTRAC assigns to Agency, and Agency hereby assumes and agrees to pay, satisfy, perform and discharge, all of the obligations and liabilities relating to the Transferred Assets arising at any time on or after the Effective Date (collectively, the “**Assumed Liabilities**”).

**1.4 Additional Obligations of Agency.** Agency agrees to maintain adequate insurance to cover the loss, theft, destruction, damage, or replacement of any of the Transferred Assets. Costs incurred by NCTTRAC or the respective HCC, as applicable, including any and all legal costs, in the recovery of the Transferred Assets will be paid by the Agency. Agency is responsible for reporting to the State the disposition of the Transferred Assets in accordance with NCTTRAC standard operating procedures. Agency will report the status of the Transferred Assets through use of the State’s GC-11 Inventory Form. Such Transferred Assets shall be made available for inspection and audit to NCTTRAC, the Department of State Health Services, and/or federal personnel, as applicable, to ascertain Agency compliance with the Department of Health and Human Services, Office of the Assistant Secretary for Preparedness and Response program requirements (the “**Program Requirements**”). Agency’s non-compliance with these Program Requirements may be cause for termination of this Agreement as provided below.

**1.5 Representations and Warranties of Agency.** Agency hereby represents and warrants that it is not currently excluded, debarred, suspended, limited, or under probation with respect to, or otherwise ineligible to participate in, any federal or state healthcare program, or NCTTRAC programs and agrees that the foregoing representation and warranty shall remain true and correct throughout the duration of this Agreement.

## ARTICLE II TERM, TERMINATION AND INDEMNITY

**2.1 Term and Termination.** The term of this Agreement will commence on the signatory date and continue in full force unless terminated as provided herein. Either party may terminate this Agreement upon providing at least thirty (30) days prior written notice of the intended date of termination. This Agreement may be terminated immediately by NCTTRAC should Agency breach a material term of this Agreement and fails to cure such breach within thirty (30) days of NCTTRAC providing notice of such breach. Upon request by NCTTRAC, termination of the Agreement by NCTTRAC, or the Agency requires the timely return of Transferred Assets to NCTTRAC.

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**2.2 Indemnity.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, ALL OF THE TRANSFERRED ASSETS ARE PROVIDED BY NCTTRAC TO AGENCY ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITHOUT REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO: (1) IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT; (2) ANY WARRANTY REGARDING THE FUNCTIONALITY, CORRECTNESS, ACCURACY, RELIABILITY, OPERATION, USE OR PERFORMANCE OF THE TRANSFERRED ASSETS; (3) ANY WARRANTY THAT DEFECTS WILL BE CORRECTED OR THAT THE TRANSFERRED ASSETS WILL BE IN WORKING ORDER, UNINTERRUPTED, SECURE, OR FREE OF ERRORS; AND (4) ANY IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE. NCTTRAC SHALL NOT BE LIABLE FOR ANY CLAIMS OR DAMAGES TO AGENCY OR ANYONE ARISING OUT OF OR RELATING TO ANY TRANSFERRED ASSETS PROVIDED AND/OR SERVICES PERFORMED IN CONNECTION WITH THE TRANSFERRED ASSETS. TO THE EXTENT PERMITTED BY THE TEXAS CONSTITUTION AND APPLICABLE LAWS, AND WITHOUT WAIVING ANY IMMUNITIES OR DEFENSES AVAILABLE TO AGENCY, AGENCY SHALL INDEMNIFY AND HOLD HARMLESS NCTTRAC, AND ALL OF ITS PARENT ENTITIES, SISTER ENTITIES, SUBSIDIARIES AND OTHER AFFILIATES AND ALL OF ITS AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, OWNERS, MEMBERS, SHAREHOLDERS, PARTNERS, AGENTS, REPRESENTATIVES, SUCCESSORS AND ASSIGNS, FROM AND AGAINST ALL CLAIMS, ACTIONS, CAUSES OF ACTION, SUITS, LIABILITIES, LOSSES, DAMAGES, COSTS AND EXPENSES, INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES AND COURT COSTS (COLLECTIVELY, "LIABILITIES"), TO THE EXTENT ARISING FROM OR RELATED IN ANY WAY TO (I) THE TRANSFERRED ASSETS OR THE OWNERSHIP, SELECTION, POSSESSION, LEASING, RENTING, OPERATION, CONTROL, USE, MAINTENANCE, DELIVERY, RETURN OR OTHER DISPOSITION OF THE TRANSFERRED ASSETS, (II) ANY BREACH OR VIOLATION BY AGENCY OF THIS AGREEMENT, OR (III) ANY NEGLIGENCE OR WILLFUL MISCONDUCT BY AGENCY OR ANY OF ITS EMPLOYEES, AGENTS OR OTHER REPRESENTATIVES, OR ANY ACTIONS OR OMISSIONS OF AGENCY OR ANY OF ITS EMPLOYEES, AGENTS OR OTHER REPRESENTATIVES. THIS SECTION SHALL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THIS AGREEMENT.

**2.3 Effective Date.** The "Effective Date" of the Transferred Assets shall be the date Agency receives the Transferred Assets from NCTTRAC.

### ARTICLE III MISCELLANEOUS PROVISIONS

**3.1 Assignment.** This Agreement shall not be assignable by either party except with the prior express written consent of the other party, which shall be in the sole discretion of such other party to grant or withhold.

**3.2 Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the heirs, successors and permitted assigns of each party hereto.

**3.3 Entire Agreement.** This Agreement, including the schedules and exhibits hereto, constitute the entire agreement of the parties with respect to the subject matter hereof and supersede all prior oral or written representations, warranties and agreements between the parties with respect to the subject matter hereof and thereof.

**3.4 Amendment.** This Agreement may be amended, supplemented or modified at any time, but only by a written instrument duly executed by NCTTRAC and Agency, which amendment shall be effective as of the date specified therein.

**3.5 Governing Law.** This Agreement shall be construed, and the rights and liabilities of the parties hereto determined, in accordance with the internal laws of the State of Texas; provided, however, that the conflicts of law principles of the State of Texas shall not apply to the extent that they would operate to apply the laws of another state.

**3.6 Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

AGENCY:

City Of Mesquite

By:

Cliff Keheley

Its: City Manager

NCTTRAC:

North Central Texas Trauma Regional Advisory Council, Inc

By:

Its: EXECUTIVE DIRECTOR

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By:

\_\_\_\_\_  
Mark Kerby, Fire Chief

ATTEST:

By:

\_\_\_\_\_  
Sonja Land, City Secretary

APPROVED AS TO FORM:

By:

\_\_\_\_\_  
Assistant City Attorney