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ORDINANCE NO.

AN ORDINANCE GRANTING AMERICAN MEDICAL RESPONSE OF TEXAS, INC. A RENEWAL OF A FRANCHISE TO OPERATE A MEDICAL TRANSFER SERVICE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. FINDINGS.

(A) Council finds the following:

- (1) American Medical Response of Texas, Inc. (AMR), has filed an application under Section 10-2-61 of the City Code to renew its franchise to operate and maintain a medical transfer service within the city limits of the City of Austin. In accordance with Section 10-2-62(A) of the City Code, the Austin/Travis County EMS Advisory Board has reviewed the application and recommended its approval.
- (2) AMR seeks approval of a franchise to operate a medical transfer service under the City Charter and Chapter 10-2 of the City Code.
- (3) AMR has met the requirements of Chapter 10-2 of the City Code.
- (4) Public convenience will be served by granting a renewal of the franchise to AMR.
- (5) The proposed operation of the transfer service will be in compliance with all provisions of the City Code and all applicable state and federal statutes and regulations.

(B) Council approves the granting of a medical transfer services franchise to AMR subject to the conditions in this ordinance.

39 **PART 2. DEFINITIONS.**

40
41 DIRECTOR means the Director of the City of Austin Emergency Medical Services
42 Department.

43
44 GRANTEE means American Medical Response of Texas, Inc., a Delaware
45 corporation authorized to do business in Texas.

46
47 MEDICAL TRANSFER SERVICE has the meaning prescribed in Chapter 10-2 of
48 the City Code.

49
50 PUBLIC RIGHT- OF- WAY means the surface of a public street, highway, lane,
51 path, alley, sidewalk, boulevard, drive, bridge, tunnel, easement or similar property
52 in which the City holds a property interest or exercises rights of management or
53 control and which, consistent with the purposes for which it was acquired or
54 dedicated, may be used for the operation of a medical transfer service.

55
56 **PART 3. GRANT OF A FRANCHISE.**

57
58 The Council grants to AMR ("Grantee") the nonexclusive right and privilege to
59 operate a medical transfer service on the public right of way of the City subject to
60 this Part:

- 61
- 62 (A) If Grantee accepts this Franchise, it shall, not later than 20 days after
63 the adoption of this ordinance, file with the City Clerk a letter
64 acknowledging and accepting the provisions of this Franchise, and
65 agreeing to be bound by the terms of this Franchise.
- 66
- 67 (B) The Grantee shall execute, or cause to be executed, all legal
68 documents, insurance certificates, and performance bonds required by
69 the City. The documents are subject to review and approval by the
70 City Attorney.
- 71
- 72 (C) The term of this franchise begins on June 26, 2018, and expires on the
73 fifth anniversary of that date unless terminated in accordance with this
74 Franchise.
- 75
- 76 (D) A reference in this Franchise to a Public Right-of-Way is not a
77 representation or guarantee by the City that its interests or other rights
78 in property are sufficient to permit its use for the operation of a

79 medical transfer service and the Grantee will gain only those rights
80 which the City has the right and power to give.
81

82 **PART 4. EXTENSION OF FRANCHISE.**

83 The Grantee may request an extension of the term of this Franchise as provided by
84 the Charter. The request for the extension shall be filed no later than nine months
85 prior to the expiration of the Franchise.
86

87 **PART 5. TRAINING.**

88
89 The Grantee's employees may attend City in-service training provided to EMS
90 employees at no cost to the Grantee on a space-available basis. The Director may
91 make additional training available to the Grantee's employees on a fee basis.
92

93 **PART 6. EMPLOYEES.**

94
95 The employees and agents of the Grantee may not be the employees, agents, or
96 representatives of the City.
97

98 The City may not direct or control the Grantee's employees and agents in the
99 performance of their duties under this Franchise. The City is not liable for the acts
100 or omissions of the Grantee's employees and agents.
101

102 **PART 7. COMPLIANCE WITH LAW.**

103
104 The Grantee, its employees, and agents shall comply with applicable federal, state
105 and City laws, rules, regulations, codes, and other requirements in connection with
106 the operation of the medical transfer service and the confidentiality of patient
107 information.
108

109 **PART 8. RATES AND CHARGES FOR SERVICE**

110
111 The City Council may, after notice and hearing, regulate by ordinance the rates,
112 charges, and fares the Grantee charges for services provided under this Franchise.
113

114 **PART 9. COMPENSATION TO THE CITY.**

115
116 The Grantee shall pay to the City as compensation during each year of this
117 Franchise, a franchise fee as provided by Chapter 10-2 of the City Code, as

118 amended from time to time. The compensation is in addition to all special
119 assessments and ad valorem taxes.

120
121 **PART 10. CITY'S RIGHT TO PURCHASE.**
122

- 123 (A) The City may purchase the Grantee's medical transfer service at any
124 time within five years before the expiration of this Franchise.
125
- 126 (B) If the City elects to exercise its right to purchase the Grantee's medical
127 transfer service, the City shall notify the Grantee in writing at least 90
128 days before the effective date of the purchase.
129
- 130 (C) The City and Grantee shall have 30 days following the date of the
131 City's notice to negotiate and agree upon a purchase price. If they fail
132 to reach agreement within such 30 day period, each party shall, within
133 60 days following the date of the City's notice of intent to purchase,
134 designate an appraiser experienced and knowledgeable in the
135 valuation of similar services.
136
- 137 (1) Each appraiser shall conduct an independent appraisal of the
138 fair market value of the Grantee's medical transfer service as a
139 going concern as of the effective date of the purchase by the
140 City.
141
- 142 (2) Each party shall be responsible for the appraisal fees of its own
143 appraisers.
144
- 145 (3) In conducting the appraisals, the appraisers shall consider,
146 among other factors, the book value of the assets constituting
147 the Grantee's medical transfer service, the age, condition, and
148 remaining useful life of the Grantee's property utilized in
149 performing services under this Franchise, and the discounted
150 future revenue stream considering the Grantee's actual customer
151 base at the time the notice of purchase is given by the City, for
152 the remaining useful life of the assets.
153
- 154 (4) If the two independent appraisals result in purchase prices that
155 are within 20 percent of each other, the purchase price to be
156 paid by the City will be the average of the two appraisals. If the
157 two independent appraisals are not within 20% of each other,

158 then the two appraisers shall discuss their appraisals and
159 attempt to arrive at a joint determination concerning the
160 purchase price. If the two appraisers are not able to arrive at a
161 joint determination of fair market value within 120 days after
162 the City's notice of its intent to purchase, then the City and
163 Grantee shall jointly select a third independent appraiser. The
164 third appraiser shall submit a determination of the purchase
165 price within thirty days of being selected, and the purchase
166 price shall be the average of the three appraisals. The City and
167 the Grantee shall each pay 50% of the costs of the third
168 independent appraiser.
169

170 (D) The purchase price shall be payable in cash unless the parties
171 mutually agree otherwise. If the City exercises the purchase option,
172 pays the purchase price, and serves notice of the action on the
173 Grantee, the Grantee shall immediately transfer to the City title to the
174 Grantee's medical transfer service and all property, real and personal,
175 of the Grantee's medical transfer system.
176

177 (E) The Grantee shall transfer the property free from liens and
178 encumbrances unless the City agrees to assume the encumbrances in
179 lieu of some portion of the purchase price.
180

181 (F) The Grantee shall execute and deliver warranty deeds, bills of sale, or
182 other instruments of conveyance to the City to complete the transfer.
183

184 **PART 11. ACCOUNTS, RECORDS, REPORTS AND INVESTIGATIONS.**

185

186 Not later than 10 days after receipt of a request for information from the Director,
187 the Grantee shall provide the City information affecting the maintenance,
188 operation, and repair of the Grantee's medical transfer service in the public rights
189 of way.
190

191 (A) The Grantee shall keep complete and accurate books of accounts and
192 records of its business and operations under this Franchise. The
193 account shall be maintained in accordance with generally accepted
194 accounting principles.
195

196 (B) The Director may require the Grantee to keep additional records to
197 identify, account for, and report revenue and uncollectible accounts.

198
199 (C) The Director may require the Grantee to provide other information
200 relating to this Franchise in the form and manner prescribed by the
201 Director.

202
203 (D) The Director may audit the Grantee.
204

205 **PART 12. ANNUAL AUDIT.**

206
207 The Grantee shall furnish to the Director an annual financial review audit
208 performed by a Certified Public Accountant. The audit shall describe the Grantee's
209 financial status and shall be performed at the Grantee's expense.
210

211 **PART 13. QUALITY ASSURANCE REVIEW.**

212
213 The Director may conduct periodic reviews, including actual on-site surveys of the
214 Grantee's physical plant and operation. The Director may, at any time, make
215 inquiries pertaining to the Grantee's performance of the terms and conditions of
216 this Franchise. The Grantee shall respond to an inquiry not later than three days
217 after an inquiry by the Director.
218

219 **PART 14. INSURANCE.**

220
221 (A) The Grantee shall provide and maintain the following insurance:
222

223 (1) Workers' Compensation insurance in accordance with the limits
224 of coverage established by Tex. Labor Code Chapter 401.001 et
225 seq.
226

227 (2) General liability insurance with a minimum bodily injury limit
228 of \$1,000,000 for each occurrence and a property damage limit
229 of \$500,000 for each occurrence to include premises/operations,
230 broad form property damages, personal liability, and
231 contractual liability coverage.
232

233 (3) Automobile liability insurance for all vehicles used in
234 performing services under this Franchise with minimum limits
235 for bodily injury of \$500,000 for each person and \$1,000,000
236 for each occurrence; and property damage limit of \$100,000 for

each occurrence. The insurance must not contain a passenger liability exclusion.

(B) The required insurance must be written by a solvent company licensed to do business in the State of Texas.

(1) Grantee shall furnish the City with a certificate of coverage issued by the insurer.

(2) The City shall be named as an additional insured.

(3) The certificate of insurance shall contain transcripts from the office of the insurer, evidencing those insured, the extent of the insurance, the location and the operations to which the insurance applies, the expiration date, and a notice of cancellation clause.

(C) The Grantee may not cause any insurance to be canceled, nor permit any insurance to lapse. Insurance certifications shall include a clause that the policy may not be canceled or altered in any way until 10 days after the Director has received written notice as evidenced by return receipt of a registered or certified letter.

(D) The City may review the insurance requirements of this section during the effective period of this Franchise and adjust insurance coverage and limits if the City's Risk Manager determines an increase is required based on changes in statutory law, court decisions, or the claims history of the industry as well as of the Grantee. The City agrees to review the coverage if the required insurance coverage increases.

PART 15. PERFORMANCE BOND.

(A) The Grantee shall file with the Director a surety bond in a form approved by the City Attorney to secure performance of the Grantee's obligations under the Franchise. The bond must be written by an insurance company licensed to do business in the state and with an agent or attorney in the city for service of process.

- 276 (B) Instead of the surety bond described in this section, the Grantee may
277 file with the Director a certificate of deposit or irrevocable letter of
278 credit in favor of the City. The certificate of deposit or letter of credit
279 is subject to the conditions for a surety bond stated in this section.
280
- 281 (C) A surety bond under this chapter must include the following terms:
282
- 283 (1) The Grantee shall pay to the City all amounts due under the
284 terms of Chapter 10-2 of the City Code.
285
 - 286 (2) The Grantee shall pay fines, assessments, and judgments levied
287 against the Grantee by a court, by the City, and by other
288 officials that may levy fines, taxes, charges, assessments, or
289 judgments.
290
 - 291 (3) The Grantee shall perform every obligation under the Grantee's
292 Franchise and Chapter 10-2 of the City Code.
293
 - 294 (4) Each surety bond must contain an endorsement that no
295 cancellation or restriction of the bond is effective until the 30th
296 day after the day the City receives notice, by certified mail
297 return receipt requested, of the cancellation or restriction.
298
 - 299 (5) The bond amount must be \$10,000.
300

301 **PART 16. INDEMNITY.**

302

303 The Grantee is an independent contractor in the performance of this Franchise, and
304 shall indemnify and hold harmless the City, its officers, agents and employees
305 from any and all claims or losses which may result from any negligent or
306 intentional act or omission of the Grantee, its agents, employees or representatives
307 under this Franchise. The Grantee shall defend, indemnify and hold the City
308 harmless against damages, costs, loss or expense for the repair, replacement, or
309 restoration of City's property, equipment, materials, structures and facilities which
310 are damaged, destroyed or found to be defective as a result of an act or omission of
311 Grantee, its agents, employees or representatives under this Franchise.
312

- 313 (A) The Grantee, for itself and its agents, employees, subcontractors, and
314 the agents and employees of subcontractors, shall defend, indemnify,
315 and hold the City, its successors, assigns, officers, employees and

316 elected officials harmless against claims, demands, suits, causes of
317 action, and judgments for:

318
319 (1) damage to or loss of the property of a person including, but not
320 limited to, the Grantee, its agents, officers, employees and
321 subcontractors, City's agents, officers and employees, and third
322 parties arising out of, incident to, concerning or resulting from a
323 negligent or intentional act or omission of the Grantee, its
324 agents, employees, or subcontractors, in the performance of all
325 activities and services under this Franchise, no matter how, or
326 to whom, the loss may occur; and

327
328 (2) death, bodily injury, illness, disease, worker's compensation,
329 loss of services, or loss of income or wages to a person
330 including, but not limited to, the agents, officers and employees
331 of the Grantee, the Grantee's subcontractors and the City, and
332 third parties, arising out of, incident to, concerning or resulting
333 from a negligent or intentional act or omission of the Grantee,
334 its agents, employees, or subcontractors, in their performance of
335 all activities and services under this Franchise, no matter how,
336 or to whom, the loss may occur.

337
338 (B) If damage, claim or loss is found by a court of competent jurisdiction
339 to be caused by the concurrent fault of both the Grantee and the City,
340 then the Grantee shall indemnify the City to the full proportionate
341 extent that the Grantee is determined to be at fault. It is the intention
342 of the parties, and the Grantee expressly agrees, that the provisions of
343 this section shall not exclude claims, damages, and losses caused in
344 part, but not wholly, by the negligence of the City, even if the City is
345 more negligent than the Grantee.

346
347 The City shall give the Grantee prompt written notice of claims made or suits filed
348 against the City that relate to the Grantee's franchise activity, and shall cooperate
349 with the Grantee in the defense of such claims or suits. The Grantee shall have the
350 right to investigate, defend, and compromise a claim or suit to the extent of its own
351 interests, including but not limited to the extent to which Grantee may be liable for
352 indemnification of City.

356 **PART 17. NOTICES.**

- 357
- 358 (A) The Grantee shall direct all notices from the Grantee to the City under
- 359 this Franchise to the City Attorney and the Director of EMS,
- 360 individually, at P.O. Box 1088, Austin, Texas 78767, or to the officer
- 361 designated by the City Council.
- 362
- 363 (B) All notices to the Grantee under this Franchise shall be to the local
- 364 corporate officer within the Austin city limits designated by the
- 365 Grantee in writing.
- 366
- 367 (C) The Grantee shall maintain within the Austin city limits an address for
- 368 service of notices by mail throughout the term of this Franchise.
- 369
- 370 (D) The Grantee shall also maintain within the Austin city limits a local
- 371 telephone number operational during normal business hours for the
- 372 conduct of matters related to this Franchise. The Grantee shall furnish
- 373 any change in address or telephone number to the City at least 10 days
- 374 before the change.
- 375

376 **PART 18. FRANCHISE CERTIFICATION.**

377

378 The Grantee certifies that it complies with the Discrimination in Employment by

379 City Contractors requirements of Chapter 5-4 of the Austin City Code.

380

381 **PART 19. GRATUITIES.**

382

383 The City may cancel this Franchise if it is found that gratuities in the form of

384 entertainment, gifts, or otherwise were offered or given by the Grantee or any

385 agent or representative to any City official or employee with a view toward

386 securing favorable treatment with respect to the awarding, amending or making of

387 any determinations with respect to the performing of the Franchise. In the event

388 this Franchise is canceled by the City under this provision, the City shall be

389 entitled, in addition to any other rights and remedies, to recover from the Grantee a

390 sum equal in amount to the cost incurred by the Grantee in providing the gratuities.

391

392

393 **PART 20. ASSIGNMENT.**

394
395 This Franchise is not transferable, delegable, or assignable without the approval of
396 the Austin City Council as provided in Article XI, Section Four of the Charter and
397 in Chapter 10-2 of the City Code.
398

399 **PART 21. JURISDICTION AND VENUE.**

400
401 Jurisdiction and venue for litigation arising from this Franchise lies in Austin,
402 Travis County, Texas.
403

404 **PART 22. TERMINATION**

405
406 In addition to the franchise revocation and suspension rights set forth in Chapter
407 10-2 of the Austin City Code and to all other rights and powers retained by the
408 City under this Franchise, the City reserves the right to terminate this Franchise
409 and all Franchise rights and privileges of the Grantee if the Grantee violates any
410 provision of the City Charter, the City Code, or this Franchise ordinance.
411

412 **PART 23. SEVERABILITY.**

413
414 If any provision, section, sentence or clause of this Franchise, or its application to
415 any person or set of circumstances is for any reason held unconstitutional, void, or
416 invalid, the validity of the remaining portions of this Franchise shall not be
417 affected. All provisions of this Franchise are intended to be severable for this
418 purpose.
419

420 **PART 24.** This ordinance takes effect on June 26, 2018.
421

422 **PASSED AND APPROVED**

423
424 §
425 §
426 _____, 2018 § _____
427 Steve Adler
428 Mayor

429 **APPROVED:** _____ **ATTEST:** _____
430 Anne L. Morgan Jannette S. Goodall
431 City Attorney City Clerk