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**ORDINANCE NO.**

**AN ORDINANCE GRANTING REPUBLIC EMS, LTD. 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) Republic EMS, LTD. (“Republic”), has filed an application under Section 10-2-61 of the City Code for a 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 did not recommend its approval.
- (2) Republic seeks approval of a franchise to operate a medical transfer service under the City Charter and Chapter 10-2 of the City Code.
- (3) Republic has met the requirements of Chapter 10-2 of the City Code.
- (4) Public convenience will be served by granting a franchise to Republic.
- (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 Republic subject to the conditions in this ordinance.

**PART 2. DEFINITIONS.**

**DIRECTOR** means the Director of the City of Austin Emergency Medical Services Department.

1 GRANTEE means Republic, a Texas corporation authorized to do business in  
2 Texas.

3  
4 MEDICAL TRANSFER SERVICE has the meaning prescribed in Chapter 10-2 of  
5 the City Code.

6  
7 PUBLIC RIGHT-OF-WAY means the surface of a public street, highway, lane,  
8 path, alley, sidewalk, boulevard, drive, bridge, tunnel, easement or similar property  
9 in which the City holds a property interest or exercises rights of management or  
10 control and which, consistent with the purposes for which it was acquired or  
11 dedicated, may be used for the operation of a medical transfer service.

12  
13 **PART 3. GRANT OF A FRANCHISE.**

14 The Council grants to Republic ("Grantee") the nonexclusive right and privilege to  
15 operate a medical transfer service on the public right of way of the City subject to  
16 this Part:

- 17
- 18 (A) If Grantee accepts this Franchise, it shall, not later than 20 days after  
19 the adoption of this ordinance, file with the City Clerk a letter  
20 acknowledging and accepting the provisions of this Franchise, and  
21 agreeing to be bound by the terms of this Franchise.
  - 22
  - 23 (B) The Grantee shall execute, or cause to be executed, all legal  
24 documents, insurance certificates, and performance bonds required by  
25 the City. The documents are subject to review and approval by the  
26 City Attorney.
  - 27
  - 28 (C) The term of this franchise begins on November 1, 2018, and expires  
29 on the fifth anniversary of that date unless terminated in accordance  
30 with this Franchise.
  - 31
  - 32 (D) A reference in this Franchise to a Public Right-of-Way is not a  
33 representation or guarantee by the City that its interests or other rights  
34 in property are sufficient to permit its use for the operation of a  
35 medical transfer service and the Grantee will gain only those rights  
36 which the City has the right and power to give.
  - 37
  - 38
  - 39
  - 40

1 **PART 4. EXTENSION OF FRANCHISE.**

2 The Grantee may request an extension of the term of this Franchise as provided by  
3 the Charter. The request for the extension shall be filed no later than nine months  
4 prior to the expiration of the Franchise.  
5

6 **PART 5. TRAINING.**

7 The Grantee's employees may attend City in-service training provided to EMS  
8 employees at no cost to the Grantee on a space-available basis. The Director may  
9 make additional training available to the Grantee's employees on a fee basis.  
10

11 **PART 6. EMPLOYEES.**

12 The employees and agents of the Grantee may not be the employees, agents, or  
13 representatives of the City.  
14

15 The City may not direct or control the Grantee's employees and agents in the  
16 performance of their duties under this Franchise. The City is not liable for the acts  
17 or omissions of the Grantee's employees and agents.  
18

19 **PART 7. COMPLIANCE WITH LAW.**

20 The Grantee, its employees, and agents shall comply with applicable federal, state  
21 and City laws, rules, regulations, codes, and other requirements in connection with  
22 the operation of the medical transfer service and the confidentiality of patient  
23 information.  
24

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

26 The City Council may, after notice and hearing, regulate by ordinance the rates,  
27 charges, and fares the Grantee charges for services provided under this Franchise.  
28

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

30 The Grantee shall pay to the City as compensation during each year of this  
31 Franchise, a franchise fee as provided by Chapter 10-2 of the City Code, as  
32 amended from time to time. The compensation is in addition to all special  
33 assessments and ad valorem taxes.  
34

35 **PART 10. CITY'S RIGHT TO PURCHASE.**

- 36 (A) The City may purchase the Grantee's medical transfer service at any  
37 time within five years before the expiration of this Franchise.  
38

1 (B) If the City elects to exercise its right to purchase the Grantee's medical  
2 transfer service, the City shall notify the Grantee in writing at least 90  
3 days before the effective date of the purchase.  
4

5 (C) The City and Grantee shall have 30 days following the date of the  
6 City's notice to negotiate and agree upon a purchase price. If they fail  
7 to reach agreement within such 30 day period, each party shall, within  
8 60 days following the date of the City's notice of intent to purchase,  
9 designate an appraiser experienced and knowledgeable in the  
10 valuation of similar services.  
11

12 (1) Each appraiser shall conduct an independent appraisal of the  
13 fair market value of the Grantee's medical transfer service as a  
14 going concern as of the effective date of the purchase by the  
15 City.  
16

17 (2) Each party shall be responsible for the appraisal fees of its own  
18 appraisers.  
19

20 (3) In conducting the appraisals, the appraisers shall consider,  
21 among other factors, the book value of the assets constituting  
22 the Grantee's medical transfer service, the age, condition, and  
23 remaining useful life of the Grantee's property utilized in  
24 performing services under this Franchise, and the discounted  
25 future revenue stream considering the Grantee's actual customer  
26 base at the time the notice of purchase is given by the City, for  
27 the remaining useful life of the assets.  
28

29 (4) If the two independent appraisals result in purchase prices that  
30 are within 20 percent of each other, the purchase price to be  
31 paid by the City will be the average of the two appraisals. If the  
32 two independent appraisals are not within 20% of each other,  
33 then the two appraisers shall discuss their appraisals and  
34 attempt to arrive at a joint determination concerning the  
35 purchase price. If the two appraisers are not able to arrive at a  
36 joint determination of fair market value within 120 days after  
37 the City's notice of its intent to purchase, then the City and  
38 Grantee shall jointly select a third independent appraiser. The  
39 third appraiser shall submit a determination of the purchase  
40 price within thirty days of being selected, and the purchase

1 price shall be the average of the three appraisals. The City and  
2 the Grantee shall each pay 50% of the costs of the third  
3 independent appraiser.  
4

- 5 (D) The purchase price shall be payable in cash unless the parties  
6 mutually agree otherwise. If the City exercises the purchase option,  
7 pays the purchase price, and serves notice of the action on the  
8 Grantee, the Grantee shall immediately transfer to the City title to the  
9 Grantee's medical transfer service and all property, real and personal,  
10 of the Grantee's medical transfer system.  
11
- 12 (E) The Grantee shall transfer the property free from liens and  
13 encumbrances unless the City agrees to assume the encumbrances in  
14 lieu of some portion of the purchase price.  
15
- 16 (F) The Grantee shall execute and deliver warranty deeds, bills of sale, or  
17 other instruments of conveyance to the City to complete the transfer.  
18

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

20 Not later than 10 days after receipt of a request for information from the Director,  
21 the Grantee shall provide the City information affecting the maintenance,  
22 operation, and repair of the Grantee's medical transfer service in the public rights  
23 of way.  
24

- 25 (A) The Grantee shall keep complete and accurate books of accounts and  
26 records of its business and operations under this Franchise. The  
27 account shall be maintained in accordance with generally accepted  
28 accounting principles.  
29
- 30 (B) The Director may require the Grantee to keep additional records to  
31 identify, account for, and report revenue and uncollectible accounts.  
32
- 33 (C) The Director may require the Grantee to provide other information  
34 relating to this Franchise in the form and manner prescribed by the  
35 Director.  
36
- 37 (D) The Director may audit the Grantee.  
38  
39

1 **PART 12. ANNUAL AUDIT.**

2 The Grantee shall furnish to the Director an annual financial review audit  
3 performed by a Certified Public Accountant. The audit shall describe the Grantee's  
4 financial status and shall be performed at the Grantee's expense.  
5

6 **PART 13. QUALITY ASSURANCE REVIEW.**

7 The Director may conduct periodic reviews, including actual on-site surveys of the  
8 Grantee's physical plant and operation. The Director may, at any time, make  
9 inquiries pertaining to the Grantee's performance of the terms and conditions of  
10 this Franchise. The Grantee shall respond to an inquiry not later than three days  
11 after an inquiry by the Director.  
12

13 **PART 14. INSURANCE.**

14 (A) The Grantee shall provide and maintain the following insurance:  
15

- 16 (1) Workers' Compensation insurance in accordance with the limits  
17 of coverage established by Tex. Labor Code Chapter 401.001 et  
18 seq.  
19
- 20 (2) General liability insurance with a minimum bodily injury limit  
21 of \$1,000,000 for each occurrence and a property damage limit  
22 of \$500,000 for each occurrence to include premises/operations,  
23 broad form property damages, personal liability, and  
24 contractual liability coverage.  
25
- 26 (3) Automobile liability insurance for all vehicles used in  
27 performing services under this Franchise with minimum limits  
28 for bodily injury of \$500,000 for each person and \$1,000,000  
29 for each occurrence; and property damage limit of \$100,000 for  
30 each occurrence. The insurance must not contain a passenger  
31 liability exclusion.  
32

33 (B) The required insurance must be written by a solvent company licensed  
34 to do business in the State of Texas.  
35

- 36 (1) Grantee shall furnish the City with a certificate of coverage  
37 issued by the insurer.  
38
- 39 (2) The City shall be named as an additional insured.  
40

1 (3) The certificate of insurance shall contain transcripts from the  
2 office of the insurer, evidencing those insured, the extent of the  
3 insurance, the location and the operations to which the  
4 insurance applies, the expiration date, and a notice of  
5 cancellation clause.  
6

7 (C) The Grantee may not cause any insurance to be canceled, nor permit  
8 any insurance to lapse. Insurance certifications shall include a clause  
9 that the policy may not be canceled or altered in any way until 10 days  
10 after the Director has received written notice as evidenced by return  
11 receipt of a registered or certified letter.  
12

13 (D) The City may review the insurance requirements of this section during  
14 the effective period of this Franchise and adjust insurance coverage  
15 and limits if the City's Risk Manager determines an increase is  
16 required based on changes in statutory law, court decisions, or the  
17 claims history of the industry as well as of the Grantee. The City  
18 agrees to review the coverage if the required insurance coverage  
19 increases.  
20

21 **PART 15. PERFORMANCE BOND.**

22 (A) The Grantee shall file with the Director a surety bond in a form  
23 approved by the City Attorney to secure performance of the Grantee's  
24 obligations under the Franchise. The bond must be written by an  
25 insurance company licensed to do business in the state and with an  
26 agent or attorney in the city for service of process.  
27

28 (B) Instead of the surety bond described in this section, the Grantee may  
29 file with the Director a certificate of deposit or irrevocable letter of  
30 credit in favor of the City. The certificate of deposit or letter of credit  
31 is subject to the conditions for a surety bond stated in this section.  
32

33 (C) A surety bond under this chapter must include the following terms:  
34

35 (1) The Grantee shall pay to the City all amounts due under the  
36 terms of Chapter 10-2 of the City Code.  
37

38 (2) The Grantee shall pay fines, assessments, and judgments levied  
39 against the Grantee by a court, by the City, and by other

1 officials that may levy fines, taxes, charges, assessments, or  
2 judgments.

- 3
- 4 (3) The Grantee shall perform every obligation under the Grantee's  
5 Franchise and Chapter 10-2 of the City Code.
- 6
- 7 (4) Each surety bond must contain an endorsement that no  
8 cancellation or restriction of the bond is effective until the 30th  
9 day after the day the City receives notice, by certified mail  
10 return receipt requested, of the cancellation or restriction.
- 11 (5) The bond amount must be \$10,000.
- 12

13 **PART 16. INDEMNITY.**

14 The Grantee is an independent contractor in the performance of this Franchise, and  
15 shall indemnify and hold harmless the City, its officers, agents and employees  
16 from any and all claims or losses which may result from any negligent or  
17 intentional act or omission of the Grantee, its agents, employees or representatives  
18 under this Franchise. The Grantee shall defend, indemnify and hold the City  
19 harmless against damages, costs, loss or expense for the repair, replacement, or  
20 restoration of City's property, equipment, materials, structures and facilities which  
21 are damaged, destroyed or found to be defective as a result of an act or omission of  
22 Grantee, its agents, employees or representatives under this Franchise.

23

- 24 (A) The Grantee, for itself and its agents, employees, subcontractors, and  
25 the agents and employees of subcontractors, shall defend, indemnify,  
26 and hold the City, its successors, assigns, officers, employees and  
27 elected officials harmless against claims, demands, suits, causes of  
28 action, and judgments for:
- 29

- 30 (1) damage to or loss of the property of a person including, but not  
31 limited to, the Grantee, its agents, officers, employees and  
32 subcontractors, City's agents, officers and employees, and third  
33 parties arising out of, incident to, concerning or resulting from a  
34 negligent or intentional act or omission of the Grantee, its  
35 agents, employees, or subcontractors, in the performance of all  
36 activities and services under this Franchise, no matter how, or  
37 to whom, the loss may occur; and
- 38
- 39 (2) death, bodily injury, illness, disease, worker's compensation,  
40 loss of services, or loss of income or wages to a person

1 including, but not limited to, the agents, officers and employees  
2 of the Grantee, the Grantee's subcontractors and the City, and  
3 third parties, arising out of, incident to, concerning or resulting  
4 from a negligent or intentional act or omission of the Grantee,  
5 its agents, employees, or subcontractors, in their performance of  
6 all activities and services under this Franchise, no matter how,  
7 or to whom, the loss may occur.  
8

- 9 (B) If damage, claim or loss is found by a court of competent jurisdiction  
10 to be caused by the concurrent fault of both the Grantee and the City,  
11 then the Grantee shall indemnify the City to the full proportionate  
12 extent that the Grantee is determined to be at fault. It is the intention  
13 of the parties, and the Grantee expressly agrees, that the provisions of  
14 this section shall not exclude claims, damages, and losses caused in  
15 part, but not wholly, by the negligence of the City, even if the City is  
16 more negligent than the Grantee.  
17

18 The City shall give the Grantee prompt written notice of claims made or  
19 suits filed against the City that relate to the Grantee's franchise activity, and shall  
20 cooperate with the Grantee in the defense of such claims or suits. The Grantee shall  
21 have the right to investigate, defend, and compromise a claim or suit to the extent  
22 of its own interests, including but not limited to the extent to which Grantee may  
23 be liable for indemnification of City.  
24

25 **PART 17. NOTICES.**

- 26 (A) The Grantee shall direct all notices from the Grantee to the City under  
27 this Franchise to the City Attorney and the Director of EMS,  
28 individually, at P.O. Box 1088, Austin, Texas 78767, or to the officer  
29 designated by the City Council.  
30
- 31 (B) All notices to the Grantee under this Franchise shall be to the local  
32 corporate officer within the Austin city limits designated by the  
33 Grantee in writing.  
34
- 35 (C) The Grantee shall maintain within the Austin city limits an address for  
36 service of notices by mail throughout the term of this Franchise.  
37
- 38 (D) The Grantee shall also maintain within the Austin city limits a local  
39 telephone number operational during normal business hours for the  
40 conduct of matters related to this Franchise. The Grantee shall furnish

1 any change in address or telephone number to the City at least 10 days  
2 before the change.  
3

4 **PART 18. FRANCHISE CERTIFICATION.**

5 The Grantee certifies that it complies with the Discrimination in Employment by  
6 City Contractors requirements of Chapter 5-4 of the Austin City Code.  
7

8 **PART 19. GRATUITIES.**

9 The City may cancel this Franchise if it is found that gratuities in the form of  
10 entertainment, gifts, or otherwise were offered or given by the Grantee or any  
11 agent or representative to any City official or employee with a view toward  
12 securing favorable treatment with respect to the awarding, amending or making of  
13 any determinations with respect to the performing of the Franchise. In the event  
14 this Franchise is canceled by the City under this provision, the City shall be  
15 entitled, in addition to any other rights and remedies, to recover from the Grantee a  
16 sum equal in amount to the cost incurred by the Grantee in providing the gratuities.  
17

18 **PART 20. ASSIGNMENT.**

19 This Franchise is not transferable, delegable, or assignable without the approval of  
20 the Austin City Council as provided in Article XI, Section Four of the Charter and  
21 in Chapter 10-2 of the City Code.  
22

23 **PART 21. JURISDICTION AND VENUE.**

24 Jurisdiction and venue for litigation arising from this Franchise lies in Austin,  
25 Travis County, Texas.  
26

27 **PART 22. TERMINATION**

28 In addition to the franchise revocation and suspension rights set forth in Chapter  
29 10-2 of the Austin City Code and to all other rights and powers retained by the  
30 City under this Franchise, the City reserves the right to terminate this Franchise  
31 and all Franchise rights and privileges of the Grantee if the Grantee violates any  
32 provision of the City Charter, the City Code, or this Franchise ordinance.  
33

34 **PART 23. SEVERABILITY.**

35 If any provision, section, sentence or clause of this Franchise, or its application to  
36 any person or set of circumstances is for any reason held unconstitutional, void, or  
37 invalid, the validity of the remaining portions of this Franchise shall not be  
38 affected. All provisions of this Franchise are intended to be severable for this  
39 purpose.  
40

