

**ORDINANCE NO. 20210408-034**

**AN ORDINANCE GRANTING VIKING ENTERPRISES, INC, d/b/a CITY AMBULANCE SERVICE, 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) Viking Enterprise. Inc. d/b/a City Ambulance Service ("City Ambulance"), 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 recommended its approval.
- (2) City Ambulance seeks approval of a franchise to operate a medical transfer service under the City Charter and Chapter 10-2 of the City Code.
- (3) City Ambulance has met the requirements of Chapter 10-2 of the City Code.
- (4) Public convenience will be served by granting a franchise to City Ambulance.
- (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 City Ambulance subject to the conditions in this ordinance.

**PART 2. DEFINITIONS.**

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

GRANTEE means Viking Enterprises, d/b/a City Ambulance Service, a Texas corporation authorized to do business in Texas.

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

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

### **PART 3. GRANT OF A FRANCHISE.**

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

- (A) If Grantee accepts this Franchise, it shall, not later than 20 days after the adoption of this ordinance, file with the City Clerk a letter acknowledging and accepting the provisions of this Franchise, and agreeing to be bound by the terms of this Franchise.
- (B) The Grantee shall execute, or cause to be executed, all legal documents, insurance certificates, and performance bonds required by the City. The documents are subject to review and approval by the City Attorney.
- (C) The term of this franchise begins on July 20, 2021, and expires on the fifth anniversary of that date unless terminated in accordance with this Franchise.
- (D) A reference in this Franchise to a Public Right -of -Way is not a representation or guarantee by the City that its interests or other rights in property are sufficient to permit its use for the operation of a medical transfer service and the Grantee will gain only those rights which the City has the right and power to give.

### **PART 4. EXTENSION OF FRANCHISE.**

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

82 **PART 5. TRAINING.**

83  
84 The Grantee's employees may attend City in-service training provided to EMS employees  
85 at no cost to the Grantee on a space-available basis. The Director may make additional  
86 training available to the Grantee's employees on a fee basis.  
87

88 **PART 6. EMPLOYEES.**

89  
90 The employees and agents of the Grantee may not be the employees, agents, or  
91 representatives of the City.  
92

93 The City may not direct or control the Grantee's employees and agents in the performance  
94 of their duties under this Franchise. The City is not liable for the acts or omissions of the  
95 Grantee's employees and agents.  
96

97 **PART 7. COMPLIANCE WITH LAW.**

98  
99 The Grantee, its employees, and agents shall comply with applicable federal, state and City  
100 laws, rules, regulations, codes, and other requirements in connection with the operation of  
101 the medical transfer service and the confidentiality of patient information.  
102

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

104  
105 The City Council may, after notice and hearing, regulate by ordinance the rates, charges,  
106 and fares the Grantee charges for services provided under this Franchise.  
107

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

109  
110 The Grantee shall pay to the City as compensation during each year of this Franchise, a  
111 franchise fee as provided by Chapter 10-2 of the City Code, as amended from time to time.  
112 The compensation is in addition to all special assessments and ad valorem taxes.  
113

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

- 115  
116 (A) The City may purchase the Grantee's medical transfer service at any time  
117 within five years before the expiration of this Franchise.  
118  
119 (B) If the City elects to exercise its right to purchase the Grantee's medical transfer  
120 service, the City shall notify the Grantee in writing at least 90 days before the  
121 effective date of the purchase.  
122

- 123 (C) The City and Grantee shall have 30 days following the date of the City's notice  
124 to negotiate and agree upon a purchase price. If they fail to reach agreement  
125 within such 30 day period, each party shall, within 60 days following the date  
126 of the City's notice of intent to purchase, designate an appraiser experienced  
127 and knowledgeable in the valuation of similar services.  
128
- 129 (1) Each appraiser shall conduct an independent appraisal of the fair market  
130 value of the Grantee's medical transfer service as a going concern as of  
131 the effective date of the purchase by the City.  
132
- 133 (2) Each party shall be responsible for the appraisal fees of its own  
134 appraisers.  
135
- 136 (3) In conducting the appraisals, the appraisers shall consider, among other  
137 factors, the book value of the assets constituting the Grantee's medical  
138 transfer service, the age, condition, and remaining useful life of the  
139 Grantee's property utilized in performing services under this Franchise,  
140 and the discounted future revenue stream considering the Grantee's  
141 actual customer base at the time the notice of purchase is given by the  
142 City, for the remaining useful life of the assets.  
143
- 144 (4) If the two independent appraisals result in purchase prices that are  
145 within 20 percent of each other, the purchase price to be paid by the  
146 City will be the average of the two appraisals. If the two independent  
147 appraisals are not within 20% of each other, then the two appraisers  
148 shall discuss their appraisals and attempt to arrive at a joint  
149 determination concerning the purchase price. If the two appraisers are  
150 not able to arrive at a joint determination of fair market value within  
151 120 days after the City's notice of its intent to purchase, then the City  
152 and Grantee shall jointly select a third independent appraiser. The third  
153 appraiser shall submit a determination of the purchase price within  
154 thirty days of being selected, and the purchase price shall be the average  
155 of the three appraisals. The City and the Grantee shall each pay 50% of  
156 the costs of the third independent appraiser.  
157
- 158 (D) The purchase price shall be payable in cash unless the parties mutually agree  
159 otherwise. If the City exercises the purchase option, pays the purchase price,  
160 and serves notice of the action on the Grantee, the Grantee shall immediately  
161 transfer to the City title to the Grantee's medical transfer service and all  
162 property, real and personal, of the Grantee's medical transfer system.  
163

- 164 (E) The Grantee shall transfer the property free from liens and encumbrances  
165 unless the City agrees to assume the encumbrances in lieu of some portion of  
166 the purchase price.
- 167
- 168 (F) The Grantee shall execute and deliver warranty deeds, bills of sale, or other  
169 instruments of conveyance to the City to complete the transfer.  
170

171 **PART 11. ACCOUNTS, RECORDS, REPORTS AND INVESTIGATIONS.**  
172

173 Not later than 10 days after receipt of a request for information from the Director, the  
174 Grantee shall provide the City information affecting the maintenance, operation, and repair  
175 of the Grantee's medical transfer service in the public rights of way.  
176

- 177 (A) The Grantee shall keep complete and accurate books of accounts and records  
178 of its business and operations under this Franchise. The account shall be  
179 maintained in accordance with generally accepted accounting principles.  
180
- 181 (B) The Director may require the Grantee to keep additional records to identify,  
182 account for, and report revenue and uncollectible accounts.  
183
- 184 (C) The Director may require the Grantee to provide other information relating to  
185 this Franchise in the form and manner prescribed by the Director.  
186
- 187 (D) The Director may audit the Grantee.  
188

189 **PART 12. ANNUAL AUDIT.**  
190

191 The Grantee shall furnish to the Director an annual financial review audit performed by a  
192 Certified Public Accountant. The audit shall describe the Grantee's financial status and  
193 shall be performed at the Grantee's expense.  
194

195 **PART 13. QUALITY ASSURANCE REVIEW.**  
196

197 The Director may conduct periodic reviews, including actual on-site surveys of the  
198 Grantee's physical plant and operation. The Director may, at any time, make inquiries  
199 pertaining to the Grantee's performance of the terms and conditions of this Franchise. The  
200 Grantee shall respond to an inquiry not later than three days after an inquiry by the Director.  
201  
202  
203  
204

205 **PART 14. INSURANCE.**

206  
207 (A) The Grantee shall provide and maintain the following insurance:

- 208  
209 (1) Workers' Compensation insurance in accordance with the limits of  
210 coverage established by Tex. Labor Code Chapter 401.001 et seq.  
211  
212 (2) General liability insurance with a minimum bodily injury limit of  
213 \$1,000,000 for each occurrence and a property damage limit of  
214 \$500,000 for each occurrence to include premises/operations, broad  
215 form property damages, personal liability, and contractual liability  
216 coverage.  
217  
218 (3) Automobile liability insurance for all vehicles used in performing  
219 services under this Franchise with minimum limits for bodily injury of  
220 \$500,000 for each person and \$1,000,000 for each occurrence; and  
221 property damage limit of \$100,000 for each occurrence. The insurance  
222 must not contain a passenger liability exclusion.  
223

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

- 226  
227 (1) Grantee shall furnish the City with a certificate of coverage issued by  
228 the insurer.  
229  
230 (2) The City shall be named as an additional insured.  
231  
232 (3) The certificate of insurance shall contain transcripts from the office of  
233 the insurer, evidencing those insured, the extent of the insurance, the  
234 location and the operations to which the insurance applies, the  
235 expiration date, and a notice of cancellation clause.  
236

237 (C) The Grantee may not cause any insurance to be canceled, nor permit any  
238 insurance to lapse. Insurance certifications shall include a clause that the  
239 policy may not be canceled or altered in any way until 10 days after the  
240 Director has received written notice as evidenced by return receipt of a  
241 registered or certified letter.  
242

243 (D) The City may review the insurance requirements of this section during the  
244 effective period of this Franchise and adjust insurance coverage and limits if  
245 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.
- (B) Instead of the surety bond described in this section, the Grantee may file with the Director a certificate of deposit or irrevocable letter of credit in favor of the City. The certificate of deposit or letter of credit is subject to the conditions for a surety bond stated in this section.
- (C) A surety bond under this chapter must include the following terms:
  - (1) The Grantee shall pay to the City all amounts due under the terms of Chapter 10-2 of the City Code.
  - (2) The Grantee shall pay fines, assessments, and judgments levied against the Grantee by a court, by the City, and by other officials that may levy fines, taxes, charges, assessments, or judgments.
  - (3) The Grantee shall perform every obligation under the Grantee's Franchise and Chapter 10-2 of the City Code.
  - (4) Each surety bond must contain an endorsement that no cancellation or restriction of the bond is effective until the 30th day after the day the City receives notice, by certified mail return receipt requested, of the cancellation or restriction.
  - (5) The bond amount must be \$10,000.

## **PART 16. INDEMNITY.**

The Grantee is an independent contractor in the performance of this Franchise, and shall indemnify and hold harmless the City, its officers, agents and employees from any and all claims or losses which may result from any negligent or intentional act or omission of the

Grantee, its agents, employees or representatives under this Franchise. The Grantee shall defend, indemnify and hold the City harmless against damages, costs, loss or expense for the repair, replacement, or restoration of City's property, equipment, materials, structures and facilities which are damaged, destroyed or found to be defective as a result of an act or omission of Grantee, its agents, employees or representatives under this Franchise.

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

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

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

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

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



328 **PART 17. NOTICES.**

- 329
- 330 (A) The Grantee shall direct all notices from the Grantee to the City under this
- 331 Franchise to the City Attorney and the Director of EMS, individually, at P.O.
- 332 Box 1088, Austin, Texas 78767, or to the officer designated by the City
- 333 Council.
- 334
- 335 (B) All notices to the Grantee under this Franchise shall be to the local corporate
- 336 officer within the Austin city limits designated by the Grantee in writing.
- 337
- 338 (C) The Grantee shall maintain within the Austin city limits an address for service
- 339 of notices by mail throughout the term of this Franchise.
- 340
- 341 (D) The Grantee shall also maintain within the Austin city limits a local telephone
- 342 number operational during normal business hours for the conduct of matters
- 343 related to this Franchise. The Grantee shall furnish any change in address or
- 344 telephone number to the City at least 10 days before the change.
- 345

346 **PART 18. FRANCHISE CERTIFICATION.**

347

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

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

350

351 **PART 19. GRATUITIES.**

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

354 gifts, or otherwise were offered or given by the Grantee or any agent or representative to

355 any City official or employee with a view toward securing favorable treatment with respect

356 to the awarding, amending or making of any determinations with respect to the performing

357 of the Franchise. In the event this Franchise is canceled by the City under this provision,

358 the City shall be entitled, in addition to any other rights and remedies, to recover from the

359 Grantee a sum equal in amount to the cost incurred by the Grantee in providing the

360 gratuities.

361

362 **PART 20. ASSIGNMENT.**

363

364 This Franchise is not transferable, delegable, or assignable without the approval of the

365 Austin City Council as provided in Article XI, Section Four of the Charter and in Chapter

366 10-2 of the City Code.

367

368

369 **PART 21. JURISDICTION AND VENUE.**

370  
371 Jurisdiction and venue for litigation arising from this Franchise lies in Austin, Travis  
372 County, Texas.

373  
374 **PART 22. TERMINATION**

375  
376 In addition to the franchise revocation and suspension rights set forth in Chapter 10-2 of  
377 the Austin City Code and to all other rights and powers retained by the City under this  
378 Franchise, the City reserves the right to terminate this Franchise and all Franchise rights  
379 and privileges of the Grantee if the Grantee violates any provision of the City Charter, the  
380 City Code, or this Franchise ordinance.

381  
382 **PART 23. SEVERABILITY.**

383  
384 If any provision, section, sentence or clause of this Franchise, or its application to any  
385 person or set of circumstances is for any reason held unconstitutional, void, or invalid, the  
386 validity of the remaining portions of this Franchise shall not be affected. All provisions of  
387 this Franchise are intended to be severable for this purpose.

388  
389 **PART 24.** This ordinance takes effect on July 20, 2021.

390  
391 **PASSED AND APPROVED**

392 §  
393 §  
394 \_\_\_\_\_, 2021 § \_\_\_\_\_  
395 Steve Adler  
396 Mayor

397  
398  
399  
400 **APPROVED:** \_\_\_\_\_ **ATTEST:** \_\_\_\_\_  
401 Anne L. Morgan Jannette S. Goodall  
402 City Attorney City Clerk