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ORDINANCE NO.

AN ORDINANCE GRANTING TO AMERICAN MEDICAL RESPONSE OF TEXAS, INC., ("AMR") 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) The City 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. AMR's current medical transfer franchise term will expire on June 24, 2013. In accordance with Sections 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 the 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) The City Council approves the renewal of a medical transfer services franchise to AMR 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 American Medical Response of Texas, Inc., a Delaware 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 AMR ("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 June 25, 2013, 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 five months prior to the expiration of the franchise.

84 **PART 5. TRAINING.**

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

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90 **PART 6. EMPLOYEES.**

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

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

98
99 **PART 7. COMPLIANCE WITH LAW.**

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

104
105 **PART 8. RATES AND CHARGES FOR SERVICE.**

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

109
110 **PART 9. COMPENSATION TO THE CITY.**

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

115
116 **PART 10. CITY'S RIGHT TO PURCHASE.**

- 117
118 A) The City may purchase the Grantee's medical transfer service at any time within
119 five years before the expiration of this Franchise.
- 120
121 (B) If the City elects to exercise its right to purchase the Grantee's medical transfer
122 service, the City shall notify the Grantee in writing at least 90 days before the
123 effective date of the purchase.
- 124

- 125 (C) The City and Grantee shall have 30 days following the date of the City's notice to
126 negotiate and agree upon a purchase price. If they fail to reach agreement within
127 such 30 day period each party shall, within 60 days following the date of the City's
128 notice of intent to purchase, designate an appraiser experienced and knowledgeable
129 in the valuation of similar services.
130
- 131 (1) Each appraiser shall conduct an independent appraisal of the fair market
132 value of the Grantee's medical transfer service as a going concern as of the
133 effective date of the purchase by the City.
134
- 135 (2) Each party shall be responsible for the appraisal fees of its own appraisers.
136
- 137 (3) In conducting the appraisals, the appraisers shall consider, among other
138 factors, the book value of the assets constituting the Grantee's medical
139 transfer service, the age, condition, and remaining useful life of the Grantee's
140 property utilized in performing services under this Franchise, and the
141 discounted future revenue stream considering the Grantee's actual customer
142 base at the time the notice of purchase is given by the City, for the remaining
143 useful life of the assets.
144
- 145 (4) If the two independent appraisals result in purchase prices that are within 20
146 percent of each other, the purchase price to be paid by the City will be the
147 average of the two appraisals. If the two independent appraisals are not
148 within 20 percent of each other, then the two appraisers shall discuss their
149 appraisals and attempt to arrive at a joint determination concerning the
150 purchase price. If the two appraisers are not able to arrive at a joint
151 determination of fair market value within 120 days after the City's notice of
152 its intent to purchase, then the City and Grantee shall jointly select a third
153 independent appraiser. The third appraiser shall submit a determination of
154 the purchase price within thirty days of being selected, and the purchase
155 price shall be the average of the three appraisals. The City and the Grantee
156 shall each pay fifty percent (50%) of the costs of the third independent
157 appraiser.
158
- 159 (D) The purchase price shall be payable in cash unless the parties mutually agree
160 otherwise. If the City exercises the purchase option, pays the purchase price, and
161 serves notice of the action on the Grantee, the Grantee shall immediately transfer
162 to the City title to the Grantee's medical transfer service and all property, real and
163 personal, of the Grantee's medical transfer system.
164

- 165 (E) The Grantee shall transfer the property free from liens and encumbrances unless
166 the City agrees to assume the encumbrances in lieu of some portion of the purchase
167 price.
168
- 169 (F) The Grantee shall execute and deliver warranty deeds, bills of sale, or other
170 instruments of conveyance to the City to complete the transfer.
171

172 **PART 11. ACCOUNTS, RECORDS, REPORTS AND INVESTIGATIONS.**
173

174 Not later than 10 days after receipt of a request for information from the Director, the
175 Grantee shall provide the City information affecting the maintenance, operation and
176 repair of the Grantee's medical transfer service in the public rights of way.
177

- 178 (A) The Grantee shall keep complete and accurate books of accounts and records
179 of its business and operations under this Franchise. The account shall be
180 maintained in accordance with generally accepted accounting principles.
181
- 182 (B) The Director may require the Grantee to keep additional records to identify
183 account for, and report revenue and uncollectible accounts.
184
- 185 (C) The Director may require the Grantee to provide other information relating
186 to this Franchise in the form and manner prescribed by the Director.
187
- 188 (D) The Director may audit the Grantee.
189

190 **PART 12. ANNUAL AUDIT.**
191

192 The Grantee shall furnish to the Director an annual financial review audit performed by a
193 Certified Public Accountant. The audit shall describe the Grantee's financial status and
194 shall be performed at the Grantee's expense.
195

196 **PART 13. QUALITY ASSURANCE REVIEW.**
197

198 The Director may conduct periodic reviews, including actual on-site surveys of the
199 Grantee's physical plant and operation. The Director may, at any time, make inquiries
200 pertaining to the Grantee's performance of the terms and conditions of this Franchise. The
201 Grantee shall respond to an inquiry not later than 3 days after an inquiry by the Director.
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203 **PART 14. INSURANCE.**
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- 205 (A) The Grantee shall provide and maintain the following insurance:

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- (1) Workers' Compensation insurance in accordance with the limits of coverage established by Tex. Labor Code Chapter 401.001 et seq.
 - (2) General liability insurance with a minimum bodily injury limit of \$1,000,000 for each occurrence and a property damage limit of \$500,000 for each occurrence to include premises/operations, broad form property damages, personal liability, and contractual liability coverage.
 - (3) Automobile liability insurance for all vehicles used in performing services under this Franchise with minimum limits for bodily injury of \$500,000 for each person and \$1,000,000 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 Certification 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.

247 **PART 15. PERFORMANCE BOND.**

- 248
- 249 (A) The Grantee shall file with the Director a surety bond in a form approved by the
- 250 City Attorney to secure performance of the Grantee's obligations under the
- 251 Franchise. The bond must be written by an insurance company licensed to do
- 252 business in the state and with an agent or attorney in the city for service for service
- 253 of process.
- 254
- 255 (B) Instead of the surety bond described in this section, the Grantee may file with the
- 256 Director a certificate of depositor irrevocable letter of credit in favor of the City.
- 257 The certificate of deposit or letter of credit is subject to the conditions for a surety
- 258 bond stated in this section.
- 259
- 260 (C) A surety bond under this chapter must include the following terms:
- 261
- 262 (1) The Grantee shall pay to the City all amounts due under the terms of this
- 263 chapter.
- 264
- 265 (2) The Grantee shall pay fines, assessments, and judgments levied against the
- 266 Grantee by a court, by the City, and by other officials that may levy fines,
- 267 taxes, charges, assessments, or judgments.
- 268
- 269 (3) The Grantee shall perform every obligation under the Grantee's Franchise
- 270 and this chapter.
- 271
- 272 (4) Each surety bond must contain an endorsement that no cancellation or
- 273 restriction of the bond is effective until the 30th day after the day the City
- 274 receives notice, by certified mail return receipt requested, of the cancellation
- 275 or restriction.
- 276
- 277 (5) The bond amount must be \$10,000.
- 278

279 **PART 16. INDEMNITY.**

280

281 The Grantee is an independent contractor in the performance of this Franchise, and shall

282 indemnify and hold harmless the City, its officers, agents and employees from any and all

283 claims or losses which may result from any negligent or intentional act or omission of the

284 Grantee, its agents, employees or representatives under this Franchise. The Grantee shall

285 defend, indemnify and hold the City harmless against damages, costs, loss or expense for

286 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, sub contractors, 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 thereof. 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.

327 **PART 17. NOTICES.**

- 328
- 329 (A) The Grantee shall direct all notices from the Grantee to the City under this
- 330 Franchise to the City Attorney and the Director of EMS, individually, at P.
- 331 O. Box 1088 Austin, Texas 78767, or to the officer designated by the City
- 332 Council.
- 333
- 334 (B) All notices to the Grantee under this Franchise shall be to the local corporate
- 335 officer within the Austin city limits designated by the Grantee in writing.
- 336
- 337 (C) The Grantee shall maintain within the Austin city limits throughout the term
- 338 of this Franchise an address for service of notices by mail.
- 339
- 340 (D) The Grantee shall also maintain within the Austin city limits a local
- 341 telephone number operational during normal business hours for the conduct
- 342 of matters related to this Franchise. The Grantee shall furnish a change in
- 343 address or telephone number to the City at least 10 days before the change.
- 344

345 **PART 18. FRANCHISE CERTIFICATION.**

346

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

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

349

350 **PART 19. GRATUITIES.**

351

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

353 entertainment, gifts, or other-wise were offered or given by the Grantee or any agent or

354 representative to any City official or employee with a view toward securing favorable

355 treatment with respect to the awarding, amending or making of any determinations with

356 respect to the performing of the Franchise. In the event this Franchise is canceled by the

357 City under this provision, the City shall be entitled, in addition to any other rights and

358 remedies, to recover from the Grantee a sum equal in amount to the cost incurred by the

359 Grantee in providing the gratuities.

360

361 **PART 20. ASSIGNMENT.**

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

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

365 10-2 of the City Code.

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PART 22. TERMINATION

PART 23. SEVERABILITY.

PART 24. This ordinance takes effect on _____, 2013.

_____, 2013

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§ _____

Lee Leffingwell
Mayor

ATTEST: _____
Jannette S. Goodall
City Clerk