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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
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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

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

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

PART 11. ACCOUNTS, RECORDS, REPORTS AND INVESTIGATIONS.

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

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

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

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

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

PART 24. This ordinance takes effect on November 1, 2018.

PASSED AND APPROVED

_____, 2018 § _____
Steve Adler
Mayor

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