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**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.

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

44  
45 MEDICAL TRANSFER SERVICE has the meaning prescribed in Chapter 10-2 of the City  
46 Code.

47  
48 PUBLIC RIGHT- OF- WAY means the surface of a public street, highway, lane, path,  
49 alley, sidewalk, boulevard, drive, bridge, tunnel, easement or similar property in which the  
50 City holds a property interest or exercises rights of management or control and which,  
51 consistent with the purposes for which it was acquired or dedicated, may be used for the  
52 operation of a medical transfer service.

53  
54 **PART 3. GRANT OF A FRANCHISE.**

55  
56 The Council grants to City Ambulance ("Grantee") the nonexclusive right and privilege to  
57 operate a medical transfer service on the public right of way of the City subject to this Part:

- 58  
59 (A) If Grantee accepts this Franchise, it shall, not later than 20 days after the  
60 adoption of this ordinance, file with the City Clerk a letter acknowledging and  
61 accepting the provisions of this Franchise, and agreeing to be bound by the  
62 terms of this Franchise.
- 63  
64 (B) The Grantee shall execute, or cause to be executed, all legal documents,  
65 insurance certificates, and performance bonds required by the City. The  
66 documents are subject to review and approval by the City Attorney.
- 67  
68 (C) The term of this franchise begins on July 20, 2021, and expires on the fifth  
69 anniversary of that date unless terminated in accordance with this Franchise.
- 70  
71 (D) A reference in this Franchise to a Public Right -of -Way is not a representation  
72 or guarantee by the City that its interests or other rights in property are  
73 sufficient to permit its use for the operation of a medical transfer service and  
74 the Grantee will gain only those rights which the City has the right and power  
75 to give.

76  
77 **PART 4. EXTENSION OF FRANCHISE.**

78 The Grantee may request an extension of the term of this Franchise as provided by the  
79 Charter. The request for the extension shall be filed no later than nine months prior to the  
80 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.  
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- (C) The City and Grantee shall have 30 days following the date of the City's notice to negotiate and agree upon a purchase price. If they fail to reach agreement within such 30 day period, each party shall, within 60 days following the date of the City's notice of intent to purchase, designate an appraiser experienced and knowledgeable in the valuation of similar services.
- (1) Each appraiser shall conduct an independent appraisal of the fair market value of the Grantee's medical transfer service as a going concern as of the effective date of the purchase by the City.
  - (2) Each party shall be responsible for the appraisal fees of its own appraisers.
  - (3) In conducting the appraisals, the appraisers shall consider, among other factors, the book value of the assets constituting the Grantee's medical transfer service, the age, condition, and remaining useful life of the Grantee's property utilized in performing services under this Franchise, and the discounted future revenue stream considering the Grantee's actual customer base at the time the notice of purchase is given by the City, for the remaining useful life of the assets.
  - (4) If the two independent appraisals result in purchase prices that are within 20 percent of each other, the purchase price to be paid by the City will be the average of the two appraisals. If the two independent appraisals are not within 20% of each other, then the two appraisers shall discuss their appraisals and attempt to arrive at a joint determination concerning the purchase price. If the two appraisers are not able to arrive at a joint determination of fair market value within 120 days after the City's notice of its intent to purchase, then the City and Grantee shall jointly select a third independent appraiser. The third appraiser shall submit a determination of the purchase 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.

- 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.  
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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

246 in statutory law, court decisions, or the claims history of the industry as well  
247 as of the Grantee. The City agrees to review the coverage if the required  
248 insurance coverage increases.

249  
250 **PART 15. PERFORMANCE BOND.**

- 251  
252 (A) The Grantee shall file with the Director a surety bond in a form approved by  
253 the City Attorney to secure performance of the Grantee's obligations under the  
254 Franchise. The bond must be written by an insurance company licensed to do  
255 business in the state and with an agent or attorney in the city for service of  
256 process.  
257
- 258 (B) Instead of the surety bond described in this section, the Grantee may file with  
259 the Director a certificate of deposit or irrevocable letter of credit in favor of  
260 the City. The certificate of deposit or letter of credit is subject to the conditions  
261 for a surety bond stated in this section.  
262
- 263 (C) A surety bond under this chapter must include the following terms:  
264
- 265 (1) The Grantee shall pay to the City all amounts due under the terms of  
266 Chapter 10-2 of the City Code.  
267
  - 268 (2) The Grantee shall pay fines, assessments, and judgments levied against  
269 the Grantee by a court, by the City, and by other officials that may levy  
270 fines, taxes, charges, assessments, or judgments.  
271
  - 272 (3) The Grantee shall perform every obligation under the Grantee's  
273 Franchise and Chapter 10-2 of the City Code.  
274
  - 275 (4) Each surety bond must contain an endorsement that no cancellation or  
276 restriction of the bond is effective until the 30th day after the day the  
277 City receives notice, by certified mail return receipt requested, of the  
278 cancellation or restriction.  
279
  - 280 (5) The bond amount must be \$10,000.  
281

282 **PART 16. INDEMNITY.**

283  
284 The Grantee is an independent contractor in the performance of this Franchise, and shall  
285 indemnify and hold harmless the City, its officers, agents and employees from any and all  
286 claims or losses which may result from any negligent or intentional act or omission of the

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

292  
293 (A) The Grantee, for itself and its agents, employees, subcontractors, and the  
294 agents and employees of subcontractors, shall defend, indemnify, and hold the  
295 City, its successors, assigns, officers, employees and elected officials  
296 harmless against claims, demands, suits, causes of action, and judgments for:

297  
298 (1) damage to or loss of the property of a person including, but not limited  
299 to, the Grantee, its agents, officers, employees and subcontractors,  
300 City's agents, officers and employees, and third parties arising out of,  
301 incident to, concerning or resulting from a negligent or intentional act  
302 or omission of the Grantee, its agents, employees, or subcontractors, in  
303 the performance of all activities and services under this Franchise, no  
304 matter how, or to whom, the loss may occur; and

305  
306 (2) death, bodily injury, illness, disease, worker's compensation, loss of  
307 services, or loss of income or wages to a person including, but not  
308 limited to, the agents, officers and employees of the Grantee, the  
309 Grantee's subcontractors and the City, and third parties, arising out of,  
310 incident to, concerning or resulting from a negligent or intentional act  
311 or omission of the Grantee, its agents, employees, or subcontractors, in  
312 their performance of all activities and services under this Franchise, no  
313 matter how, or to whom, the loss may occur.

314  
315 (B) If damage, claim or loss is found by a court of competent jurisdiction to be  
316 caused by the concurrent fault of both the Grantee and the City, then the  
317 Grantee shall indemnify the City to the full proportionate extent that the  
318 Grantee is determined to be at fault. It is the intention of the parties, and the  
319 Grantee expressly agrees, that the provisions of this section shall not exclude  
320 claims, damages, and losses caused in part, but not wholly, by the negligence  
321 of the City, even if the City is more negligent than the Grantee.

322  
323 The City shall give the Grantee prompt written notice of claims made or suits filed against  
324 the City that relate to the Grantee's franchise activity, and shall cooperate with the Grantee  
325 in the defense of such claims or suits. The Grantee shall have the right to investigate,  
326 defend, and compromise a claim or suit to the extent of its own interests, including but not  
327 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.**

352

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.

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