

(Published in the Topeka Metro News December 16, 2019)

**ORDINANCE NO. 20225**

AN ORDINANCE introduced by City Manager Brent Trout, providing for a nonexclusive franchise to American Medical Response to operate an ambulance service within the City of Topeka until December 31, 2020, and replacing the franchise ordinance codified at City Code Appendix B, Article XI that will expire December 31, 2019.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF TOPEKA, KANSAS:

**Section 1. Authority.**

This Franchise Ordinance is passed and approved by the Governing Body of the City of Topeka, Kansas, and enacted pursuant to K.S.A. 12-2001 and the authority found and provided for in Chapter 5.25 TMC.

**Section 2. Satisfactory qualifications.**

The Governing Body of the City of Topeka, Kansas, has considered the legal, character, financial, and other qualifications of the applicant and has found Medevac MidAmerica, Inc., doing business as American Medical Response, hereinafter "AMR," to be qualified in all respects to own, maintain and operate an ambulance service in the City of Topeka, Kansas hereinafter "City." The Governing Body of the City of Topeka finds that public convenience will be promoted and public necessity requires such ambulance service under the terms and provisions of Chapter 5.25 TMC.

**Section 3. Service.**

The maintenance and operation of an ambulance service by AMR in the City shall be in accordance with these terms and conditions and performance standards set forth in the current ambulance service contract entered into by AMR and the Board of County Commissioners of Shawnee County, Kansas. Said contract is identified as

Shawnee County Contract C207-2016. In addition, AMR agrees to provide to the City Manager of the City copies of documents which are required to be filed pursuant to Shawnee County Contract C207-2016.

AMR is currently working toward implementing a community paramedicine program/service. It is the goal of AMR and TFD to jointly participate and collaborate in such implementation. This franchise does not permit AMR to provide the new paramedicine program without further approval by the City.

#### **Section 4. Franchise grant.**

Pursuant to the provisions of TMC 5.25.040, a nonexclusive franchise is granted to AMR, to own, maintain, and operate an ambulance service within the City. Said nonexclusive franchise is granted through and including December 31, 2020, and shall vest all rights, privileges and immunities of an ambulance service franchise with AMR; however, said nonexclusive franchise shall be subject to and conditioned upon all of the terms, duties and obligations found in the laws of the State of Kansas, Chapter 5.25 TMC, and this Franchise Ordinance.

#### **Section 5. Payments to the City.**

Consideration for the rights, privileges, and immunities granted to AMR includes the benefits to be derived by the citizens of the City of Topeka from the maintenance and operation of an ambulance service under the terms and conditions of this Franchise Ordinance.

(a) The ambulance service franchise application fee prescribed by TMC 5.10.040 has been paid to the City Clerk.

(b) On or before April 1 of each year within the term of this Franchise

Ordinance, the fees set forth in TMC 5.10.040(b) are due, including the business fee and an ambulance fee for each AMR ambulance in operation in the City. An ambulance fee for each additional ambulance placed into operation after the initial fee payment is due at the time the additional ambulance is licensed.

(c) Within thirty (30) days of the presentation of an invoice to AMR by the City, AMR shall make payments to the City Treasurer for the following types of assistance:

(1) For each Topeka Fire Department (“TFD”) response to AMR’s request for a non-emergency lift assist of any patient due to the patient’s weight, AMR shall pay a fee of \$200.00 per patient receiving the lift assist. For purposes of this subsection, non-emergency means any request that was not initiated by a 911 call.

#### **Section 6. Insurance.**

Upon the effective date of this Franchise Ordinance, AMR shall file with the City Clerk an insurance policy as required by TMC 5.25.140 and the same shall be approved as to form by the City Attorney’s office. During the term of this Franchise Ordinance, AMR shall maintain paid insurance coverage according to TMC 5.25.140.

#### **Section 7. Acceptance by AMR.**

Operation of an ambulance service within the City by AMR on or after the effective date of this Franchise Ordinance constitutes acceptance of the provisions of the Franchise Ordinance.

#### **Section 8. Remedies of City.**

Nothing herein shall limit or preclude the City from seeking remedies at law or equity in a court of competent jurisdiction for any violation by AMR of the laws of the

State of Kansas or any ordinance of the City.

#### **Section 9. Forfeiture.**

Any material and substantial fraud, misrepresentation or default of the terms, duties and obligations imposed upon AMR by the laws of the State of Kansas, Chapter 5.25 TMC or by this Franchise Ordinance shall constitute grounds for forfeiture of this nonexclusive Franchise Ordinance. The City shall notify AMR in writing of any allegation of a material and substantial fraud, misrepresentation or default and shall hold a public hearing before the Governing Body of the City of Topeka on the merits of such allegations. Said public hearing shall be held within thirty (30) days after the notification to AMR and shall be adjudicative in character but shall not bar the rights of any parties to pursue judicial review. Within ten (10) days following the conclusion of such hearing, the Governing Body of the City of Topeka shall act with respect to such forfeiture and shall submit a written statement to AMR. This Franchise Ordinance shall not be forfeited unless the Governing Body of the City of Topeka finds that there has been a material and substantial fraud, misrepresentation or default on the part of AMR so as to justify a forfeiture. In such case a notice of forfeiture shall be provided to AMR. In the event this Franchise Ordinance is forfeited, AMR shall, within one hundred eighty (180) days of its receipt of notice of forfeiture, cease operation of an ambulance service hereunder.

#### **Section 10. Surrender.**

If, during the term of this Franchise Ordinance, AMR does not earn a fair rate of return upon the value of property used and useful in providing such ambulance service for a period of six (6) months; and it is determined by AMR that it would not be practical, possible or in the public interest to cure the deficiency by an increase in rates and/or a

99 reduction in service; and AMR has complied with all applicable procedures as  
100 prescribed by the Board of County Commissioners of Shawnee County, Kansas  
101 including the giving of notice of surrender to the City; then AMR upon one hundred  
102 eighty (180) days written notice to the City Clerk may elect to surrender this Franchise  
103 Ordinance and cease operation of the ambulance service hereunder. Fair rate of return  
104 means receipt of revenues for patient charges and public funds, if any, to include the  
105 sum of operating costs, depreciation reserves, growth and development costs and  
106 management fees.

#### 107 **Section 11. Transfer.**

108 Only upon written approval of the Governing Body of the City of Topeka may the  
109 rights and obligations of AMR, pursuant to this Franchise Ordinance, be transferred to a  
110 person meeting the requirements for an ambulance service, as determined by the laws  
111 and regulations of the State and the City at the time of the contemplated transfer. Any  
112 approved transferee shall, without limitation, assume all the duties and obligations of  
113 AMR and AMR shall be released of all future rights, duties, and obligations arising from  
114 this Franchise Ordinance.

#### 115 **Section 12. Hold harmless.**

116 AMR shall hold the City harmless for all liability, damages, costs and expenses of  
117 every kind for the payment of which the City may become liable to any person by  
118 reason of the rights and privileges herein granted and, if any action either at law or in  
119 equity, be brought against the City for damages or for any cost to the City for any fault  
120 of AMR, its servants, agents, or employees, in the operation of its ambulance service,  
121 AMR shall pay all costs, damages and expenses including costs of defense for which

the City may be held liable.

**Section 13. Effective date.**

This Franchise Ordinance shall take effect and be in force from January 1, 2020, and after its passage, approval and publication in the official City newspaper in the manner prescribed by law, and shall be binding upon AMR upon the conditions set forth herein.

PASSED AND APPROVED by the Governing Body on December 10, 2019.

CITY OF TOPEKA, KANSAS

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Michelle De La Isla, Mayor

ATTEST:

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Brenda Younger, City Clerk