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ORDINANCE NO. 20399

AN ORDINANCE introduced by City Manager Stephen Wade, providing for a nonexclusive franchise to American Medical Response to operate an ambulance service within the City of Topeka until December 31, 2023, and replacing the franchise ordinance codified at City Code Appendix B, Article XI that will expire December 31, 2022.

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.

In the event that AMR intends to work toward implementing a community paramedicine program/service, it is the goal of AMR and Topeka Fire Department, hereafter "TFD," to jointly participate and collaborate in such implementation.

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, 2023, 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 1st 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 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 TFD response to AMR's request for a nonemergency lift assist of any patient due to the patient's weight, AMR shall pay a fee of \$200.00 per transport. For purposes of this subsection, "nonemergency" means any request that was not initiated by a 911 call. Any time that such fee is incurred, TFD shall make written request for payment that includes the date, address, and TFD incident number. Upon receipt of the invoice AMR will process the request per AMR AP policy of net 45 days.

Section 6. Other AMR responsibilities.

(a) Upon written request from the Fire Chief, the Chief of EMS, or their designees, AMR shall provide certain material data elements to calls within Contract Zone 1. These data elements include ALS/BLS response, response times, unit and triage. AMR shall respond to such requests within 30 days. Failure to provide the requested information within 30 days shall result in a penalty of \$100.00 per week until the information is provided. If a request is for material data elements that are not typically included in reports generated pursuant to Shawnee County Contract C207-2016 as it relates to calls within Contract Zone 1 needs additional time beyond 30 days to respond to such request, AMR may request additional time before the initial 30 days expire, the amount of which to be agreed upon by the parties. TFD agrees that any cost associated with the development of a new report that is not currently available will be reimbursed to AMR if such report can be developed; provided, that AMR first provides TFD a written estimate of the associated costs and obtains approval from TFD. AMR's response time will be stayed while TFD

79 reviews such estimates.

80 (b) AMR and the Fire Chief, the Chief of EMS and/or their designees shall meet
81 no less than monthly for call review and quality assurance/improvement of selected calls
82 to include, but not be limited to, severe trauma, cardiac arrest, or similar types of calls
83 occurring in the City of Topeka limits. The intent is to look at the entirety of the call for
84 improvements to address training, equipment needs and general system improvements.

85 (c) AMR agrees to provide notification through the County Protocol Committee to
86 the Fire Chief and Chief of EMS concerning anticipated or desired changes to protocol,
87 equipment, or medications that are not a result of national supply shortage or emergency.
88 Further, AMR agrees that all proposed protocol changes that are not a result of a national
89 supply shortage or emergency will be submitted for review to the County Protocol
90 Committee prior to submission to the Medical Director. After submission to the Medical
91 Director, the Fire Chief, Chief of EMS and/or their County Protocol Committee member
92 shall be given the opportunity to attend meetings to discuss proposed protocol changes
93 in the event the Medical Director changes the proposed protocols submitted to him/her.
94 Notice of such meeting shall be provided as soon as reasonable based on the schedule
95 of the Medical Director.

96 (d) Upon reasonable request and subject to available resources, AMR agrees to
97 respond and provide a stand-by/posted ambulance upon request of the Fire Chief or
98 designees when there is reason to believe a life-threatening public emergency presently
99 exists to include fire, rescue and hazmat incidents. TFD agrees to release ambulance as
100 soon as possible when the life-threatening public emergency no longer exists.

101 (e) In January of each calendar year, AMR shall provide copies of all written
102 mutual aid agreements for ambulance service in the City of Topeka or provide written

notice that no such agreements exist. Failure to submit this information by the last business day in January shall result in a penalty of \$100.00 per day until submitted.

(f) AMR agrees to the use of designated dispatch radio channels for EMS operations within the City of Topeka. Further, AMR agrees that AMR units and dispatch are responsible for monitoring the designated channel while on scene.

(g) AMR will pursue an option if available to provide TFD command staff designated by the Fire Chief with access to view the availability of all on-duty AMR units in real time. If there is cost directly associated with the development, implementation or annual maintenance of this request, AMR will provide TFD a written estimated of the expense to seek approval for the reimbursement of this request. TFD agrees that any party with access to this system may be required to complete initial and annual training as deemed reasonably appropriate by AMR compliance or other regulatory department and consistent with such trainings required of AMR staff with similar view access. Failure of those individuals to complete training will result in revocation of rights and privileges to view the data.

Section 7. 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 8. 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.

127 **Section 9. Remedies of City.**

128 Nothing herein shall limit or preclude the City from seeking remedies at law or in
129 equity in a court of competent jurisdiction for any violation by AMR of the laws of the State
130 of Kansas or any ordinance of the City.

131 **Section 10. Forfeiture.**

132 Any material and substantial fraud, misrepresentation or default of the terms,
133 duties and obligations imposed upon AMR by the laws of the State of Kansas, Chapter
134 5.25 TMC or by this franchise ordinance shall constitute grounds for forfeiture of this
135 nonexclusive franchise ordinance. The City shall notify AMR in writing of any allegation
136 of a material and substantial fraud, misrepresentation or default and shall hold a public
137 hearing before the Governing Body of the City of Topeka on the merits of such allegations.
138 Said public hearing shall be held within 30 days after the notification to AMR and shall be
139 adjudicative in character but shall not bar the rights of any parties to pursue judicial
140 review. Within 10 days following the conclusion of such hearing, the Governing Body of
141 the City of Topeka shall act with respect to such forfeiture and shall submit a written
142 statement to AMR. This franchise ordinance shall not be forfeited unless the Governing
143 Body of the City of Topeka finds that there has been a material and substantial fraud,
144 misrepresentation or default on the part of AMR so as to justify a forfeiture. In such case
145 a notice of forfeiture shall be provided to AMR. In the event this franchise ordinance is
146 forfeited, AMR shall, within 180 days of its receipt of notice of forfeiture, cease operation
147 of an ambulance service hereunder.

148 **Section 11. Surrender.**

149 If, during the term of this franchise ordinance, AMR does not earn a fair rate of
150 return upon the value of property used and useful in providing such ambulance service

for a period of six 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 reduction in service; and AMR has complied with all applicable procedures as prescribed by the Board of County Commissioners of Shawnee County, Kansas including the giving of notice of surrender to the City; then AMR upon 180 days' written notice to the City Clerk may elect to surrender this franchise ordinance and cease operation of the ambulance service hereunder. "Fair rate of return" means receipt of revenues for patient charges and public funds, if any, to include the sum of operating costs, depreciation reserves, growth and development costs and management fees.

Section 12. Transfer.

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

Section 13. Hold harmless.

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

held liable.

Section 14. Re-openers

In the event that Shawnee County Contract C207-2016 is materially and substantively amended or replaced by a new contract that is materially and substantively different, AMR and the City may mutually agree to re-open this franchise ordinance before the December 31, 2023, expiration date.

Section 15. Effective date.

This franchise ordinance shall take effect and be in force from January 1, 2023, 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 20, 2022.

CITY OF TOPEKA, KANSAS

Michael A. Padilla, Mayor

ATTEST:

Brenda Younger, City Clerk