

(Published in the Topeka Metro News January 13, 2014)

## **ORDINANCE NO. 19874**

AN ORDINANCE introduced by City Manager Jim Colson, providing for the renewal of a nonexclusive franchise to American Medical Response to operate an ambulance service within the City of Topeka which replaces the franchise ordinance codified at City Code Appendix B, Article XI that will expire December 31, 2013.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TOPEKA:

### **Section 1. Authority.**

This Franchise Ordinance is passed and approved by the Council 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 Council 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 Council 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 C428-2005, as amended by C293-2010. 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 C248-2005, as amended by C293-2010.

#### **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, ~~2013~~2014, 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. The following licensing fees shall be paid by AMR to the City of Topeka:

a. On the effective date of this Franchise Ordinance, the ambulance service license fees prescribed by TMC 5.10.040(b).

b. On the first working day recognized by the City, after January 1 of each year within the term of this Franchise Ordinance and while AMR is operating an ambulance service pursuant to such Franchise Ordinance, the annual registration fee for each vehicle in operation in the City as set forth in TMC 5.10.040(c) as presently provided or hereafter amended.

53 All fee payments made hereunder shall be made to the city treasurer.

54 **Section 6. Insurance.**

55 AMR shall upon the effective date of this Franchise Ordinance file with the city clerk an  
56 insurance policy as required by TMC 5.25.140 and the same shall be approved as to  
57 form by the city attorney's office. During the term of this Franchise Ordinance and the  
58 time AMR is providing service AMR shall maintain paid insurance coverage according to  
59 TMC 5.25.140.

60 **Section 7. Written acceptance.**

61 AMR shall file with the city clerk its written acceptance of the provisions of the Franchise  
62 Ordinance within sixty (60) days after the effective date of this Franchise Ordinance as  
63 determined by K.S.A. 12-2001.

64 **Section 8. Remedies of City.**

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

68 **Section 9. Forfeiture.**

69 Any material and substantial fraud, misrepresentation or default of the terms, duties and  
70 obligations imposed upon AMR by the laws of the State of Kansas, Chapter 5.25 TMC  
71 or by this Franchise Ordinance shall constitute grounds for forfeiture of this  
72 nonexclusive Franchise Ordinance. The City shall notify AMR in writing of any allegation  
73 of a material and substantial fraud, misrepresentation or default and shall hold a public  
74 hearing before the Council of the City of Topeka on the merits of such allegations. Said  
75 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 Council 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 Council 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 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 one hundred eighty (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.

99                   **Section 11. Transfer.**

100       All the rights and obligations of AMR, pursuant to this Franchise Ordinance, may with  
101       written approval of the Council of the City of Topeka, be transferred to a person meeting  
102       the requirements for an ambulance service, as determined by the laws and regulations  
103       of the State and the City at the time of the contemplated transfer. Any such transferee  
104       shall, without limitation, assume all the duties and obligations of AMR and AMR shall be  
105       released of all future rights, duties, and obligations arising from this Franchise  
106       Ordinance.

107                   **Section 12. Hold harmless.**

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

115                   **Section 13. Effective date.**

116       This Franchise Ordinance shall take effect and be in force on January 1, 2014 after its  
117       approval and publication in the official City newspaper in the manner prescribed by law,  
118       and shall be binding upon AMR upon the filing of its written acceptance as required by  
119       Section 7.

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PASSED AND APPROVED by the Governing Body on January 7, 2014.

CITY OF TOPEKA, KANSAS

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Larry E. Wolgast, Mayor

ATTEST:

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Brenda Younger, City Clerk