CITY OF EL PASO, TEXAS
AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM

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DEPARTMENT: Fire

AGENDA DATE: Introduction – November 27, 2007

CONTACT PERSON/PHONE: Manuel Chavira – 771-1000

DISTRICT(S) AFFECTED: N/A

SUBJECT:

APPROVE a resolution / ordinance / lease to do what? OR AUTHORIZE the City Manager to do what? Be descriptive of what we want Council to approve. Include $ amount if applicable.

That the Mayor be authorized to sign a renewal of an Ordinance granting a Franchise for Life Ambulance Service, Inc. to operate a Non-Emergency Ambulance Transfer Service.

BACKGROUND / DISCUSSION:

Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?

A non-exclusive franchise to operate an non-emergency ambulance service within the City of El Paso.

PRIOR COUNCIL ACTION:

Has the Council previously considered this item or a closely related one?

Yes. Life Ambulance Service, Inc. is currently granted a franchise number 16225 and is requesting renewal of the franchise.

AMOUNT AND SOURCE OF FUNDING:

How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

N/A

BOARD / COMMISSION ACTION:

Enter appropriate comments or N/A

N/A

**********REQUIRED AUTHORIZATION**********

LEGAL: (if required) _____ **FINANCE:** (if required) _____

DEPARTMENT HEAD: Roberto Rivera

(Example: if RCA is initiated by Purchasing, client department should sign also)

Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA:

CITY MANAGER: _____ **DATE:** _____

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ORDINANCE NO._____

AN ORDINANCE GRANTING A RENEWAL OF THE FRANCHISE FOR LIFE AMBULANCE SERVICE, INC., TO OPERATE A NON-EMERGENCY AMBULANCE TRANSFER SERVICE.

WHEREAS, the City of El Paso, Texas is empowered to grant franchises for the use of its streets, alleys, and public rights-of-way under the City Charter and the City's general police powers; and

WHEREAS, the City Council finds that all relevant facts about **LIFE AMBULANCE SERVICE, INC** are known to City Council; and

WHEREAS, LIFE AMBULANCE SERVICE, INC has previously been granted a franchise ordinance number 16225 and requested renewal of its franchise by a letter dated August 22, 2007 and

WHEREAS, the City Council, finds that **LIFE AMBULANCE SERVICE, INC** will have sufficient equipment of suitable type and condition to operate a non-emergency ambulance transfer service;

WHEREAS, on evidence received, City Council finds public convenience and necessity justifies granting a franchise to **LIFE AMBULANCE SERVICE, INC** to operate a non-emergency ambulance transfer service in the City of El Paso, Texas; and

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO, TEXAS THAT:

ARTICLE I. GRANT OF THE FRANCHISE AND GENERAL PROVISIONS

A. Grant of Non-Exclusive Franchise

A non-exclusive franchise, subject to the Grantee's compliance with the requirements and limitations set forth herein and by local, state and federal laws, is hereby granted to **LIFE AMBULANCE SERVICE, INC**, Grantee, to operate a non-emergency transfer ambulance service within the City and upon the public streets, rights-of-way and alleys of the City of El Paso.

B. Definitions

For the purpose of this agreement the following terms, phrases, words and their derivations shall have the following meaning. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is mandatory and the word "may" is permissive.

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1. Fire Chief. "Fire Chief" shall mean the Fire Department official responsible for the management of emergency ambulance service for the City of El Paso or his designated representative.

2. City. "City" shall mean the City of El Paso, Texas and any department or board that may be designated by the City Council to administer, oversee or enforce the provisions of this agreement.

3. City Council. "City Council" shall mean the council of the City as the governmental, legislative and administrative body of the City.

4. Customer. "Customer" shall mean any person who requests or receives the services of the Grantee.

5. Franchise Area. "Franchise Area" shall mean that portion of the City for which a franchise is granted under the authority of this agreement. If not otherwise stated in the franchise, the Franchise Area shall be the corporate limits of the City of El Paso including all territory hereafter annexed to the City.

6. Grantee. "Grantee" shall mean **LIFE AMBULANCE SERVICE, INC** Ambulance Services.

7. Gross Revenues. "Gross Revenues" shall mean all revenues derived directly or indirectly from the operation or use of all or part of the Grantee's ambulance transfer service, its affiliates, subsidiaries, parents, and any person in which the Company has a financial interest including, but not limited to all transportation fees, supplies fees, equipment fees, late fees, collection fees, and personnel fees. Gross revenues do not include refunds to patients and clients or any taxes on services furnished by the Grantee imposed directly on any patient or client by the State, local or other governmental unit and collected by the Company on behalf of the governmental unit. An affiliate or subsidiary does not include entities which are suppliers of service to all non-emergency ambulance transfer services and which are not controlled by the Grantee.

8. Non-Emergency Ambulance Transfer Service. "Non-emergency ambulance transfer service" shall mean the operation of a service whereby persons are transported by ambulance under the supervision and care of duly licensed and certified emergency medical technicians in non-emergency situations except that a non-emergency ambulance transfer service may transport persons in emergency situations as permitted by the terms of this franchise agreement and other applicable laws.

9. Person. "Person" means any individual, firm, partnership, limited partnership, association, corporation, company, and organizations of any kind, or any other legally recognized entity.

10. Public Rights-of-Way. "Public Rights-of-Way" shall mean the surface, the air space above the surface, and the area below the surface of any public street, highway, land, path, alley, sidewalk, boulevard, drive, bridge, tunnel, parkways, waterways, utility easements or other public right-of-way now or hereafter held by the City.

11. Service. "Service" shall mean any service which is authorized pursuant to the terms of this Franchise Agreement.

12. DSHS. "DSHS" shall mean the Texas Department of State Health Services.

C. Term and Effective Date

Regardless of the date upon which the ordinance granting the franchise is adopted, the term of this franchise shall be for two (2) years commencing on 12:01 a.m., December 4, 2007. The City Manager is authorized to grant a thirty (30) day extension of this agreement, provided grantee submits its notice and request for renewal prior to the expiration of this franchise.

D. Operational Timeframe

This franchise shall automatically expire if Grantee's non-emergency ambulance transfer service is not fully operational, as verified by the Fire Chief, within ninety (90) days of the date the Franchise is approved by City Council.

E. Renewal of Franchise

1. City's Sole Option. The City shall have the sole option to renew this franchise upon the written request of the Grantee.

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2. Renewal Procedure. If the Grantee wishes the City to renew this franchise, Grantee shall submit a request in writing, via certified mail to the City Clerk's Office, 2 Civic Center, El Paso, Texas 79901, no later than three (3) months prior to the expiration date of this franchise. Should Grantee fail to submit a request for the renewal of this franchise to the City as herein required, this franchise shall expire upon the expiration date and a new application for a franchise shall be required if Grantee desires to operate a non-emergency ambulance franchise within the City of El Paso.

3. City's Right to Modify Terms of Franchise and Require Additional Information Reserved. Grantee understands, agrees, and accepts that the City reserves its rights to require a) that the terms, conditions, and provisions of this franchise be modified upon, Grantee's request for renewal of the franchise and b) that Grantee submit additional information and documents as conditions for renewing the grant of this franchise to operate a non-emergency ambulance transfer service.

F. Business Entity

1. Registered Business Entity and Assumed Name. Grantee shall, forward to and maintain on file with the Fire Chief a certified copy of its corporate Articles of Incorporation, Partnership Agreement and Bylaws, or a sworn and notarized statement of sole proprietorship for the purpose of identifying Grantee's business entity status and a sworn and notarized statement of any name by which it does business if different than the business entity name within 15 days of the grant of this franchise, unless required to be performed at an earlier time by other legal provisions.

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2. Sale of Business. Grantee shall notify the City immediately of the proposed sale or actual sale of the Grantee's business entity. Grantee shall give notice to the City of any actual sale of the Grantee's business entity no less than ten (10) business days prior to the actual sale or transfer.

3. Business Officers, Supervisors and Managers. Grantee shall, within fifteen (15) days of the grant of this franchise, submit to the Fire Chief, the names and business addresses of all owners, officers and supervisory and management personnel of Grantee.

4. Financial Interest. Grantee shall, within 15 days of the grant of this franchise, submit to the Fire Chief the names and business addresses of all persons having a financial interest in the Grantee or any parent, affiliate or subsidiary of Grantee's business entity.

5. Fiscal Year. Grantee shall, within 15 days of the grant of this franchise, submit to the Fire Chief the beginning and ending dates of its fiscal year.

6. Changes. Any additions or changes in the information, which is required to be submitted to the City pursuant to this section, shall be forwarded in written form by the Grantee to the Fire Chief within 15 days of such changes.

7. Non-compliance and Revocation. Failure to comply with this section shall constitute a material breach by Grantee and shall constitute grounds for revocation of this franchise by the City.

G. Indemnification and Public Liability Insurance

1. Indemnification. Grantee shall, at its sole cost, fully indemnify and hold harmless the City, its officers, boards and commissions, and city employees against any and all claims or actions for damages arising out of Grantee's actions or omissions under this franchise, including, but not limited to, expenses for reasonable legal fees and disbursements and liabilities assumed by the City in connection with any such claims or actions.

2. Public Liability Insurance Required. The Grantee shall be required to obtain and maintain in effect throughout the term of the franchise a public liability insurance policy, which meets the requirements as, set forth in this franchise. The policy shall be for the protection of any person, whether a passenger or patient in the Grantee's ambulance or not, whether injured or killed by the negligence of the Grantee or its agent or employee and shall not contain a passenger liability exclusion.

3. Insurance Policy Limits; Litigation. The Grantee shall obtain and maintain in effect throughout the term of this franchise public liability insurance in an amount of not less than $1,000,000. The Grantee shall immediately advise the Fire Chief of any claim or litigation, which affects the Grantee's insurance coverage.

4. Insurance Carrier. The policy of public liability insurance shall be written by an insurance company with an A rating, authorized to do business in the state of Texas. A

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copy of the current insurance policy shall be filed with the Fire Chief within 15 days of the grant of the franchise.

5. Notice of Cancellation, Suspension, Revocation or Reduction in Amount of Insurance Coverage. The policy of public liability insurance shall provide that it cannot be suspended, revoked, canceled or reduced in coverage without ten (10) days written notice to the City.

6. City as Additional Insured. The policy shall name the City of El Paso, its officers, agents, servants and employees as additional insured to the full amount of the policy limits.

7. Failure to Maintain Policy in Effect. Failure to keep the policy in full force and effect throughout the term of the franchise shall be grounds for the termination of this franchise.

8. Operation By Grantee Prohibited Upon Lapse, Suspension, Revocation, Cancellation or Reduction of Insurance Policy. Grantee shall not operate its service during any period for which:

a. its insurance lapses for any reason;
b. its insurance is suspended, revoked, or canceled; or
c. the amount of effective coverage of its insurance has been reduced below the minimum coverage amounts required by this franchise agreement.

9. Certificate of Insurance. Grantee shall forward to the Fire Chief, a copy of each certificate of insurance issued as such policy or policies are modified, renewed, suspended or canceled.

H. Compensation and Payment of Franchise Fee

1. Compensation - Franchise Fee. As compensation for the grant of this franchise to use the public rights-of-way of the City of El Paso, Grantee shall pay to the City two percent of Grantee's monthly gross revenues.

2. Franchise Area For Which Gross Revenues Are to Be Reported. The Grantee shall report its gross revenues for all transports, treatment or other services rendered to any customer, which commence within the Franchise Area as defined herein.

3. Gross Revenues. Gross revenues will include all items of revenue as defined by generally accepted accounting principles, as defined herein, for the type of business and accounting method used.

4. Payment Due Date. Grantee's payments shall be payable monthly and shall be due on the 15th day of the month following the month for which gross revenues are reported.

5. Interest Charged for Late Payments. In the event that any payment required by this Section is not made when due, interest shall be compounded daily from such date at the annual rate equivalent to the then existing prime rate reported in the Wall Street Journal on the due date plus four percent (+4%).

6. Statement Required Where No Gross Revenues Reportable. If Grantee has no gross revenues for a given month, Grantee shall provide written verification that it has no gross revenues no later than the 15th day of the month following the month for which the Grantee has no gross revenues. Failure to provide such notice to the City shall result in commencement of proceedings to terminate the franchise.

7. Payments to City Comptroller. All payments are to be sent to the City Comptroller with copies of all accompanying correspondence sent to the Fire Chief.

I. Ad Valorem Taxes

Grantee will also pay before delinquency all ad valorem taxes lawfully assessed against its property.

J. City Inspection of Grantee's Books and Audits

The City shall have the right to inspect the books of Grantee during the term of this franchise and shall further have the right to order an independent audit of said books made when, in the opinion of the City, the condition of said books justifies such actions. In the event the audit proves that the Grantee has kept true and accurate records on book accounts, the cost of such audit will be borne by the City. In the event that the audit shows that the Grantee has failed to keep true and accurate records and books of accounts, the cost of said audit will be borne by Grantee.

K. Annual Audited Statement of Gross Revenues Required

The Grantee shall submit to the City Comptroller an annual audited statement of gross receipts. Such annual audit shall reflect the Grantee's fiscal year and shall be submitted to the City Comptroller within sixty (60) days of the close of Grantee's fiscal year. A copy of this audit shall be sent to the Fire Chief. The annual audit shall be conducted at no expense to the City.

L. Grantee to Keep Separate Records

Grantee shall maintain separate records if other services are provided outside the scope of this franchise.

M. Franchise Not Transferable

This franchise is not for the benefit of any third party and is not transferable.

N. Failure to Enforce Franchise Agreement No Waiver of Terms Thereof

The Grantee or other parties shall not be excused from complying with any of the terms and conditions of this agreement by any failure of the City upon any one or more occasions to insist upon or to seek compliance with any such terms or conditions.

O. Judicial Relief, Costs and Attorneys' Fees

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In addition to all remedies provided in this agreement, the City shall have the right to apply to any court of competent jurisdiction to secure judicial relief, as it shall deem proper. The City's costs and attorney's fees for such action shall be paid by the Grantee if the City obtains a judgment or other relief.

P. Contractual Relationship

Nothing contained herein shall be construed as creating the relationship of employer and employee between the City and the Grantee, their employees, or between the City and the Grantee's employees. The Grantee shall be deemed at all times to be an independent franchisee. In carrying out the terms of this agreement, the Grantee shall employ its own personnel, and such employees shall be and act under the exclusive and complete supervision and control of their employer.

Q. Notice

Wherever any notice is required or permitted hereunder such notice shall be in writing. Any notice or document required or permitted to be delivered hereunder shall be deemed to be delivered whether actually received or not when deposited in the United States Mail, postage prepaid, Certified Mail, Return Receipt Requested, addressed to the individuals named herein and to whom copies or notice are required to be provided at the respective addresses as follows:

City of El Paso
Attn: City Manager
2 Civic Center Plaza
El Paso, Texas 79901

and

Fire Chief
Fire Department
8600 Montana Street
El Paso, Texas 79925

and

LIFE AMBULANCE SERVICE, INC
Attn: Howard Enloe
P. O. Box 26486
El Paso, Texas 79926

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or to such other addresses as the City or Grantee may designate to each other in writing via certified, postage pre-paid, first class mail. It shall be the duty of the Grantee to provide the City with Grantee's most current mailing and business addresses no less than ten (10) business days prior to any change of same.

R. Revocation and Termination

1. Public Protection and Welfare. Should the City at any time, for any reason, decide that the public protection or welfare is not being met as contemplated by this franchise,

upon thirty (30) days written notice to the Grantee, the City Council may cancel, terminate and revoke this franchise at no cost to the City. Any and all rights of the Grantee in the use of City streets, alleys or public rights-of-way shall then be terminated.

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2. Failure to Use Public Rights-of-Way. In addition, if Grantee has ceased to use the City streets, alleys, or public rights-of-way for the purposes herein contemplated for a period of thirty (30) days or if Grantee defaults in any of Grantee's obligations under the franchise and fails to correct such default within thirty (30) days after written notice to do so, the City Council may cancel, terminate and revoke this franchise at no cost to the City. Any and all rights of the Grantee under this franchise shall then terminate.

3. Breach of Franchise Agreement Terms. After thirty (30) days written notice, the City Council may cancel, terminate and revoke this franchise for breach by the Grantee of any of its obligations hereunder or for failure of the Grantee to pay any final judgment of a court of competent jurisdiction in a suit on any claim in connection with the operation of the ambulance service. If court proceedings are instituted to determine the legality of such revocation, and Grantee does not prevail, the Grantee shall pay the reasonable expenses incurred by the City in connection with such litigation.

S. Entire Franchise Agreement

This document contains all of the terms of this franchise and may not be modified, except by an agreement in writing signed by both parties.

T. Severability

The invalidity or illegality of any one or more provisions of this franchise agreement by any court of competent jurisdiction shall not affect the validity of the remaining provisions hereof.

U. Acceptance of Terms by Grantee Required

This franchise shall be null and void unless Grantee, before the grant of this franchise, files with the City Clerk its written acceptance of the franchise. Grantee's failure to accept the terms and conditions of this franchise and file its acceptance thereof with the City Clerk prior to the grant of this franchise shall render the grant of this franchise null and void.

V. Acceptance by Grantee's Authorized Representative

The individual accepting the terms and conditions of this franchise on behalf of the Grantee affirmatively acknowledges that he is authorized to do so and said individual further warrants that he is authorized to commit and bind the Grantee to the terms and conditions of this franchise.

W. Rights of Individuals

1. Service and Rates. The Grantee shall not refuse non-emergency ambulance transport service to any person or customer who requests the service for a lawful purpose and which the Grantee has the ability to render. The Grantee shall not, as to rates, charges, quality of service, or in any other respect, make or grant any unreasonable preference or advantage, nor subject any person to any prejudice or disadvantage. The Grantee shall

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take affirmative steps to disseminate the information concerning the availability of its service to all persons. The Grantee shall ensure that all services are equally available to all persons. This provision shall not be deemed to prohibit promotional campaigns to stimulate requests for service, nor shall it be deemed to prohibit the establishment of a graduated scale of charges and classified rate schedules to which any customer coming within the classification shall be entitled, provided the schedules have been filed with and approved by the City Council as provided in Article I, Section X ("Amendments") of this franchise agreement.

2. Personnel and EEOC. The Grantee shall strictly adhere to the equal employment opportunity requirements of Federal and State statutes and local regulations, as amended from time to time. The Grantee shall comply at all times with all other applicable federal, state and local laws and regulations, and all executive and administrative orders relating to nondiscrimination with are incorporated in this agreement by reference.

3. Customer Medical Records and Privacy. The Grantee shall be responsible for protecting the rights of customers as set forth in the Emergency Medical Services Act, TEX. HEALTH & SAFETY CODE ANN., CHAPTER 773, (VERNON'S 1997), and other applicable laws, as amended.

X. Time is of the Essence

Whenever this agreement shall set forth any time for an act to be performed by or on behalf of the Grantee, the time shall be deemed of the essence and any failure within the control of the Grantee to perform within the time allotted shall be sufficient ground for the City to invoke an appropriate penalty including possible revocation of the franchise.

Y. Amendments

The City reserves the right to amend the terms of this ordinance and franchise agreement in any manner necessary for the safety or welfare of the public or to protect the public interests.

Z. Police Powers

1. Compliance by Grantee Required. In accepting this franchise, the Grantee acknowledges that its rights under this agreement are subject to the police power of the City to adopt and enforce general ordinances necessary to the safety and welfare of the public and the Grantee agrees to comply with all applicable general laws and ordinances enacted by the City pursuant to this power.

2. Conflict of Laws. Any conflict between the provisions of this franchise and any other present or future lawful exercise of the City's police powers shall be resolved in favor of the City except that any such exercise that is not of general application in the jurisdiction or applies exclusively to the Grantee which contains provisions inconsistent with this franchise shall prevail only if the City finds their exercise necessary to protect the public health, safety, property or general welfare or the exercise is mandated by law. Should the terms of this franchise conflict with any other law or regulation, this franchise shall control where any law or regulation permits the City to impose more stringent standards or requirements upon Grantee.

AA. Compliance with Laws

The Grantee shall comply with all laws and regulations of the United States, the State of Texas and the City of El Paso. Grantee shall comply with all applicable statutes, laws, codes, regulations, and ordinances applicable to Grantee's use of City streets, alleys, and public rights-of-way for the purposes permitted herein. Failure to comply with these laws and regulations shall constitute a material breach by Grantee and shall constitute grounds for cancellation, termination and revocation of this franchise by the City.

BB. Governmental Powers Not Surrendered

The granting of this franchise does not surrender any governmental powers now or hereafter conferred upon the City.

CC. Law Governing

The laws of the State of Texas shall govern the validity, performances and enforcement of this franchise.

ARTICLE II. SERVICE OPERATIONS, STANDARDS AND REQUIREMENTS

A. Availability of Service

The Grantee shall offer service on a twenty-four hour basis to the general public within the Franchise Area.

B. Radio Communications

1. Communications Center. Grantee must provide, at its own expense, a communications center, which will include 24-hour day telephone access for the public and direct radio communication with all company ambulances used under this franchise.

2. Communications with El Paso Fire Department (EPFD). Grantee shall equip each ambulance with a radio capable of maintaining direct radio communication with the EPFD Communications Center through either an 800 Mhz trunked commercial radio system or UHF National EMS Frequency, Channel 2. Grantee shall so equip each ambulance at its sole expense and such radios shall be used to coordinate disaster and emergency relief with EPFD when responding to an incident as directed by the Fire Chief or when an emergency is encountered within the Franchise Area.

C. Response Time Requirements

1. Grantee's Response to Customers' Requests for Service. Grantee shall respond to a customer's request for non-emergency transfer service, at any time of day on any day of the week, no later than one and one-half hours after the request for service is received unless pre-arrangements are made.

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2. Grantee's Response Per Request of Fire Chief . Grantee shall respond to non-emergency incidents upon the request of the Fire Chief or his designee. Grantee agrees to send the earliest available ambulance to non-emergency incidents as requested by Fire Chief or his designees, but in no case shall response time exceed thirty minutes for non-emergency calls.

D. Emergency Aid to City of El Paso

Grantee shall provide emergency aid assistance to the City of El Paso in cases of system overload or multiple patient incidents as requested or directed by the Fire Chief or his designee. Such assistance shall be provided on an emergency basis with immediate priority being given to those requests.

E. Grantee's Costs

The City shall not be responsible for any cost incurred in providing services as described in this franchise.

F. Billing and Collection for Services

The Grantee shall bill and collect charges for services from the patient or responsible party at Grantee's sole expense.

G. Transportation Logs

The Grantee shall be required to submit monthly or more frequently as directed by the Fire Chief, a log showing the following information:

1. the total number of emergency transports commencing within the Franchise Area for the month;

2. the total number of non-emergency transports commencing within the Franchise Area for the month; and

3. the number of transports originating within the Franchise Area for the month.

H. Personnel Requirements

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1. Records of Personnel. The Grantee shall be required to submit to the Fire Chief, prior to the commencement of operations, a list identifying all of its employees hired to drive or attend Grantee's customers. The list shall identify each employee by name and shall identify the employee's current DSHS certification status, driver's license status, and Defensive Driving Course Status. The Grantee shall forward written notice of any addition or change in the information required to be submitted within fifteen (15) calendar days of the addition or change.

2. Monthly Report Noting Changes of Personnel or Personnel License Status. Grantee shall submit to the Fire Chief monthly reports to include additions and changes of

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personnel and personnel records information as required in Article II, Section H(1) of this franchise agreement.

3. DSHS Certification of Grantee's Employees. Each of Grantee's attendants and drivers employed by Grantee must be currently certified as an Emergency Medical Technician-Basic with the Texas Department of State Health Services, Emergency Medical Services Division. Individuals providing a higher level of care to customers must be currently certified with the Texas Department of Health at the level consistent with the type of care for which that ambulance is equipped as identified in this franchise.

4. Driver's License Required. While on duty, each of Grantee's attendants and drivers must possess at all times no less than a class C license valid to operate an emergency vehicle and transfer ambulance in the State of Texas

5. EMT Identification Required. While on duty, each of Grantee's attendants and drivers shall be required to possess the wallet-size EMT certificate issued to the EMT by the Texas Department of State Health Services;

6. Statement from Physician; Reportable Communicable Diseases. Within fifteen (15) days of employment of each attendant and driver, the Grantee must submit to the Fire Chief a written statement from a physician authorized to practice medicine in the State of Texas stating the person is free of communicable diseases and is physically capable of performing the required duties. If an individual contracts a communicable disease which is required to be reported to appropriate federal, state or local health authorities, Grantee shall immediately notify the Fire Chief that the individual is unable to perform duties as an EMT and shall, prior to permitting the individual to resume his or her duties as an EMT, submit to the Fire Chief, a physician's statement that the individual has recovered from his or her illness and may resume providing care under the individual's EMT license as permitted by those laws governing emergency medical technicians and communicable diseases.

7. Defensive Driving Course Certificate. Within ninety (90) days of employment, the Grantee must submit to the Fire Chief, for each of Grantee's employees, evidence showing completion of a National Safety Council Approved Defensive Driving Course and shall maintain and submit current evidence of completion of a National Safety Council-Approved Defensive Driving Course while operating under this franchise.

I. Ambulance Staffing Requirements

1. Basic Ambulance Staffing. Each ambulance being used for basic care must be staffed by no less than an EMT-Basic driver and an EMT-Basic attendant, and any other personnel needed to sustain current level of care for the patient as determined by the attending physician.

2. Advanced Life Support Ambulance Staffing. Each ambulance being used for advanced life support care (ALS) must be staffed by no less than an EMT-Intermediate

and an EMT-Basic, and any other personnel needed to sustain current level of care for the patient as determined by the attending physician.

3. MICU Ambulance Staffing. Each ambulance being used for mobile intensive care (MICU) must be staffed by a minimum of an EMT-Paramedic, an EMT-Basic, and any other personnel needed to sustain current level of care for the patient as determined by the attending physician.

J. Vehicle Inspections

1. Inspection of Ambulances Prior to Initial Operation. Prior to the commencement of operations, the Fire Chief or his designee shall inspect all ambulances used by Grantee in operating its transfer service at a reasonable time. An ambulance must pass inspection and have a current valid permit sticker prior to any use for customer transportation or care.

2. Field Inspections. Ambulances may be field inspected at any hour by the Fire Chief and he may require any ambulance to proceed to a specified location for further inspection.

3. Inspection Process. Each inspection shall include:

a. Confirmation that the vehicle has a current motor vehicle certificate of inspection as required by Texas Transportation Code, Chapter 548, as amended, and motor vehicle license number plates which show current registration as required by Texas Transportation Code, §§ 502.180, as amended.

b. Confirmation that the Grantee has a current EMS Provider License issued by Texas Department of State Health Services, Emergency Medical Services Division as provided for under 25 T.A.C. §§ 157.2 and 157.11.

c. Visual and mechanical inspection of the vehicle(s) for the purpose of determining compliance with the vehicle type specifications of this franchise. In addition, the following motor vehicle equipment shall be in good and working order:

(1) headlights, tail-lights, back-up lights, ambulance body clearance lights (if appropriate), brake lights and license plate lights;
(2) appropriate emergency lights and sirens;
(3) brakes; and
(4) tires.

d. Visual and mechanical inspection of equipment for the purpose of determining compliance with the medical equipment specifications of the franchise.

4. Written Inspection Report. EPFD shall give the Grantee a written report at the time of inspection indicating any deficiencies.

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5. Permit Sticker. A vehicle that meets the requirements of this franchise under this ordinance shall be issued a permit sticker having a scheduled expiration date of December 6, 2009. The scheduled expiration date shall not be deemed to impair or limit the City's ability to conduct field inspections or perform any other function under the terms of this franchise agreement.

6. Permit Sticker Non-transferable. A permit sticker is not transferable from one vehicle to another.

7. Ambulances Not Passing Inspection. Any ambulance found not to be in compliance with the requirements of this franchise or of any other ordinance of the City regulating the use of ambulances on the streets and alleys of the City of El Paso shall 1) fail inspection, 2) be considered not safe or useable and 3) have any existing permit sticker removed. Hereafter, until the vehicle passes inspection, it shall not be operated for customer transportation or care upon the streets of the City of El Paso.

8. Re-inspection. At the request of the Grantee, EPFD shall re-inspect a vehicle that has failed inspection to determine if the deficiencies have been corrected. EPFD may require review of written documentation, such as equipment repair bills or sales receipts, and may re-inspect the vehicle and equipment visually and mechanically for compliance with this franchise.

K. Vehicle, Equipment and Supply Requirements

1. DSHS Regulations. Vehicles are required to meet all applicable Texas Department of State Health Services Regulations in effect at the time of inspection.

2. DSHS Vehicle Equipment and Supply Requirements. The following equipment and supplies are required for each ambulance operated in the Franchise Area by the Grantee:

a. Each ambulance being used for Basic Life Support Care must comply fully with DSHS requirements for Basic Life Support Ambulances, as amended.

b. Each ambulance being used for Advanced Life Support Care must comply fully with DSHS requirements for Advanced Life Support Ambulances, as amended.

c. Each ambulance being used for Mobile Intensive Care Unit services must comply fully with DSHS requirements for Mobile Intensive Care Ambulances, as amended.

3. Ambulance Markings. Grantee shall mark each ambulance distinctly with company's name. Business phone numbers and logos are permissible; however, the words "Fire Medical Services" or "FMS" shall not be used in any fashion.

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4. Additional Requirements. Each ambulance is additionally required to meet the following vehicle, equipment and supply requirements.

a. Have air conditioning and heating units, which are in proper working order;

b. Have a multilevel stretcher capable of being secured to the vehicle with a commercial mount;

c. Be capable of transporting a minimum of two (2) recumbent patients;

d. All windows in the patient compartment shall be intact, in working condition and free from defects;

e. Have an exhaust system which discharges at the side(s) of the vehicle away from fuel tank filler pipe(s) and patient compartment door openings;

f. Have one (1) five-pound (5 lb.) ABC fire extinguisher with current inspection tag attached. The extinguisher shall be securely mounted in patient compartment with location easily visible and accessible;

g. Have two (2) "No Smoking" signs mounted in the patient compartment which is easily visible from each entry way and one (1) "No Smoking" sign mounted in the front cab compartment;

h. Have three (3) thirty-minute (30 min.) road flares; or three (3) reflective triangle road signs; and one (1) functional flashlight (excluding penlight);

i. Have one auxiliary stretcher device;

j. Have one stair chair device;

k. Have OSHA approved disposable gloves for handling patients with infectious disease;

l. Have disposable goggles;

m. Have disposable masks, gowns and booties;

n. Have red bags marked for infectious waste storage disposal;

o. Have one needle disposal (needle cutters are not acceptable);

p. Have disinfectant for cleaning contaminated equipment equivalent to a 1.10 solution of hypochlorite; and

q. Have any other infectious disease control items currently required by OSHA or DSHS.

5. Grantee to Comply with Most Comprehensive Requirements. Grantee shall comply at the time of inspection or re-inspection with the supply and equipment list required in this ordinance or by the Texas Department of State Health Services, whichever is more comprehensive.

L. Operational Requirements

1. Permits. Grantee shall obtain and maintain, at its own expense, all required permits necessary for the operation of Grantee's service under applicable laws and the terms of this franchise.

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2. Lights and Sirens. Grantee shall not avail himself of the permission given ambulances to disregard traffic laws except in those instances as expressly permitted under federal, state or local laws and with the permission of the Fire Department as may be granted upon a case-by-case basis.

3. Transportation and Treatment Decisions. Transportation and treatment decisions shall be made in accordance with Grantee's established policies and in accordance with the usual and customary medical practices of the medical community.

4. Treatment Protocols and Transfer Policies. Grantee shall file a copy of its treatment protocols and transfer policies with the Fire Chief and shall forward any changes in such protocols or procedures no less than five (5) working days prior to implementation of same.

5. Dispatcher's Responsibilities. Grantee's Dispatchers shall make reasonable efforts to determine if a request for service is an emergency or non-emergency. Upon receipt of request for emergency service within the City limits of El Paso, or if Grantee responds to a call within the City limits that in good faith was taken as a non-emergency and then upon arrival it is determined that the call is an emergency, the call shall be immediately relayed by Grantee to EPFD Communications via radio or, if necessary, Grantee shall relay the call via 9-1-1 or 832-4438. EPFD will either elect to respond the call or give Grantee permission to respond.

6. Response to Emergency Situations. Unless authorized to do so by the Fire Chief or his designee, Grantee, its agents, or its employees, shall not knowingly go to the scene of an emergency within the City limits of El Paso with the intent to provide emergency service and transportation; provided, however, if Grantee discovers an emergency situation within the City limits of El Paso it shall immediately notify the EPFD Communications via EPFD radio and shall remain to render aid until an EPFD vehicle arrives or may transport if instructed to do so per EPFD Communications via EPFD radio. Such aid must be comprehensive and at the maximum level allowed for those personnel by the Grantee's medical director.

7. Uniforms. Grantee's employees shall be required to wear uniforms while performing duties associated with the transportation and care of a customer. Uniform style and color provided by Grantee shall have the prior written approval of the Fire Chief and shall not resemble the uniform of the Fire Department or Fire Medical Services.

8. Representation as EMT. Neither Grantee nor its employees shall hold out to the public in any manner that they are trained Emergency Medical Technicians or Paramedics unless they have been so certified by the Texas Department of State Health Services, Emergency Medical Services Division.

9. EMT to Attend Customer. The highest certified Emergency Medical Technician assigned to Grantee's ambulance must accompany the patient and render any medical care.

10. Ambulance for Customer Transport Only. Ambulances shall be used only for the purpose of transporting customers.

ARTICLE III. ADMINISTRATION AND REGULATIONS

A. State-Issued EMS Provider License

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1. State License to Be Filed with City. Before commencing operations under this franchise, Grantee shall file with the City Clerk and the Fire Chief, a copy of its EMS Provider License as issued by the State of Texas, Department of State Health Services.

2. Suspension, Revocation, Non-Renewal of State License. Should Grantee's state-issued EMS Provider License be suspended, revoked or not renewed by the State of Texas, Grantee shall not operate any ambulance upon the streets, alleys or public rights-of-way within the City of El Paso until such time as Grantee's EMS Provider License is reinstated or renewed by the State of Texas. Grantee shall immediately notify the Fire Chief of any suspension, revocation, or non-renewal of its state-issued EMS Provider License.

3. Termination of Franchise Where Grantee Not Licensed by State. The basis set forth by the State of Texas for the suspension, revocation, or non-renewal of Grantee's EMS Provider License shall constitute a reasonable basis for the cancellation, termination or revocation of this franchise by the City of El Paso.

B. Rates

1. Grantee's Rates. The Mayor and City Council, hereby approve the schedule of rates attached hereto as "Exhibit A" and by reference made a part hereof. Any change in this schedule of rates under this franchise shall be subject to the prior approval of the Mayor and City Council before being assessed to any patient or client by Grantee.

2. Rates for EPFD-directed Emergency Response. Whenever the Grantee shall be directed by the Fire Chief to respond to an emergency as permitted by this franchise agreement or other applicable law, the Grantee shall be permitted to charge the rates which the Fire Department is authorized to charge at the time the service is rendered.

C. Grantee's Office and Telephone Number

The Grantee shall, at its own cost, maintain an office within the City, which shall be open during all usual business hours, have a publicly-listed telephone with a locally accessible number and sufficient lines and be operated so that complaints and requests for billing or adjustments shall be received on a twenty-four (24) hour basis.

D. Billing Statements

1. Franchising Authority Identified. Grantee's billing statements shall include the Grantee's proper phone number and street address for its El Paso office and shall identify the City as Grantee's franchising authority as follows: Franchising Authority: City of El Paso, Attn: Fire Department, Fire Medical Services, 8600 Montana Street, El Paso, Texas 79925.

2. Complaints May Be Sent to City of El Paso. Grantee shall include in each of its billing statements a notice to its clients and patients that copies of complaints may be forwarded to the Grantee's franchising authority, the City of El Paso.

E. Customer Complaints

1. Complaint Procedure shall, in addition to the requirements mandated elsewhere in this franchise agreement, establish procedures for receiving, acting upon, and resolving complaints. A copy of the most current procedures shall be filed with the Fire Chief. The Grantee shall furnish a notice of such procedures to its patients and clients on each of its billing statements.

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2. Complaint Logs. The Grantee shall keep a log, which will indicate the name of the complainant, the name of the customer (if different from the complainant), the nature of each complaint, the date and time it was received, the disposition of said complaint and the time and date thereof. This log shall be made available for periodic inspection by representatives of the City.

3. Retention of Complaint Logs. All complaint entries shall be retained on file for a period of two (2) years from the date the complaint entry was made.

4. Multiple complaints - City-ordered Investigation, Analysis and Report. When similar complaints are filed or when other evidence exists which casts doubt on the reliability or quality of Grantee's service, the City shall have the right to require the Grantee to investigate, analyze, and report on the performance of the transfer service and the personnel involved. Such report shall be delivered to the City no later than fourteen (14) days after the City formally notifies the Grantee and shall include, at a minimum, the following information: the nature of the complaints which precipitated the investigation; the equipment used in rendering services; the procedures employed in rendering services to the complainant or patient; a narrative of the incident and the resulting outcome; and the method by which said complaints were resolved.

5. City May Conduct Own Investigation. The City may conduct its own investigation, analysis and draft reports regarding the Grantee's customer service. The City may also require that an investigation, analysis and report be conducted or supervised by an independent health care professional with demonstrated knowledge and understanding of appropriate EPFD and Medical Transfer procedures and protocols and who is not on the permanent staff of the Grantee.

6. Selection of Independent Health Care Professional. An independent health care professional shall be selected by the Grantee from a list of no less than two persons or firms nominated by the City of El Paso through its Fire Chief. Should Grantee fail to select an independent health care professional from the list of nominees within ten days after receiving the notice identifying the nominees, the City shall be entitled to select the independent health care professional and such selection shall be final. The aforesaid professional shall sign all reports of the investigation and analysis and shall forward the report, including such records as necessary to properly interpret the results of the investigation and analysis, to the City or other designated City representative. The report shall recommend actions to be taken by the Grantee and the City. The reasonable costs of

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such independent investigation shall be paid by the Grantee, provided, however, in the event such investigation determines that the Grantee is operating in accordance with all performance standards and requirements of this franchise, all costs for such independent investigation shall be paid by the City.

7. Basis for Investigation. The City shall require investigations, analyses, and reports when and under such circumstances as the City has reasonable grounds to believe a) that the health or welfare of the public may be at risk or b) that Grantee's level of service does not meet or comply with the standards of care and service which are customary in the emergency medical profession or which are required by federal, state, or local laws.

F. **HHS PRIVACY REGULATIONS.** The Health Insurance Portability and Accountability Act (HIPAA) *Standards for Privacy of Individually Identifiable Health Information* (Privacy Rule). See 45 CFR Part 160 and Subparts A and E of Part 164, requires that the City of El Paso offer assurances to the Franchisee that the City of El Paso will safeguard any protected health information received or created on behalf of the Franchisee. Pursuant to this requirement, the following is set forth:

(a) **Definitions**. The following terms shall have the meaning ascribed to them in this Section. Other capitalized terms shall have the meaning ascribed to them in the context in which they first appear.

1. **Contract** shall refer to this document.
2. **Business Associate** means the City of El Paso.
3. **HHS Privacy Regulations** shall mean the Code of Federal Regulations ("C.F.R.") at Title 45, Sections 160 and 164.
4. **Individual** shall mean the person who is the subject of the Information, and has the same meaning as the term "individual" is defined 45 C.F.R. 164.501.
5. **Information** shall mean any "health information" provided and/or made available by the FRANCHISEE to BUSINESS ASSOCIATE, and has the same meaning as the term "health information" as defined by 45 C.F.R. 160.102.
6. **Parties** shall mean BUSINESS ASSOCIATE and the FRANCHISEE.
7. **Secretary** shall mean the Secretary of the Department of Health and Human Services ("HHS") and any other officer or employee of HHS to whom the authority involved has been delegated.

(b) **Limits On Use And Disclosure Established by Terms of Contract.** BUSINESS ASSOCIATE hereby agrees that it shall be prohibited from using or disclosing the Information provided or made available by the FRANCHISEE for any other purpose other than as expressly permitted or required by this Contract (ref. 164.504(e)(2)(i).)

(c) **Stated Purposes For Which BUSINESS ASSOCIATE May Use Or Disclose Information.** The Parties hereby agree that BUSINESS ASSOCIATE shall be permitted to use and/or disclose Information provided or made available from FRANCHISEE for the following stated purposes:
For the purpose of complaint investigation. (ref. 164.504(e)(2)(i); 65 Fed. Reg. 82505.)

(d) **Use of Information For Management, Administrative and Legal Responsibilities.** BUSINESS ASSOCIATE is permitted to use Information if necessary for the proper management and

administration of BUSINESS ASSOCIATE or to carry out legal responsibilities of BUSINESS ASSOCIATE. (ref. 164.504(e)(4)(i)(A-B)).

(e) **Use of Information For Management, Administrative and Legal Responsibilities.** BUSINESS ASSOCIATE is permitted to use Information if necessary for the proper management and administration of BUSINESS ASSOCIATE or to carry out legal responsibilities of BUSINESS ASSOCIATE. (ref. 164.504(e)(4)(i)(A-B)).

(f) **Disclosure of Information For Management, Administration and Legal Responsibilities.** BUSINESS ASSOCIATE is permitted to disclose Information received from FRANCHISEE for the proper management and administration of BUSINESS ASSOCIATE or to carry out legal responsibilities of BUSINESS ASSOCIATE, provided:

1. The disclosure is required by law; or
2. The BUSINESS ASSOCIATE obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, the person will use appropriate safeguards to prevent use or disclosure of the information, and the person immediately notifies the BUSINESS ASSOCIATE of any instance of which it is aware in which the confidentiality of the information has been breached. (ref. 164.504(e)(4)(ii)).

(g) **Data Aggregation Services.** BUSINESS ASSOCIATE is also permitted to use or disclose Information to provide data aggregation services, as that term is defined by 45 C.F.R. 164.501, relating to the health care operations of FRANCHISEE. (ref. 164.504(e)(2)(i)(B)).

(h) BUSINESS ASSOCIATE OBLIGATIONS:

1. **Limits on Use and Further Disclosure Established by Contract and Law.** BUSINESS ASSOCIATE hereby agrees that the Information provided or made available by the FRANCHISEE shall not be further used or disclosed other than as permitted or required by the Contract or as required by law. (ref. 45 C.F.R. 164.504(e)(2)(ii)(A)).
2. **Appropriate Safeguards.** BUSINESS ASSOCIATE will establish and maintain appropriate safeguards to prevent any use of disclosure of the Information, other than as provided for by this Contract. (ref. 164.504(e)(2)(ii)(B)).
3. **Reports of Improper Use or Disclosure.** BUSINESS ASSOCIATE hereby agrees that is shall report to FRANCHISEE **within two (2) days of discovery** any use or disclosure if Information not provided for or allowed by this Contract. (ref. 164.504(e)(2)(ii)(C)).
4. **Subcontractors And Agents.** BUSINESS ASSOCIATE hereby agrees that anytime Information is provided or made available to any subcontractors or agents, BUSINESS ASSOCIATE must enter into a subcontract with the subcontractor or agent that contains the same terms, conditions and restrictions on the use and disclosure of Information as contained in this Contract. (ref. 164.504(e)(2)(ii)(D)).
5. **Right Of Access To Information.** BUSINESS ASSOCIATE hereby agrees to make available and provide a right of access to Information by an Individual. This right of access shall conform with and meet all of the requirements of 45 C.F.R. 164.524, including substitution of the words "COVERED ENTITY" with BUSINESS ASSOCIATE where appropriate. (ref. 164.504(e)(2)(ii)(E)).

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6. **Amendment And Incorporation Of Amendments.** BUSINESS ASSOCIATE agrees to make Information available for amendment and to incorporate any amendments to Information in accordance with 45 C.F.R. 164.504(e)(2)(ii)(F)).
7. **Provide Accounting.** BUSINESS ASSOCIATE agrees to make Information available as required to provide an accounting of disclosures in accordance with 45 C.F.R. 164.528, including substitution of the words "COVERED ENTITY" with BUSINESS ASSOCIATE where appropriate. (ref. 164.504(e)(2)(ii)(G)).
8. **Access To Books And Records.** BUSINESS ASSOCIATE hereby agrees to make its internal practices, books, and records relating to the use or disclosure of Information received from, or created or received by BUSINESS ASSOCIATE on behalf of the FRANCHISEE, available to the Secretary or the Secretary's designee for purposes of determining compliance with the HHS Privacy Regulations. (ref. 164.504(e)(2)(ii)(H)).
9. **Return Or Destruction Of Information.** At the termination of this Contract, BUSINESS ASSOCIATE hereby agrees to return or destroy all Information received from, or created or received by BUSINESS ASSOCIATE on behalf of the FRANCHISEE. BUSINESS ASSOCIATE agrees not to retain any copies of the Information after termination of the Contract. If return or destruction of the Information is not feasible, BUSINESS ASSOCIATE agrees to extend the protections of this Contract for as long as necessary to protect the Information and to limit any further use of disclosure. If BUSINESS ASSOCIATE elects to destroy the Information, it shall certify to the FRANCHISEE that the Information has been destroyed. (ref. 164.504(e)(2)(ii)(I)).
10. **Mitigation Procedures.** BUSINESS ASSOCIATE agrees to have procedures in place for mitigating, to the maximum extent practicable, any deleterious effect from the use or disclosure of Information in a manner contrary to this Contract or the HHS Privacy Regulations. (ref. 164.530(f)).
11. **Sanction Procedures.** BUSINESS ASSOCIATE agrees and understands that it must develop and implement a system of sanctions for any employee, subcontractor or agent who violates this Agreement of the HHS Privacy Regulations. (ref. 164.530(e)(1)).

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(i) **Property Rights.** The Information shall be and remain the property of the FRANCHISEE. BUSINESS ASSOCIATE agrees that it acquires no title or rights to the Information, including any de-identified information, as a result of this Contract.

PASSED AND APPROVED this _____ day of _____, 2007.

WITNESS THE FOLLOWING SIGNATURES AND SEALS:

THE CITY OF EL PASO

_____
John Cook
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

Ernesto Rodriguez
Assistant City Attorney

APPROVED AS TO CONTENT:

Roberto Rivera
Fire Chief

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(ACCEPTANCES AND ACKNOWLEDGMENT ON THE FOLLOWING PAGE)

ACCEPTANCE AND ACKNOWLEDGMENT

ACCEPTANCE

The above instrument, with all conditions thereof, is hereby accepted this 21 day of November, 2007.

LIFE AMBULANCE SERVICE, INC

By: Rachel Harracksingh
Printed Name: Rachel Harracksingh
Title: EVP

ACKNOWLEDGEMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this 21 day of November, 2007, by Rachel Harracksingh, as _____, on behalf of **LIFE AMBULANCE SERVICE, INC.**

LAURA D. PRINE
NOTARY PUBLIC
In and for the State of Texas
My commission expires
08-05-2009

Laura D. Prine
Notary Public, State of Texas
Notary's Printed or Typed Name:
Laura D Prine

My Commission Expires:

RECEIVED FOR FILING THIS 21st **DAY OF** November**, 2007.**

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Richarda Duffy Momsen
Richarda Duffy Momsen, City Clerk

EXHIBIT A

LIFE AMBULANCE SERVICE, INC

Public Rates

BLS Non-Emergency Transport	**$295.00**
BLS Emergency Transport	**$335.00**
ALS Non-Emergency Transport	**$325.00**
ALS 1 Emergency Transport	**$360.00**
ALS 2 Emergency Transport	**$485.00**
SCT Specialty Care Transport	**$575.00**
Mileage	**$7.85**

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