

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

**DEPARTMENT:** Fire

**AGENDA DATE:** April 4, 2017

**CONTACT PERSON/PHONE:** Mario D'Agostino, Interim Fire Chief, 915-485-5605

**DISTRICT(S) AFFECTED:** All

**STRATEGIC GOAL: NO. 2 Set the Standard for a Safe and Secure City**

**SUBJECT:**

The El Paso Fire Department recommends that the City Manager be authorized to sign the Franchise Agreement extension between the City of El Paso, Texas and DOMINION AMBULANCE, LLC. for the latter to operate a non-emergency transfer service within the City and upon the public streets, right-of-ways and alleys of the City of El Paso; from 12:01 a.m. May 1, 2017 through April 30, 2019.

**BACKGROUND / DISCUSSION:**

The agreement in effect with DOMINION AMBULANCE, LLC. is to provide a non-exclusive franchise to operate a non-emergency transfer service with the City of El Paso. El Paso Fire Department only provides emergency services, and does not provide non-emergency transfer services.

**COUNCIL REPRESENTATIVE BRIEFING:**

Was a briefing provided? ☐ Yes or ☒ No

**PRIOR COUNCIL ACTION:**

DOMINION AMBULANCE, LLC. has been providing non-emergency ambulance transfer services under a franchise renewal granted by the City Council through Ordinance No. 018340 April 14, 2015, which extended and modified Ordinance No. 107997 approved on April 30, 2013, which extended and modified Ordinance No. 017783 dated May 1, 2012, and before that, the franchise was approved through Ordinance No. 017553 dated May 10, 2011, and Ordinance No. 07105 on April 7, 2009, which renewed Ordinance No. 016647 dated May 29, 2007.

**AMOUNT AND SOURCE OF FUNDING:**

Total Amount: Revenue Generating

Funding Source: Dept: 999; Division: 99999; Fund: 1000; Account: 431200; Funding Source: Ambulance Service Revenue

**BOARD / COMMISSION ACTION:**

N/A

\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**DEPARTMENT HEAD:** \_\_\_\_\_

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE GRANTING A FRANCHISE FOR DOMINION AMBULANCE, LLC, 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**, **DOMINION AMBULANCE, LLC. ("GRANTEE")** has been providing non-emergency ambulance transfer services under a franchise renewal granted by the City Council through Ordinance No. 018340 on April 14, 2015, which extended and modified Ordinance No. 107997 approved on April 30, 2013, which extended and modified Ordinance No. 017783 dated May 1, 2012, and before that, the franchise was approved through Ordinance No. 017553 dated May 10, 2011, and Ordinance No. 017105 on April 7, 2009, which renewed Ordinance No. 016647 dated May 29, 2007; and

**WHEREAS**, Section 3 of Ordinance No. 017997 dated April 30, 2013, allows for an extension of the non-emergency ambulance transfer service franchise, provided Grantee give to the City a written request to extend the franchise no later than three (3) months prior to the expiration date of this franchise whether it be during the initial term or any renewal period; and

**WHEREAS**, Grantee provided said written request in a timely fashion; and

**WHEREAS**, there have been numerous amendments made to the ordinance over the years, and the City now seeks to provide a restatement in order to consolidate all of the changes into one sole document for ease of reference; and

**WHEREAS**, on evidence received, City Council finds that public convenience and necessity justify granting a franchise to **GRANTEE** to operate a non-emergency ambulance transfer service in the City of El Paso, Texas.

**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 **DOMINION AMBULANCE, LLC**, 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 franchise 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.

1. "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 franchise.
2. "City Council" shall mean the council of the City as the governmental, legislative and administrative body of the City.
3. "Customer" shall mean any person who requests or receives the services of the Grantee.
4. "DSHS" shall mean the Texas Department of State Health Services.
5. "Fire Chief" shall mean the Fire Department official responsible for the management of emergency ambulance service for the City of El Paso or his designee.
6. "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.
7. "Grantee" shall mean **DOMINION AMBULANCE, LLC**.
8. "Net Receipts" shall be defined as all cash, credits and property of any kind or nature received as consideration directly or indirectly by the Grantee, its affiliates, subsidiaries, parent and any person in which Grantee has a financial interest, or from any source whatsoever, arising from or attributable to the transport of patients or services rendered in relation to the transport of a patient by the Grantee or in any way derived from the operation of its franchise. These net receipts shall not be reduced for any purpose and shall be the basis for computing the franchise fee.
9. "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 and other applicable laws.
10. "Person" means any individual, firm, partnership, limited partnership, association, corporation, company, and organizations of any kind, or any other legally recognized entity.
11. "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.

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

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., May 1, 2017 (the "Effective Date"), with the possibility to renew the franchise as set forth below.

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. **Renewal Procedure.** If the Grantee wishes that the City renew this franchise, Grantee shall submit a request in writing to the City Clerk's Office, P.O. Box 1890, El Paso, Texas 79950-1890, by at least three (3) months prior to the expiration date of this franchise, whether it be during the initial term or any renewal period. The City shall consider Grantee's written request and shall determine whether public convenience and necessity justify renewal of this franchise, including during any renewal period.

2. 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 franchise shall be required if Grantee desires to operate a non-emergency ambulance franchise within the City of El Paso.

3. Notwithstanding Article I, Sections E.1 and E.2 of this franchise, the City Manager is authorized to grant a thirty (30) day extension of this franchise, under the same terms and conditions in effect at the time that Grantee makes its written renewal request, whether or not Grantee timely submits the renewal request notice prior to the expiration of this franchise during the initial term or any renewal periods.

4. **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.

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. Contractor shall be required to obtain and maintain in effect throughout the term of the Agreement a public liability insurance policy which meets the requirements set forth in this Agreement. This policy shall be for the protection of any person, whether a passenger or patient in Contractor's ambulance or not, whether injured or killed by the negligence of Contractor or its agent or employee and shall not contain a passenger liability exclusion.

2.1 Contractor shall obtain and maintain in effect throughout the term of this Agreement public liability insurance in an amount of not less than \$1,000,000 each occurrence with \$2,000,000 annual aggregate. Contractor shall immediately advise the Fire Chief of any claim or litigation which affects Contractor's insurance coverage.

2.2 Contractor shall maintain comprehensive general and automobile liability coverage with limits of no less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) annual aggregate. Contractor shall maintain medical professional liability coverage with limits of no less than five hundred thousand dollars (\$500,000) per occurrence and one million dollars (\$1,000,000) annual aggregate (including incidental medical malpractice coverage). These amounts are not a limitation upon the Contractor's agreement to indemnify and hold the City harmless. Contractor shall immediately advise the Fire Chief of any claim or litigation which affects Contractor's insurance.

2.3 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.

2.4 The policy of public liability insurance shall provide that it cannot be suspended, revoked, canceled or reduced in coverage without sixty (60) days written notice to the City.

2.5 The policy shall provide that the insurer will defend against all claims and lawsuits which arise and will pay any final judgment of a court of competent jurisdiction against the City, its officers, agents, servants or employees and Contractor, his officers, agents, servants or employees. The policy shall name the City of El Paso, its officers, agents, servants and employees as additional insureds to the full amount of the policy limits.

2.6 Contractor shall not operate its service during any period for which: 1) its insurance lapses for any reason; 2) its insurance is suspended, revoked or canceled; or 3) the amount of effective coverage of its insurance has been reduced below the minimum coverage amounts required by this Agreement. Failure to keep the policy in full force and effect throughout the term of the special privilege shall be grounds for termination of the Agreement.

2.7 Contractor shall forward to the Fire Chief a copy of each certificate of insurance issued within fifteen (15) days after the execution of this Agreement and as such policy or policies are modified, renewed, suspended or canceled.

2.8 Certificates of insurance that state that the insurer shall endeavor to give notice and/or that there shall be no liability for the failure to give the notice required herein shall not meet the requirements of this section.

#### 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 2.75% of Grantee's monthly net receipts.

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

3. Net Receipts. Net receipts shall include those items of revenue as defined by generally accepted accounting principles and as defined herein for the type of business and accounting method used.

4. Payment Due Date. Grantee's payments shall be paid monthly and shall be postmarked by the 15th day of the month following the month for which net receipts 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 Net Receipts Reportable. If Grantee has no net receipts for a given month, Grantee shall provide written verification that it has no net receipts which shall be postmarked 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

Grantee agrees that it will keep a true and accurate set of books, accounts and records. 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 Net Receipts Required

The Grantee shall submit to the City Comptroller an annual audited statement of net receipts by month for fees derived in the Franchise Area. 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 franchise 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

In addition to all remedies provided in this franchise, 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 franchise, 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  
P.O. Box 1890  
El Paso, Texas 79950-1890

and

Fire Chief  
Fire Department  
416 N. Stanton, Ste. 200  
El Paso, Texas 79901



and

**DOMINION AMBULANCE, LLC**  
**Attn: Demetrius E. Alonzo, President/CEO**  
**155 N. San Marcial**  
**El Paso, Texas 79905-1025**

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.
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. Article II, Section C.3 of this franchise contains specific terms regarding termination for failure to meet response times. The City may at any time make an inquiry as to whether Grantee is able to comply with each and every term of this franchise.
4. **Convenience.** This non-exclusive franchise for non-emergency ambulance transfer service may be terminated in whole or in part by the City by giving thirty (30) days' written notice of termination to Grantee. Such right of termination is in addition to and not in lieu of rights of the City set forth in Article I, Sections R.1-3 and Article II, Section C.3 of the present franchise.
5. **Annual Review.** The City shall conduct a compliance review regarding all aspects of this franchise ninety (90) days prior to the end of each twelve month period. Should the City determine that compliance is not being met, the City shall proceed under the provisions of Art. I, Sec. R.3 of this franchise.

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 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 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 Y ("Amendments") of this franchise.

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 which are incorporated in this franchise 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 Health Care 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 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 franchise 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 eighty minutes for at least ninety percent (90%) of the time after the request for service is received unless pre-arrangements are made.

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 twenty five minutes for at least ninety percent (90%) of the time for non-emergency calls.

3. Failure to Meet Response Time. In the event that Grantee fails to meet the response times indicated in this Section C, during four consecutive months, the City shall notify Grantee of such failure and that failure to meet the response times during the immediately following month shall be grounds for immediate termination of this franchise.

### **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

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 personnel and personnel records information as required in Article II, Section H(1) of this franchise.
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 a license issued by the State of Texas or New Mexico which is valid to operate an emergency vehicle and transfer ambulance.

5. EMT Identification Required. While on duty, each of Grantee's attendants and drivers shall be required to possess proof of 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 the following communicable diseases (Tuberculosis, Measles, Mumps, Rubella, Hepatitis B, and Tetanus) 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 or Emergency Vehicles Operation 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 or an Emergency Vehicles Operation Course, the latter from the El Paso Fire Department, 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 Advanced EMT 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. Subsequent to the initial inspection, all ambulances which are subject to this franchise shall be inspected by the Fire Chief or designee every two years, except as noted in Article II.J.2.

2. Field Inspections. Ambulances may be inspected in the field at any hour by the Fire Chief or designee, and he may require any ambulance to proceed to a specified location for further inspection. If Grantee has three ambulance field inspection failures within a 12-month period, then the City shall re-inspect Grantee's entire ambulance fleet within 30 days of the last failed field inspection.

3. Non-Compliance. The Fire Chief or designee shall flag the ambulance and remove the permit sticker from an ambulance that fails an inspection. Grantee shall not operate an ambulance without a valid permit sticker. It shall be an event of default for Grantee to operate a vehicle without a valid permit.

4. Inspection Process. Each inspection shall include:

a. Confirmation that the vehicle has a current motor vehicle registration sticker on the front windshield in compliance with Texas Transportation Code §502.059(c), as amended, with proof of vehicle inspection pursuant to the requirements of Texas Transportation Code Chapter 548, 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 inspection of the vehicle(s) for the purpose of determining full operation of the following motor vehicle equipment:

(1) headlights, tail-lights, back-up lights, ambulance body clearance lights (if appropriate), brake lights and license plate lights, and appropriate emergency lights and sirens; and

(2) tires.

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

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

6. Permit Sticker. A vehicle that meets the requirements of this franchise under this ordinance shall be issued a permit sticker indicating its validity for a twenty-four month period from the date of inspection. The sticker's 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. An ambulance that has met the inspection requirements of this franchise shall display the permit sticker on the vehicle's rear window and said sticker shall be visible from the exterior of the vehicle at all times.

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

8. 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. Thereafter, until the vehicle passes inspection, it shall not be operated for customer transportation or care upon the streets of the City of El Paso.

9. 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.

10. Specialty Ambulance. The City, upon verification of the licensing of a vehicle as a specialty ambulance by the Texas Department of State Health Services, shall issue a sticker, as described in Article II, Section J.5, for any such vehicle.

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 its company's name. Grantee's name shall be marked with a minimum one inch wide and five inch tall lettering on at least three sides of the ambulance. The color of Grantee's name must contrast with the color of the ambulance or the wrap. The Texas Department of State Health Service provider's license number shall be displayed on the sides of the ambulance with "TX" appearing prior to said number in the width and height required by the State of Texas. Business phone numbers and logos are permissible; however, the words "Emergency Medical Services" or "EMS" shall not be used in any fashion.



4. Grantee shall submit to the Fire Chief or designee the Grantee's Equipment and Medical checklist for approval. Grantor shall conduct the required vehicle inspection with said checklist to ensure that Grantee meets state and local requirements. Changes to Grantee's equipment as listed on the checklist shall be submitted to the Fire Chief or designee within fifteen days of a change.

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.

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 a 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 911 or 915-832-4429. EPFD will either elect to respond to the call or give Grantee permission to handle the incident.

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.

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. All patient care and transport decisions are the responsibility of the highest medically trained and highest credentialed person on the scene. After a complete patient assessment and if the patient is stable, patient will be attended by the most appropriate certified EMT. In the event of an emergency situation, Grantee shall adhere to Article II.L.6 of this Franchise. .

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**

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 maximum rates attached hereto as "Exhibit A" and by reference made a part hereof. Any increase to the listed 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. Grantee shall indicate where any discounts to third parties have been given when providing its payment to the City.

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 or other applicable law, the Grantee shall charge the City of El Paso rates established in the City's Budget Resolution or other resolution appropriately adopted by the El Paso City Council for Grantee's services provided to this franchise, instead of the rates listed for emergency response in the attached "Exhibit A". The discounts referenced in Article III, B.1 above are not applicable to EPFD-directed emergency response.

3. Special Segments: The following shall be handled as stated below:

- a. Long Distance. Long Distance transport fee shall only include the base rate and shall exclude mileage from the computation.
- b. Airport Transfer. For calls that originate in the City of El Paso and request transfer to the El Paso International Airport the fee shall only include the base rate and shall exclude mileage from the computation.
- c. Special Events. Special events shall be billed only when an actual transport is required to an El Paso hospital from a special event and shall include both the base rate and the mileage.

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 Research Division, 416 N. Stanton, Ste. 200, El Paso, Texas 79901.
- 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, 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.
- 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 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), as amended by the HITECH Act and regulations promulgated thereunder by the

U.S. Department of Health and Human Services, and any subsequent amendments or modifications thereto (collectively, “HIPAA”); see 45 CFR Part 160 and Subparts A and E of Part 164, requires that Grantee offer assurances to the City that the Grantee will safeguard any protected health information received or created on behalf of the City. Pursuant to this requirement, the following is set forth:

1. **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, or as provided in (1)(h) to this Section.
  - a. **Agreement** shall refer to this document.
  - b. **Business Associate** means Grantee.
  - c. **HHS Privacy Regulations** shall mean the Code of Federal Regulations (“C.F.R.”) at Title 45, Sections 160 and 164, in effect, or as amended.
  - d. **Individual** shall mean the person who is the subject of the Information, and has the same meaning as the term “individual” is defined in 45 C.F.R. 164.501.
  - e. **Information** shall mean any “health information” provided and/or made available by the CITY to BUSINESS ASSOCIATE, and has the same meaning as the term “health information” as defined by 45 C.F.R. 160.102.
  - f. **Parties** shall mean the CITY and BUSINESS ASSOCIATE.
  - g. **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.
  - h. **Catch-all definition:** The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Privacy, Security, Breach Notification and Enforcement Rules at 45 C.F.R. Part 160 and 164, in effect, or as amended: breach, data aggregation, designated record set, disclosure, health care operations, protected health information, required by law, subcontractor, and use.
2. **Limits on Use and Disclosure Established by Terms of Agreement.** BUSINESS ASSOCIATE hereby agrees that it shall be prohibited from using or disclosing the Information provided or made available by the CITY for any other purpose other than as expressly permitted or required by this Agreement (ref. 45 C.F.R. 164.504(e)(2)(i).)
3. **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 CITY for the following stated purposes:

To provide ambulance, public health, and related support services (service) to the community of the CITY for the mutual benefit and general welfare of BUSINESS ASSOCIATE and the CITY (ref. 45 C.F.R. 164.504(e)(2)(i); 65 Fed. Reg. 82505.)

4. **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. 45 C.F.R. 164.504(e)(4)(i)(A-B)).
5. **Disclosure of Information for Management, Administration and Legal Responsibilities.** BUSINESS ASSOCIATE is permitted to disclose Information received from CITY for the proper management and administration of BUSINESS ASSOCIATE or to carry out legal responsibilities of BUSINESS ASSOCIATE, provided:
  - a. The disclosure is required by law; or
  - b. 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. 45 C.F.R. 164.504(e)(4)(ii)).
6. **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 CITY. (ref. 45 C.F.R. 164.504(e)(2)(i)(B)).
7. **BUSINESS ASSOCIATE OBLIGATIONS:**
  - a. **Limits on Use and Further Disclosure Established by Agreement and Law.** BUSINESS ASSOCIATE hereby agrees that the Information provided or made available by the CITY shall not be further used or disclosed other than as permitted or required by the Agreement or as required by federal law. (ref. 45 C.F.R. 164.504(e)(2)(ii)(A)).
  - b. **Appropriate Safeguards.** BUSINESS ASSOCIATE will establish and maintain appropriate safeguards to prevent any use or disclosure of the Information, other than as provided for by this Agreement. (ref. 45 C.F.R. 164.504(e)(2)(ii)(B)).
  - c. **Reports of Improper Use or Disclosure.** BUSINESS ASSOCIATE hereby agrees that it shall report to CITY **within two (2) days of discovery** any use or disclosure of Information not provided for or allowed by this Agreement. (ref. 45 C.F.R. 164.504(e)(2)(ii)(C)).

- d. **Subcontractors and Agents.** BUSINESS ASSOCIATE hereby agrees that any time 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 Agreement. (ref. 45 C.F.R. 164.504(e)(2)(ii)(D)).
- (i) **45 C.F.R. 164.502(e)(1)(ii) and 164.308(b)(2).** In accordance with 45 C.F.R. 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, BUSINESS ASSOCIATE agrees to ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of BUSINESS ASSOCIATE agree in writing to the same restrictions and conditions that apply through this Agreement to BUSINESS ASSOCIATE with respect to such Information.
- e. **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 Section 181.102 of the Texas Health and Safety Code, requiring that not later than the 15th business day after the date of the receipt of a written request from a person for the person's electronic health record, BUSINESS ASSOCIATE shall provide the requested record to the person in electronic form unless the person agrees to accept the record in another form, and with any further requirements of 45 C.F.R. 164.524, including substitution of the words "COVERED ENTITY" with BUSINESS ASSOCIATE where appropriate. (ref. 45 C.F.R. 164.504(e)(2)(ii)(E)).
- f. **Correction of Health Information by Individuals.** BUSINESS ASSOCIATE shall, upon receipt of notice from the CITY, amend or correct protected health information (PHI) in its possession or under its control.
- g. **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)).
- h. **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. 45 C.F.R. 164.504(e)(2)(ii)(G)).
- i. **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 CITY, available to the Secretary or the Secretary's designee for purposes of determining compliance with the HHS Privacy Regulations. (ref. 45 C.F.R. 164.504(e)(2)(ii)(H)).

- j. **Return or Destruction of Information.** At the termination of this Agreement, BUSINESS ASSOCIATE hereby agrees to adhere to Section B.3. of this Agreement. (ref. 45 C.F.R. 164.504(e)(2)(ii)(I)).
  - k. **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 Agreement or the HHS Privacy Regulations. (ref. 45 C.F.R. 164.530(f)).
  - l. **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. 45 C.F.R. 164.530(e)(1)).
  - m. **Subpart E of 45 C.F.R. Part 164.** To the extent BUSINESS ASSOCIATE is to carry out one or more of CITY'S obligations under Subpart E of 45 C.F.R. Part 164, BUSINESS ASSOCIATE shall comply with the requirements of Subpart E that apply to CITY in the performance of such obligation(s).
  - n. **Prohibition against the Sale of Protected Health Information.** The BUSINESS ASSOCIATE shall comply with the requirements of Texas Health and Safety Code Sec. 181.153, and any amendments of that section.
  - o. **Notice and Authorization Required for Electronic Disclosure of PHI.** The BUSINESS ASSOCIATE shall comply with the requirements of Texas Health and Safety Code Sec. 181.154, and any amendments of that section, regarding the requirement of providing notice to an Individual for whom the BUSINESS ASSOCIATE creates or receives protected health information if the Individual's PHI is subject to electronic disclosure.
  - p. **State Law on Medical Records Privacy.** The BUSINESS ASSOCIATE shall abide by the requirements set forth in Texas Health and Safety Code Section 181.001 et. seq., and any amendments of that chapter.
8. **Property Rights.** The Information shall be and remain the property of the CITY. BUSINESS ASSOCIATE agrees that it acquires no title or rights to the Information, including any de-identified Information, as a result of this Agreement.
9. **Modifications.** The CITY and BUSINESS ASSOCIATE agree to modify this Business Associate Agreement, in order to comply with Administrative Simplification requirements of HIPAA, as set forth in Title 45, Parts 160 and 164,



(Subparts A and E the “Privacy Rule” and Subparts A and C the “Security Rule”) of the Code of Federal Regulations.

10. **Automatic Amendment.** Upon the effective date of any amendment to the regulations promulgated by HHS with respect to PHI, this Business Associate Agreement shall automatically amend such that the obligations imposed on BUSINESS ASSOCIATE as a Business Associate remain in compliance with such regulations.

**PASSED AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2017.**

**WITNESS THE FOLLOWING SIGNATURES AND SEALS:**

THE CITY OF EL PASO

\_\_\_\_\_  
Oscar Leaser  
Mayor

ATTEST:

\_\_\_\_\_  
Richarda Duffy Momsen  
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

\_\_\_\_\_  
Josette Flores  
Assistant City Attorney

\_\_\_\_\_  
Mario D'Agostino  
Interim Fire Chief

(ACCEPTANCES AND ACKNOWLEDGMENT ON THE FOLLOWING PAGE)

**ACCEPTANCE AND ACKNOWLEDGMENT**

**ACCEPTANCE**

The above instrument, with all conditions thereof, is hereby accepted this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

**DOMINION AMBULANCE, LLC**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ACKNOWLEDGEMENT**

THE STATE OF TEXAS     )

)

COUNTY OF EL PASO     )

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by \_\_\_\_\_, as \_\_\_\_\_, on behalf of **DOMINION AMBULANCE, LLC**.

\_\_\_\_\_  
Notary Public, State of Texas

Notary's Printed or Typed Name:

My Commission Expires:

\_\_\_\_\_

**RECEIVED FOR FILING THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2017.**

\_\_\_\_\_  
Richarda Duffy Momsen, City Clerk

## EXHIBIT A

### DOMINION AMBULANCE, LLC

#### Public Rates

<b>BLS Non-emergency Transport</b>	
<b>BLS Emergency Transport</b>	
<b>ALS –Non-emergency Transport</b>	
<b>ALS 1 Emergency Transport</b>	
<b>Mileage rate</b>	