ORDINANCE NO. 18782

AN ORDINANCE introduced by Norton N. Bonaparte, Jr., City Manager repealing City of Topeka Code Appendix B, Article XI, and amending City of Topeka Appendix B, Article VIII relating to ambulance services within the City of Topeka, Kansas, providing a non-exclusive franchise to Medevac MidAmerica, Inc. doing business as American Medical Response to operate an ambulance service within the City of Topeka, Kansas, and specifically repealing City of Topeka Code Appendix B, Articles VIII and XI.

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

Section 1. City of Topeka Code Appendix B, Article VIII is hereby repealed.

MEDEVAC MEDAMERICA, INC.*

Section 1. Authority.

This ordinance is passed and approved by the Council of the City of Topeka, Kansas, and enacted pursuant to K.S.A. 12-2001, the authority founded and provided in Ordinance No. 14919, duly enacted on the 1st day of February, 1982, by the City of Topeka, Kansas. Ordinance No. 14919 referred to in this ordinance is hereby incorporated into this section by reference as if fully set out therein.

(Ord. No. 16639, § 1, 9-28-93)

Section 2. Satisfactory qualifications.

The Council of the City of Topeka, Kansas, has considered the legal, character, financial, and other qualifications of the applicant and has found Medevac Midamerica, Inc., to be qualified in all respects to own, maintain, and operate an ambulance service in the City of Topeka, Kansas.

(Ord. No. 16639, § 2, 9-28-93)
Section 3. Franchise grant.

Pursuant to the provisions of Ordinance No. 14919 a nonexclusive Franchise is granted to Medevac Midamerica, Inc., the Grantee, to own, maintain, and operate an ambulance service within the City of Topeka, Kansas. Said nonexclusive Franchise is granted through and including December 31, 1998, and shall vest all rights, privileges, and immunities of an ambulance service Franchise with Medevac Midamerica, Inc.; however, said nonexclusive Franchise shall be subject to and conditioned upon all of the terms, duties and obligations found in the laws of the State of Kansas, Ordinance No. 14919, and this ordinance.

(Ord. No. 16639, § 3, 9-28-93)

Section 4. Rates of charges.

The Council of the City of Topeka shall at no time take any action regarding rates and charges which shall preclude the Grantee from earning a reasonable rate of return upon the value of the property used and useful in providing such service.

(Ord. No. 16639, § 4, 9-28-93)

Section 5. Payments to the City.

Adequate and valuable consideration for the rights, privileges, and immunities granted Medevac Midamerica, Inc., shall consist of the benefits to be derived by the citizens of the City of Topeka from the maintenance and operation of an ambulance service under the terms and conditions of this franchise and the following amounts which shall be paid by the Grantee to the City of Topeka:
a. On the effective date of this ordinance, Medevac Midamerica, Inc., shall
pay to the City of Topeka, Kansas, the license fee prescribed by Section 24-
34(2) [30-34(2)].

b. On the first working day recognized by the City of Topeka, Kansas, after
January 1 of each year within the term of this franchise agreement and while
the Grantee is operating an ambulance service pursuant to such franchise,
Medevac Midamerica, Inc., shall pay to the City of Topeka, Kansas, the
annual registration fee for each vehicle operation in the City as set forth in
Section 24-34(3) [30-34(3)] as presently provided or hereafter amended.

c. All payments made hereunder shall be made to the City Treasurer.

(Ord. No. 16639, § 5, 9-28-93)

Section 6. Insurance.

Medevac Midamerica, Inc., shall upon the effective date of this ordinance file with
the City Clerk an insurance policy as required by Section 3, paragraph 32 of Ordinance No.
14919 and the same shall be approved as to form by the City Attorney's Office during the
term of this franchise and during such time as the Medevac Midamerica, Inc., is providing
service pursuant to this franchise, Medevac Midamerica, Inc., shall have filed with the City
Clerk an insurance policy as required by Section 3, paragraph 32 of Ordinance 14919.

(Ord. No. 16639, § 6, 9-28-93)
Section 7. Written acceptance.

Medevac Midamerica, Inc., shall file with the City Clerk its written acceptance of the provisions of the Franchise within sixty (60) days after the effective date of this franchise as determined by K.S.A. 12-2001.

(Ord. No. 16639, § 7, 9-28-93)

Section 8. Remedies of City.

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

(Ord. No. 16639, § 8, 9-28-93)

Section 9. Forfeiture.

Any material and substantial fraud, misrepresentation or default of the terms, duties and obligations imposed upon the Grantee by the laws of the State of Kansas, Ordinance No. 14919, or by ordinance shall constitute grounds for forfeiture of this nonexclusive franchise. The City shall notify the Grantee in writing of any allegation of a material and substantial default, fraud, or misrepresentation and shall hold a public hearing on the merits of such allegations. Said public hearing shall be held within thirty (30) days after the notification to the Grantee and shall be adjudicative in character but shall not bar the rights of any parties to pursue judicial review. Within ten (10) days following the conclusion of such hearing, the Council shall act with respect to such forfeiture and shall submit a written statement to the Grantee. The franchise shall not be forfeited unless the Council finds that there has been a material and substantial default, fraud, or
misrepresentation of the part of the Grantee so as to justify a forfeiture. In the event the franchise is forfeited, the Grantee shall, within one hundred eighty (180) days of its receipt of the Notice of Forfeiture, cease operation of an ambulance service hereunder.

(Ord. No. 16639, § 9, 9-28-93)

Section 10. Surrender.

If, during the term of this franchise, the Grantee does not earn a fair rate of return upon the value of property used and useful in providing such ambulance service for a period of 6 months; and it is determined by the Grantee that it would not be practical, possible or in the public interest to cure the deficiency by an increase in rates and/or a reduction in service; and the Grantee has complied with all applicable County procedures including the giving of notice of surrender to the City; then the Grantee upon one hundred eighty (180) days written notice to the City Clerk may elect to surrender its franchise and cease operations of the ambulance service hereunder.

(Ord. No. 16639, § 10, 9-28-93)

Section 11. Transfer.

All the rights and obligations of the Grantee, pursuant to this franchise, may with proper approval of the Council, be transferred to a person meeting the requirements for an ambulance service grantee, as determined by the laws and regulations of the State and the City at the time of the contemplated transfer. Any such transferee shall, without limitation, assume all the duties and obligations of Medevac Midamerica, Inc., and Medevac Midamerica, Inc., shall be released of all future rights, duties, and obligations arising from [from] this franchise [franchise].
Section 12. Hold harmless.

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

Section 13. Effective date.

This franchise ordinance shall take effect and be in force from and after its passage, approval and publication in the official City newspaper in the manner prescribed by law, and shall be binding upon the franchisee upon the filing of its written acceptance as required by Section 7.

Section 2. City of Topeka Code Appendix B, Article XI is hereby amended to read as follows:

American Medical Response, Inc.

Section 1. Authority.
This ordinance is passed and approved by the Council of the City of Topeka, Kansas, and enacted pursuant to K.S.A. 12-2001 and the authority found and provided for in Topeka City Code § 62-26 through § 62-69 inclusive.

(Ord. No. 17314, § 1, 10-27-98; Ord. No. 17767, § 1, 11-20-01)

Section 2. Satisfactory qualifications.

The Council of the City of Topeka, Kansas, has considered the legal, character, financial, and other qualifications of the applicant and has found American Medical Response, Inc. f/k/a Medevac MidAmerica, Inc., to be qualified in all respects to own, maintain, and operate an ambulance service in the City of Topeka, Kansas.

(Ord. No. 17314, § 2, 10-27-98; Ord. No. 17767, § 2, 11-20-01)

Section 3. Service.

The maintenance and operation of an ambulance service by American Medical Response in the City of Topeka, Kansas shall be in accordance with these terms and conditions and performance standards set forth in the current ambulance service contract entered into by American Medical Response and the Board of County Commissioners of Shawnee County, Kansas. Said contact is identified as Shawnee County Contract C1-2001. In addition, American Medical Response agrees to provide to the Chief Administrative Officer of the City of Topeka copies of documents which are required to be filed pursuant to Shawnee County Contract C1-2001.

(Ord. No. 17314, § 3, 10-27-98; Ord. No. 17767, § 3, 11-20-01)

Section 4. Franchise grant.
Pursuant to the provisions of Topeka City Code § 62-41, a nonexclusive franchise is granted to American Medical Response, Inc., hereinafter referred to as the Grantee, to own, maintain, and operate an ambulance service within the City of Topeka, Kansas. Said nonexclusive franchise is granted through and including December 31, 2006, and shall vest all rights, privileges, and immunities of an ambulance service franchise with grantee, however, said nonexclusive franchise shall be subject to and conditioned upon all of the terms, duties and obligations found in the laws of the State of Kansas, Topeka City Code § 62-26 through § 62-69, and this ordinance.

Section 5. Payments to the city.

Consideration for the rights, privileges, and immunities granted to grantee includes the benefits to be derived by the citizens of the City of Topeka from the maintenance and operation of an ambulance service under the terms and conditions of this franchise. The following licensing fees shall be paid by the grantee to the City of Topeka:

a. On the effective date of this ordinance, the ambulance service license fees prescribed by Topeka City Code § 30-54(2).

b. On the first working day recognized by the City of Topeka, Kansas, after January 1 of each year within the term of this franchise agreement and while the grantee is operating an ambulance service pursuant to such franchise, the annual registration fee for each vehicle in operation in the city as set forth in Topeka City Code § 30-54(3) as presently provided or hereafter amended.

All fee payments made hereunder shall be made to the city treasurer.
Section 6. Insurance.

Grantee shall upon the effective date of this ordinance file with the city clerk an insurance policy as required by Topeka City Code § 62-51 and the same shall be approved as to form by the City attorney’s office. During the term of this franchise and the time grantee is providing service grantee shall maintain paid insurance coverage.

Section 7. Written acceptance.

Grantee shall file with the city clerk its written acceptance of the provisions of the franchise within 60 days after the effective date of this franchise as determined by K.S.A. 12-2001.

Section 8. Remedies of city.

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

Section 9. Forfeiture.

Any material and substantial fraud, misrepresentation or default of the terms, duties and obligations imposed upon the grantee by the laws of the State of Kansas, Topeka City Code § 62-26 through § 62-69 inclusive or by this ordinance shall constitute grounds for forfeiture of this nonexclusive franchise. The city shall notify the grantee in writing of any
allegation of a material and substantial fraud, misrepresentation or default and shall hold a
public hearing before the council of the City of Topeka on the merits of such allegations.
Said public hearing shall be held within 30 days after the notification to the grantee and
shall be adjudicative in character but shall not bar the rights of any parties to pursue judicial
review. Within ten days following the conclusion of such hearing, the city council shall act
with respect to such forfeiture and shall submit a written statement to the grantee. The
franchise shall not be forfeited unless the city council finds that there has been a material
and substantial fraud, misrepresentation or default on the part of the grantee so as to justify
a forfeiture. In such case a notice of forfeiture shall be provided to the grantee. In the event
the franchise is forfeited, the grantee shall, within 180 days of its receipt of notice of
forfeiture, cease operation of an ambulance service hereunder.

(Ord. No. 17314, § 9, 10-27-98; Ord. No. 17767, § 9, 11-20-01)

Section 10. Surrender.

If, during the term of this franchise, the grantee does not earn a fair rate of return
upon the value of property used and useful in providing such ambulance service for a
period of six months; and it is determined by the grantee that it would not be practical,
possible or in the public interest to cure the deficiency by an increase in rates and/or a
reduction in service; and the grantee has complied with all applicable procedures as
prescribed by the Board of County Commissioners of Shawnee County, Kansas including
the giving of notice of surrender to the city; then the grantee upon 180 days written notice
to the city clerk may elect to surrender its franchise and cease operation of the ambulance
service hereunder. Fair rate of return means receipt of revenues for patient charges and
public funds, if any, to include the sum of operating costs, depreciation reserves, growth and development costs and management fees.

(Ord. No. 17314, § 10, 10-27-98; Ord. No. 17767, § 10, 11-20-01)

Section 11. Transfer.

All the rights and obligations of the grantee, pursuant to this franchise, may with written approval of the city council, be transferred to a person meeting the requirements for an ambulance service grantee, as determined by the laws and regulations of the state and the city at the time of the contemplated transfer. Any such transferee shall, without limitation, assume all the duties and obligations of the grantee and grantee shall be released of all future rights, duties, and obligations arising from this franchisee.

(Ord. No. 17314, § 11, 10-27-98; Ord. No. 17767, § 11, 11-20-01)

Section 12. Hold harmless.

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

(Ord. No. 17314, § 12, 10-27-98; Ord. No. 17767, § 12, 11-20-01)
Section 13. Effective date.

This franchise ordinance shall take effect and be in force from and after its passage, approval and publication in the official city newspaper in the manner prescribed by law, and shall be binding upon the grantee upon the filing of its written acceptance as required by section 7.

(Ord. No. 17314, § 13, 10-27-98; Ord. No. 17767, § 13, 11-20-01)

Medevac MidAmerica, Inc. doing business as American Medical Response

Section 1. Authority.

This Franchise Ordinance is passed and approved by the Council of the City of Topeka, Kansas, and enacted pursuant to K.S.A. 12-2001 and the authority found and provided for in Topeka City Code § 62-26 through § 62-69 inclusive.

Section 2. Satisfactory qualifications.

The Council of the City of Topeka, Kansas, has considered the legal, character, financial, and other qualifications of the applicant and has found Medevac MidAmerica, Inc., doing business as American Medical Response, hereinafter “AMR,” to be qualified in all respects to own, maintain and operate an ambulance service in the City of Topeka, Kansas hereinafter “City.” The Council of the City of Topeka finds that public convenience will be promoted and public necessity requires such ambulance service under the terms and provisions of Topeka City Code Chapter 62.

Section 3. Service.

The maintenance and operation of an ambulance service by AMR in the City shall be in accordance with these terms and conditions and performance standards set forth in the
current ambulance service contract entered into by AMR and the Board of County
Commissioners of Shawnee County, Kansas. Said contract is identified as Shawnee
County Contract C428-2005. In addition, AMR agrees to provide to the city manager of the
City copies of documents which are required to be filed pursuant to Shawnee County

Section 4. Franchise grant.

Pursuant to the provisions of Topeka City Code § 62-41, a nonexclusive franchise is
granted to AMR, to own, maintain, and operate an ambulance service within the City. Said
nonexclusive franchise is granted through and including December 31, 2011, and shall vest
all rights, privileges and immunities of an ambulance service franchise with AMR; however,
said nonexclusive franchise shall be subject to and conditioned upon all of the terms, duties
and obligations found in the laws of the State of Kansas, Topeka City Code § 62-26 through
§ 62-69, and this Franchise Ordinance.

Section 5. Payments to the City.

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

a. On the effective date of this Franchise Ordinance, the ambulance service
license fees prescribed by Topeka City Code § 30-54(2).

b. On the first working day recognized by the City, after January 1 of each year
within the term of this Franchise Ordinance and while AMR is operating an
ambulance service pursuant to such Franchise Ordinance, the annual registration fee for each vehicle in operation in the City as set forth in Topeka City Code § 30-54(3) as presently provided or hereafter amended.

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

Section 6. Insurance.

AMR shall upon the effective date of this Franchise Ordinance file with the city clerk an insurance policy as required by Topeka City Code § 62-51 and the same shall be approved as to form by the city attorney's office. During the term of this Franchise Ordinance and the time AMR is providing service AMR shall maintain paid insurance coverage according to Topeka City Code § 62-51.

Section 7. Written acceptance.

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

Section 8. Remedies of City.

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

Section 9. Forfeiture.

Any material and substantial fraud, misrepresentation or default of the terms, duties and obligations imposed upon AMR by the laws of the State of Kansas, Topeka City Code § 62-26 through § 62-69 inclusive or by this Franchise Ordinance shall constitute grounds
for forfeiture of this nonexclusive Franchise Ordinance. The City shall notify AMR in writing
of any allegation of a material and substantial fraud, misrepresentation or default and shall
hold a public hearing before the Council of the City of Topeka on the merits of such
allegations. Said public hearing shall be held within thirty (30) days after the notification to
AMR and shall be adjudicative in character but shall not bar the rights of any parties to
pursue judicial review. Within ten (10) days following the conclusion of such hearing, the
Council of the City of Topeka shall act with respect to such forfeiture and shall submit a
written statement to AMR. This Franchise Ordinance shall not be forfeited unless the
Council of the City of Topeka finds that there has been a material and substantial fraud,
misrepresentation or default on the part of AMR so as to justify a forfeiture. In such case a
notice of forfeiture shall be provided to AMR. In the event this Franchise Ordinance is
forfeited, AMR shall, within one hundred eighty (180) days of its receipt of notice of
forfeiture, cease operation of an ambulance service hereunder.

Section 10. Surrender.

If, during the term of this Franchise Ordinance, AMR does not earn a fair rate of
return upon the value of property used and useful in providing such ambulance service for a
period of six (6) months; and it is determined by AMR that it would not be practical, possible
or in the public interest to cure the deficiency by an increase in rates and/or a reduction in
service; and AMR has complied with all applicable procedures as prescribed by the Board
of County Commissioners of Shawnee County, Kansas including the giving of notice of
surrender to the City; then AMR upon one hundred eighty (180) days written notice to the
city clerk may elect to surrender this Franchise Ordinance and cease operation of the
ambulance service hereunder. Fair rate of return means receipt of revenues for patient charges and public funds, if any, to include the sum of operating costs, depreciation reserves, growth and development costs and management fees.

Section 11. Transfer.

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

Section 12. Hold harmless.

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

Section 13. Effective date.

This Franchise Ordinance shall take effect and be in force from and after its passage, approval and publication in the official City newspaper in the manner prescribed
by law, and shall be binding upon AMR upon the filing of its written acceptance as required by section 7.

Section 3. City of Topeka Code Appendix B, Articles VIII and XI are hereby specifically repealed.

PASSED and APPROVED by the City Council December 19, 2006.

William W. Bunten, Mayor

ATTEST:

Brenda Younger, Interim City Clerk