



MARION COUNTY AMBULANCE SERVICE AREA

FRANCHISE AGREEMENT #HE-1915-17

This Agreement between Salem Fire Department, an Oregon [municipal] corporation, hereinafter called "Franchisee," and Marion County, a political subdivision of the State of Oregon, hereinafter called "County," provides for emergency and non-emergency ambulance services through the Marion County Ambulance Service Area Ordinance, as may be amended from time to time, hereinafter referred to as "ASA Ordinance," and the Marion County Ambulance Service Area Plan, as may be amended from time to time, hereinafter referred to as "ASA Plan."

RECITAL

Franchisee filed an application of an exclusive franchise to provide emergency and non-emergency ambulance services in Marion County Ambulance Service Area (ASA) No.1. Based upon the ASA Plan Administrator's recommendation and information submitted in the application and at a public hearing, the County approved the application by order on October 11, 2017.

AGREEMENT

In consideration for granting the franchise and in reliance on the information provided by the Franchisee, the parties agree as follows:

1. Franchisee shall comply with the terms of the ASA Ordinance, the ASA Plan, the applicable terms of ORS Chapter 682, any rules and regulations issued pursuant to ORS Chapter 682, including but not limited to OAR 333-260-0000 to 333-260-0070, and any other applicable state, federal or local laws, rules or regulations. The County reserves the right to enact additional rules and regulations from time to time as it deems necessary to protect the health, interest, safety and welfare of the public in relation to emergency and non-emergency ambulance services, provided that any county rules and regulations shall not be inconsistent with the provisions of applicable state regulations mentioned in this subsection. Pursuant to OAR 333-260-0000, the County may establish requirements more stringent than those set forth in the state rules.
2. The County gives and grants to the Franchisee an exclusive franchise and right to provide emergency and non-emergency ambulance services in ASA No.1. The service area of this franchise is described in the ASA Plan and shown on the map attached thereto. The boundaries of an ambulance service area may change from time to time, or an ambulance service area may be created or incorporated into one or more ambulance service areas to provide efficient and effective emergency ambulance services, by board order following notice to the affected ASA providers and after consideration of the subjects or items required by law. An order adverse to the holder of the ASA franchise shall not be effective less than 30 days from the date of the order unless the board enters an emergency order if it finds that there is an immediate and serious danger to the public or that a health hazard or public nuisance would be created by a delay.
3. This franchise shall commence on January 1, 2018, and expire December 31, 2023. Two additional assignment terms of five years will/shall be granted to providers who have demonstrated compliant

performance during the initial assignment term; and who request to receive the extension. The request shall be made in writing to the administrator at least 60 days prior to the end of the initial assignment term. The administrator shall recommend such term extensions to the Board for approval.

4. Franchisee shall provide uninterrupted emergency and non-emergency ambulance services at a level of care and pursuant to standards established by the ASA Ordinance, ASA Plan and any state or federal laws or regulations, including those established by the Oregon Health Authority, Public Health Division for personnel and equipment.
5. Franchisee may subcontract out services required by this franchise only with the prior written consent of the ASA Plan Administrator. Franchisee shall be held responsible for the services furnished by any subcontractor, including compliance with the franchise provisions and the terms of this Agreement, the ASA Ordinance and the ASA Plan. Franchisee must include compliance with this franchise Agreement, the ASA Ordinance and the ASA Plan, and any future modifications or amendments to the ASA Agreement, Ordinance and Plan, as a required provision of any subcontract. A copy of the subcontract shall be provided to the ASA Plan Administrator within 30 days of execution.
6. Franchisee must have and maintain a state license for the provision of EMS/Ambulance services and agrees to provide County with a copy of required license upon signature of this agreement and upon renewal of the license. Franchisee shall maintain all required licenses or certifications required for personnel, ambulances, and other equipment.
7. Franchisee shall maintain adequate staffing levels to meet state license requirements and requirements of the Marion County ASA Ordinance and ASA Plan.
8. Franchisee must participate in ASA administrative and quality improvement meetings as scheduled by the ASA Plan Administrator. Subcontractors providing significant levels of service shall also participate directly in Quality Improvement processes and meetings as determined by the Administrator. Notice of the meetings will be provided to the Franchisee and to subcontractors who are required to attend.
9. Franchisee shall report response times and other data as necessary requested by the ASA Plan Administrator to monitor system performance. Franchisee must provide reasons for exceptions to timely ambulance response.
10. Franchisee shall report any citations, fines, reprimands or penalties levied by the Oregon Health Authority associated with delivery of emergency or non-emergency ambulance services by Franchisee or its subcontractors to the ASA Plan Administrator within two weeks of the incident or violation. Franchisee shall also report any complaints received from the public associated with delivery of ambulance services by it or its subcontractors that involve care or treatment received, and a summary of Franchisee action to address the issue.
11. Indemnification, Insurance, And Bonding
 - a. Franchisee shall defend, indemnify, and hold harmless the County, its officers, agents, and employees from damages arising out of the tortious acts of Franchisee, its officers, agents, and employees acting within the scope of their employment and duties in performance of this agreement.

- b. Required Insurance. Franchisee shall maintain at Franchisee's expense the insurance specified in this section in full force and at its own expense throughout the duration of this Contract and all warranty periods. Franchisee shall obtain the following insurance from insurance companies or entities that are authorized to transact the business of insurance and issue coverage in Oregon and that are acceptable to County:
- i. Workers Compensation. All employers, including Franchisee, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Franchisee shall require and ensure that each of its subcontractors complies with these requirements.
 - ii. Professional Liability. Covering any damages caused by an error, omission or any negligent acts related to the services to be provided under this Contract. Franchisee shall provide proof of insurance of not less than the following amounts as determined by the County:
 - ☒ \$1,000,000 Per occurrence limit for any single claimant; and
 - ☒ \$2,000,000 Per occurrence limit for multiple claimants
 - iii. Commercial General Liability. Covering bodily injury, death and property damage in a form and with coverages that are satisfactory to the County. This insurance shall include personal injury liability, products and completed operations. Coverage shall be written on an occurrence basis. Franchisee shall provide proof of insurance of not less than the following amounts as determined by the County:

Bodily Injury/Death:

 - ☒ \$1,000,000 Per occurrence limit for any single claimant; and
 - ☒ \$2,000,000 Per occurrence limit for multiple claimants
 - iv. Automobile Liability Insurance. Covering all owned, non-owned, or hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for "Commercial General Liability" and "Automobile Liability"). Franchisee shall provide proof of insurance of not less than the following amounts as determined by the County:

Bodily Injury/Death:

 - ☒ \$500,000 Per occurrence limit for any single claimant; and
 - ☒ \$1,000,000 Per occurrence limit for multiple claimants
- c. Franchisee may fulfill the insurance obligations of this agreement through a program of self-insurance.
- d. Notice of Cancellation or Change. There shall be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without 30 days written notice from this Franchisee or its insurer(s) to County. Any failure to comply with the reporting provisions of this clause shall constitute a material breach of Contract and shall be grounds for immediate termination of this Contract by County.
- e. The County, pursuant to applicable provisions of ORS 30.260 to 30.300, maintains a self-insurance program that provides property damage and personal injury coverage.

- f. Franchisee and the County agree that there is no relationship under this Agreement except as specified herein. The County exercises no control over, is not responsible for the act of, assumes no specific responsibilities to or for officers, employees, or agents of franchisee, or the public in general, except as specified in this Agreement.
12. The service or services to be rendered under this agreement are those of an independent contractor. Franchisee is not an officer, employee or agent of County as those terms are used in ORS 30.265. Franchisee expressly agrees that it is solely responsible for obtaining and maintaining its equipment, supplies and facilities at its own expense necessary for providing emergency and non-emergency ambulance services.
13. Franchisee and its employees are not employees of County. Franchisee is responsible to pay for all social security, unemployment compensation and workers' compensation assessments, payments or taxes. Franchisee shall pay and be responsible for any and all federal and /or state taxes of whatever kind. Franchisee shall be responsible to verify employment eligibility for all persons employed to perform labor for it.
14. Franchisee shall maintain books and records sufficient to accurately disclose all services performed pursuant to this franchise agreement. These books and records shall be open for inspection or audit at reasonable times and places by authorized County personnel or its designee. Franchisee's own records shall be made available to the ASA Plan Administrator within five (5) working days of the request. Records of any subcontractor shall be made available to the Franchisee for inspection within forty-eight (48) hours, and copies will be made available to the Franchisee within fifteen (15) days. Franchisee shall provide these subcontractor records to the ASA Plan Administrator as soon as received and in no case greater than two (2) working days of their receipt from its subcontractor. Any audit conducted pursuant to this Agreement shall be conducted at a location designated by the County.
15. This franchise may be suspended, modified, revoked, renewed, non-renewed, transferred or reassigned pursuant to the ASA Ordinance and Plan. In addition, this franchise may be forfeited, at the County's option, upon Franchisee's failure or refusal to observe the terms and conditions set forth in this Agreement. Forfeiture may be exercised by written notice following Franchisee's failure or refusal to make corrections within the time allowed by County to do so. The exercise of the remedy of forfeiture of the franchise shall not preclude exercise of any other right or remedy the County may have by law, under this Agreement or pursuant to the ASA Ordinance and ASA Plan, whether exercised concurrently or subsequently.
16. Termination By Franchisee
- a. Franchisee may terminate this agreement effective upon delivery of written notice to County or at such later date as may be established under any of the following conditions:
- i. If funding to Franchisee from federal, state, or other sources is not obtained or continued at levels sufficient to allow for the fulfillment of the Franchisee's obligations under this Agreement. This Agreement may be modified by mutual written agreement of the parties to accommodate a reduction in funds.
- ii. If funding budgeted to the Salem Fire Department through the City of Salem budgeting process is not obtained or continued at levels sufficient to allow for the fulfillment of the Franchisee's obligations under this Agreement. This Agreement may be modified by mutual written agreement of the parties to accommodate a reduction in budgeted funds.

iii. If staffing levels are not obtained or continued at levels sufficient to allow for the fulfillment of Franchisee's obligations under this Agreement. This Agreement may be modified by mutual written agreement of the parties to accommodate a reduction in staffing levels.

b. Any such termination of this agreement shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.

17. The CONTRACTOR agrees to comply with the Civil Rights Act of 1964, and 1991, Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973, and Title VI as implemented by 45 CFR 80 and 84 which states in part, No qualified person shall on the basis of disability, race, color, or national origin be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which received or benefits from federal financial assistance.

18. Franchisee shall comply faithfully with the terms of this Agreement, the ASA Ordinance and the ASA Plan as they may from time to time be amended, and with any orders or determinations of the County made pursuant to the ASA Ordinance and the ASA Plan.

19. Notice shall be sent by first class mail or hand delivered to the parties at the addresses stated herein:

Marion County:
Cary Moller, Administrator
Marion County Health Department
3180 Center Street NE
Salem, OR 97301

Franchisee:

20. The failure of either party to this Agreement to insist upon the performance of any of the terms and conditions of the Agreement, or the waiver of any breach of any of the terms and conditions of this Agreement, shall not be construed as thereafter waiving any such terms and conditions, but the same shall continue and remain in full force and effect as if the forbearance or waiver had not occurred.

21. The invalidity of any portion of this Agreement will not and shall not be deemed to affect the validity of any other provision. In the event that any provision of this Agreement is held to be invalid by a court of competent jurisdiction, the parties agree that the remaining provisions shall be deemed to be in full force and effect as if they had been executed by both parties subsequent to the expunction of the invalid provision.

22. This Agreement shall constitute the entire agreement between the parties and any prior understandings or representations of any kind preceding the date of this agreement shall not be binding upon either party except to the extent incorporated in this agreement.

23. Any modification of this Agreement or additional obligation assumed by either party in connection with this Agreement shall be binding only if evidenced in a writing signed by each party or an authorized representative of each party.

24. This franchise is contingent on the payment of any application or annual franchise fee if adopted by County board order as authorized by the ASA Ordinance. Franchise fees shall be due and paid as specified in the adopting order.

MARION COUNTY SIGNATURE

Authorized Signature: _____
Cary Moller, ASA Plan Administrator Date

Authorized Signature: _____
Chief Administrative Officer Date

Reviewed by Signature: _____
Marion County Legal Counsel Date

Reviewed by Signature: _____
Marion County Contracts & Procurement Date

SALEM FIRE DEPARTMENT SIGNATURE

Authorized Signature: Steven D. Povers Date: 12/18/2017

Title: City Manager