

**AMENDMENT NO. 1 TO THE FRANCHISE AGREEMENT
FOR THE PROVISION OF NON-EMERGENCY AMBULANCE SERVICES
BETWEEN THE CITY OF LAS VEGAS
AND GUARDIAN ELITE MEDICAL SERVICES, LLC**

THIS AMENDMENT NO. 1 TO THE FRANCHISE AGREEMENT FOR THE PROVISION OF NON-EMERGENCY AMBULANCE SERVICES BETWEEN THE CITY OF LAS VEGAS AND GUARDIAN ELITE MEDICAL SERVICES, LLC (“First Amendment”) is made and entered into on this 15th day of June, 2022, by and between the City of Las Vegas, a political subdivision of the State of Nevada (hereinafter referred to as “City”), and GUARDIAN ELITE MEDICAL SERVICES, LLC, a Nevada limited liability company (hereinafter referred to as “GUARDIAN ELITE” or the “Franchisee”). The City and GUARDIAN ELITE may be referred to herein singularly as a “Party” or collectively as the “Parties.”

RECITALS

WHEREAS, the City and GUARDIAN ELITE executed that certain Franchise Agreement for the Provision of Non-Emergency Ambulance Services on November 15, 2017, commencing as of March 1, 2018 (“Agreement”);

WHEREAS, the Agreement will expire by its terms on March 1, 2023, unless an extension of such Agreement is approved by the Las Vegas City Council (“City Council”);

WHEREAS, Section 4.2 of the Agreement permits the City Council to grant no more than two extensions of the Agreement, the first of which may be granted for no more than three years;

WHEREAS, Section 4.2.1 of the Agreement requires GUARDIAN ELITE to file a request for an extension of the Agreement no less than one calendar year prior to March 1, 2023 with the City Manager;

WHEREAS, GUARDIAN ELITE filed such request with the City Manager on May 22, 2021;

WHEREAS, Section 4.2.2 of the Agreement requires the City Manager to accept the request for extension, reject the request for extension, or require the Fire Chief and GUARDIAN ELITE to negotiate terms of an amended franchise agreement prior to presenting an item to the City Council for consideration of such extension; and

WHEREAS, the City Manager has accepted the request for extension to the Agreement with certain terms of the Agreement being amended as well.

NOW, THEREFORE, based upon good and sufficient consideration, and in consideration of the recitals above and the mutual obligations of the Parties expressed herein, the Parties mutually agree as follows:

1. **Recitals**. The recitals set forth above are true and correct and are hereby incorporated by this reference.
2. **Term**. The Agreement shall be extended for three (3) additional years and shall now continue in full force and effect until 11:59 PM on March 1, 2026. It is understood and agreed by and between the

Parties that this extension shall count towards the first of GUARDIAN ELITE's two extensions pursuant to Section 4.2 of the Agreement.

3. Priorities – Category 3. The term “Priority 3” or “priority 3” as used throughout the Agreement shall now be replaced and known as “Priority 11” pursuant to a 2020 amendment to Las Vegas Municipal Code Chapter 6.08 (Ord. No. 6762 12-16-2020).

4. Grant of Franchise. Section 2.4 of the Agreement is hereby deleted in its entirety and replaced by the following:

“2.4 The City of Las Vegas reserves and retains the right to provide non-emergency medical services, emergency triage treatment and transport (‘ET3’) model services, integrated health and community outreach programs in the FSA as defined below. LVFR will implement Fire Based Community Health Programs during the term of this Franchise which will include Mobile Integrated Health Services. Franchisee may be invited to participate and collaborate in identified services. This Franchise does not permit Franchisee to provide new system medical and outreach programs, such as what is commonly referred to as Mobile Integrated Health Services, or ET3 model services, unless approved by the LVFR Medical Director. Approval will not be unreasonably withheld or delayed.”

5. Term and Effective Date of Franchise. Section 4.4 of the Agreement is hereby deleted in its entirety and replaced by the following:

“4.4 The Fire Chief, or designee, shall send Franchisee written notice of response time compliance or noncompliance during the preceding calendar year no later than March 1 each year in accordance with the notice procedures of this Franchise.”

6. Response Time Measurement. Section 13.4.1.4(d) of the Agreement is hereby deleted in its entirety and replaced by the following:

“(d) The City may use verbal recordings and AVL data to prove or disprove the accuracy of the on scene time reported by Franchisee for any response. Should verbal recordings and/or AVL data disprove data reported by Franchisee, the City’s Franchise Officer will substitute the more accurate data. Franchisee may appeal the Franchise Officer’s decision in writing to the City Manager’s Office. The City Manager’s decision is final and binding.”

7. Exemption Request Procedure. Section 13.8 of the Agreement is hereby deleted in its entirety and replaced by the following:

“13.8 Exemption Request Procedure

13.8.1 If Franchisee believes that any response or group of responses should be excluded from the calculation of the response time requirements pursuant to paragraph 13.6, above, and the exemption request is not precluded by paragraph 13.7, above, Franchisee shall provide detailed documentation for each actual response in question to the City’s Franchise Officer and the LVFR Medical Director in accordance with the following procedure:

13.8.1.1 Franchisee shall use the FirstWatch Solutions Online Compliance Utility (“OCU”) (or LVFR-approved alternative) to document the exemption request;

13.8.1.2 Any such request must be made in writing and received by the City’s Franchise Officer and the LVFR Medical Director within three (3) business days after the date of occurrence and any request for an exemption received after three (3) business days will not be considered;

13.8.1.3 The City’s Franchise Officer and the LVFR Medical Director will jointly review the request and issue a determination, using the OCU (or City-approved alternative);

13.8.1.4 Should Franchisee dispute the determination made by the City’s Franchise Officer and the LVFR Medical Director, Franchisee may make a written appeal to the Fire Chief for a definitive ruling within five (5) business days of the receipt of the appeal determination.”

8. Liquidated Damages, Generally. Section 14.1.3 of the Agreement is hereby deleted in its entirety and replaced by the following:

“14.1.3 Franchisee shall make payment for any assessed liquidated damages within fourteen (14) calendar days of receipt of penalty assessments from the City or provide an appeal in writing of the penalties assessed, or any portion thereof to the Director of Finance. Within 30 days of receipt of a written appeal, the Director will provide to Franchisee a written letter of determination on the appeal. Within fourteen (14) days of receipt of the Director's determination, Franchisee shall make payment of the total amount of the Director's penalty assessments. The Director's decision is final.”

9. Monthly Liquidated Damage Assessment. Section 14.2 of the Agreement is hereby deleted in its entirety and replaced by the following:

“14.2 Monthly Liquidated Damage Assessment.

Assessments for failure to comply with the monthly response time standard of 90% as indicated at Paragraph 13 shall be assessed to Franchisee in any consecutive twelve (12) month period as follows:

<i>Category</i>	<i>Occurrence No.</i>	<i>Liquidated Damages Amount</i>
Priority 11	First Occurrence	\$6,165.13
Priority 11	Second Occurrence	\$12,330.27
Priority 11	Third Occurrence	\$18,495.40

14.2.1 The monthly liquidated damage assessments indicated above at Paragraph 14.2 shall be assessed on Franchisee in addition to the Individual Per Call Liquidated Damage Assessment indicated at Paragraph 14.3 for late patient response.

14.2.2 The assessments indicated above at Paragraph 14.2 shall be assessed each month if Franchisee fails to comply with the monthly response time standard indicated at Paragraph 13. For purposes of assessing Liquidated Damages, monthly response times will be reported without

decimals and no rounding factor will be allowed (e.g. a monthly performance of 89.9% will be reported as 89%).

14.2.3 Failure of Franchisee to achieve at least 90% response time compliance in the FSA for calls will require that Franchisee submit and implement a deployment plan that includes additional staffed ambulance hours aimed to achieve 90% compliance with response times.

14.2.4 Failure to meet Priority 11 response time criteria for at least 90% of the time for 3 consecutive months, or for 4 months in any 12 consecutive months may be considered a breach of this Franchise and may result in revocation of this Franchise pursuant to this Franchise and the Ambulance Service Ordinance, and the City after revocation of the Franchise may file a claim with Franchisee's surety for the surrender of the entire performance bond amount for failure to perform pursuant to the terms of the Ambulance Service Ordinance and this Franchise.”

10. Individual Per Call Liquidated Damage Assessment. Section 14.3 of the Agreement is hereby deleted in its entirety and replaced by the following:

“14.3 Individual Per Call Liquidated Damage Assessment.

Assessments for failure to meet response times for individual calls as indicated in Paragraph 13 shall be assessed to Franchisee as follows:

<i>Category</i>	<i>Standard Late Penalty</i>	<i>Excessive Response time</i>
Priority 11 Urgent	\$30.82	Exceeds response time by more than 10 minutes
Priority 11 Scheduled	\$61.06	Exceeds response time by more than 30 minutes
Priority 11 Unscheduled	\$61.06	Exceeds response time by more than 30 minutes

11. Other Liquidated Damage Assessments. Section 14.4 of the Agreement is hereby deleted in its entirety and replaced by the following:

“14.4 Other Liquidated Damage Assessments

14.4.1 Failure to Report On-Scene Time

Franchisee shall pay the City a liquidated damage assessment in the amount of three hundred eight dollars and twenty-seven cents (\$308.27) for each time an emergency ambulance is dispatched and the ambulance crew fails to report and document an on-scene time. The Fire Chief or designee may waive such assessment in a case where Franchisee can demonstrate to the satisfaction of the Fire Chief, or designee, an accurate on-scene time. Where an on-scene time for a particular emergency call is not documented or demonstrated to be accurate, the response time for that call shall be deemed to have exceeded the required response time for purposes of determining response time compliance.

14.4.2 Extended EnRoute Time

14.4.2.1 Franchisee shall pay the City a liquidated damage assessment in the amount of two thousand four hundred sixty-six dollars and five cents (\$2,466.05) for each occurrence of an Extended EnRoute Time.

14.4.2.2 Extended EnRoute Time is defined as any call request made for non-emergency ground ambulance transport for which Franchisee fails to dispatch and/or no authorized mutual aid ground transport ambulance responds within the response time requirements pursuant to the table at Paragraph 13.2.

14.4.3 Excessive Response Time

14.4.3.1 Excessive time is defined as Franchisee's or authorized mutual aid ground ambulance response failure to arrive on the scene in response to NAED Priority 11 Urgent level responses which originates within the FSA for which the Franchisee's response time exceeds the response time standard as described herein by more than ten minutes (10:00) the City will assess liquidated damages in the amount of one hundred twenty-three dollars and thirty cents (\$123.30) per occurrence.

14.4.3.2 Excessive time is defined as Franchisee's or authorized mutual aid ground ambulance response failure to arrive on the scene in response to NAED Priority 11 Scheduled and Unscheduled level responses which originates within the FSA for which the Franchisee's response time exceeds the response time standard as described herein by more than thirty minutes (30:00) the City will assess liquidated damages in the amount of one hundred twenty-three dollars and thirty cents (\$123.30) per occurrence.

14.4.4 Monthly Report Requirement

14.4.4.1 Franchisee shall pay the City a liquidated damage assessment in the amount of six hundred sixteen dollars and fifty-one cents (\$616.51) for each failure to submit a monthly report as provided by this Franchise by the seventh (7th) calendar day of the month following the month for which the report pertains. If such day falls on a weekend day or a national holiday, it is a failure not to file such report by the next business day.

14.4.4.2 Franchisee shall pay the City a liquidated damage assessment in the amount of three hundred eight dollars and twenty-seven cents (\$308.27) for each successive day Franchisee fails to submit the report in accordance with 14.4.4.1, above.

14.4.5 Failure to Submit Responses to Inquiries

Franchisee shall pay the City a liquidated damage assessment in the amount of six hundred sixteen dollars and fifty-one cents (\$616.51) for each failure by Franchisee to submit a response to a request or task by City Staff within three (3) business days.

14.4.6 Failure to provide ePCR when requested

Franchisee shall pay the City a liquidated damage assessment in the amount of six hundred sixteen dollars and fifty-one cents (\$616.51) for each failure by Franchisee to provide ePCR requested by the LVFR Medical Director, for patient care provided by Franchisee in the City of Las Vegas, within five calendar days of the request.

14.4.7 Reporting On-Scene Erroneously

Franchisee shall pay the City a liquidated damage assessment in the amount of one thousand two hundred thirty-three dollars and two cents (\$1,233.02) for each instance where Franchisee reports a "unit arrived on scene" before the unit actually arrives at the specific address or location.

14.4.8 Failure to Meet Minimum Equipment Standards

Franchisee shall pay the City a liquidated damage assessment in the amount of one thousand two hundred thirty-three dollars and two cents (\$1,233.02) for each instance where Franchisee's unit fails to meet the minimum equipment and supply list established by the Southern Nevada Health District.

14.4.9 Responding to Emergency Incident Inappropriately

Franchisee shall pay the City a liquidated damage assessment in the amount of one thousand two hundred thirty-three dollars and two cents (\$1,233.02) for each instance where Franchisee responds to an emergency incident without notification from an Incident Commander or FAO, or continues to respond after cancellation by the Incident Commander or FAO.

14.4.10 Franchisee shall pay the City a liquidated damage assessment in the amount of one hundred twenty-three dollars and thirty cents (\$123.30) for each instance of the following:

14.4.10.1 Failure to provide reports and information to City by specified due dates;

14.4.10.2 Failure to leave, or have immediately available by electronic means, completed Electronic Patient Care Reports (ePCRs) documenting patient care to the receiving facility and LVFR prior to leaving the facility; and

14.4.10.3 Responding and transporting a patient in a BLS unit when the call requires ALS response and transport.

14.4.11 Franchisee shall pay the City a liquidated damage assessment in the amount of two hundred fifteen dollars and eighty cents (\$215.80) for each instance when AVL/GPS data confirms that Franchisee's unit was not on-scene when Franchisee reported the unit on-scene.

14.4.12 Franchisee shall pay the City a liquidated damage assessment in the amount of three hundred twenty dollars and fifty-eight cents (\$320.58) for each instance it is determined that Franchisee called for emergency response resources (i.e. ambulances, air ambulances, power, gas, etc.) without prior notification of an incident commander.

14.4.13 Franchisee shall pay the City a liquidated damage assessment in the amount of three hundred twenty dollars and fifty-eight cents (\$320.58) for each instance where Franchisee uses a nonexistent ambulance identifier as a dispatched or diverted ambulance.

14.4.14 Franchisee shall pay the City a liquidated damage assessment in the amount of three hundred twenty dollars and fifty-eight cents (\$320.58) for each instance Franchisee fails to have the gurney and jump-bag when in the immediate proximity of a patient.”

12. Franchise Fees. Section 20.1 of the Agreement is hereby deleted in its entirety and replaced by the following:

“20.1 Franchise Fee Payment

The City shall provide dispatch, radio communications system maintenance, clinical and non-clinical oversight, injury prevention program coordination, contract management, regulatory oversight, administration and other services relevant to the administration of this Franchise. Except as otherwise provided herein at 20.2 for the Franchisee's first annual prorated franchise fee payment, Franchisee shall reimburse the City for these services by paying the City an annual franchise fee not to exceed its costs for such services. The franchise fee shall be in the amount of one hundred twenty-one thousand and fifty-one dollars and twenty cents (\$121,051.20) (as of December 1, 2021), payable quarterly in arrears, with each installment due and payable not later than 45 days after the end of the calendar quarter of each year during the term of this Franchise. If such franchise fee is received by the City after the due date, a late fee of two percent per month of the delinquent amount will be assessed against the franchisee until such franchise fee is paid. Failure by the franchisee to pay the franchise fee or any assessed late fees may result in revocation of the franchise pursuant to the Ambulance Service Ordinance. This franchise fee shall be adjusted for inflation annually on December 1 during the term of this Franchise by 2% or by the percentage change in the CPI-MCS for the twelve-month period of the preceding calendar year, whichever is greater; provided that ambulance rates increase by an identical increase in accordance with the Ambulance Service Ordinance. The franchise fee set forth in this Franchise shall be used to partially reimburse the City only for the city services. No funds shall be used by the City in a manner that may violate 42 U.S.C. Section 1320a-7b, the federal Anti-Kickback Statute.”

13. Administration. Section 30 of the Agreement is hereby deleted in its entirety and replaced by the following:

“30. ADMINISTRATION

The Director of Finance shall administer or direct the administration of this Franchise.”

14. Notices. Section 31 of the Agreement is hereby deleted in its entirety and replaced by the following:

“31. NOTICES

Any notice, request, or demand which may be or is required to be given under this Franchise shall be delivered in person at the address stated below or may be deposited with the United States Postal Service, certified or registered mail, postage prepaid, to the party and address stated below:

FRANCHISEE:

Guardian Elite Medical Services
Attention: Samuel Scheller
3570 East Flamingo Road
Las Vegas, Nevada 89121

CITY:

CITY OF LAS VEGAS
Franchise Administration
Department of Finance
495 South Main Street, 4th Floor
Las Vegas, Nevada 89101

Copy to:

LAS VEGAS FIRE AND RESCUE
Fire Chief
500 N. Casino Center Blvd.
Las Vegas, Nevada 89101”

15. Ordinance Change. Section 40 of the Agreement is hereby added as follows:

“40. ORDINANCE CHANGE.

Franchisee acknowledges that these franchise provisions are subject to the terms of the Ambulance Service Ordinance as currently adopted and as amended in the future pursuant to LVMC 6.08.340. That provision, provides in pertinent part, as follows: “the franchisee, by its acceptance of the franchise, agrees to be bound thereby and to comply with any action under (or requirement) of the Las Vegas Municipal Code, as it exists now or as amended in the future.””

16. Exhibit 1. Section 10 to Exhibit 1 of the Agreement is hereby deleted in its entirety and replaced by the following:

“10. Franchisee shall provide the City with such other reports and records as may be required by the City’s Franchise Officer.”

17. Obligations of Parties. This First Amendment extends the effectiveness of all other terms, conditions and obligations of the Parties pursuant to the Agreement which remains in full force and effect until the natural expiration of the Agreement as provided in paragraph 2 above.

18. Capitalized Terms. All initial capitalized terms not otherwise defined in this First Amendment shall have the meanings set forth in the Agreement and Las Vegas Municipal Code Chapter 6.08.

19. Subsequent Agreements. This First Amendment shall not constitute consent or approval to any future modifications, amendments, changes or extensions to the Agreement, and shall not relieve GUARDIAN ELITE or any person claiming under or through GUARDIAN ELITE of the obligation to obtain the approval of the City Council, to the extent required under the Agreement, to any future modifications, amendments, changes or extensions to the Agreement and the terms and conditions thereof be expressed in a written document signed by both Parties.

20. Counterparts. This First Amendment may be executed in counterparts. All such counterparts will constitute the same contract and the signature of any Party to any counterpart will be deemed a signature to, and may be appended to, any other counterpart. Executed copies hereof may be delivered by facsimile or e-mail and upon receipt will be deemed originals and binding upon the Parties hereto, regardless of whether originals are delivered thereafter.


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IN WITNESS WHEREOF, the Parties hereto have caused this First Amendment to be legally executed in duplicate as of the date first date written above.

CITY OF LAS VEGAS

By: 
CAROLYN G. GOODMAN, Mayor

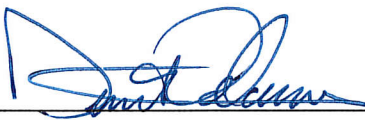
ATTEST:

By: 
LuAnn B. Holmes, MMC
City Clerk


Council Action
June 1, 2022
Item # 12

APPROVED AS TO FORM:

Dimitri P. Dalacas
Deputy City Attorney

By:  5/12/2022
Deputy City Attorney Date

GUARDIAN ELITE MEDICAL SERVICES,
LLC

By: 
Printed Name: Samuel Shaker
Title: CEO