

VEHICLE LEASE AGREEMENT

This **VEHICLE LEASE AGREEMENT** (“Agreement”) is made and entered into by and between the **CITY OF BURLESON** (the “City”), a home rule municipal corporation situated in portions of Tarrant and Johnson Counties, Texas and **EINSTEIN GROUP LLC d/b/a SPEEDWAY EMS** (“SEMS”).

WITNESETH:

WHEREAS, the City will begin to directly provide emergency medical services to its citizens on October 1, 2023; and

WHEREAS, the City desires to utilize and lease an ambulance vehicle so the City may begin the process of receiving necessary certifications from the State of Texas to provide emergency medical services; and

WHEREAS, SEMS possesses and owns an ambulance vehicle it would like to lease to the City, and the City would like to lease such vehicle based on the terms and conditions provided in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises herein contained, the parties agree as follows:

1. LEASE OF VEHICLE.

SEMS hereby leases to the City and the City hereby leases from SEMS, based on the terms and conditions provided in this Agreement, the following vehicle (hereafter the “Vehicle”):

| | | | |
|------------------------|-------------------------|---------------------|--------------|
| Year: 2000 | Make: FORD | Model: McCoy Miller | Color: White |
| VIN: 1FDXE45F1YHB85477 | License Plate: KRB-5860 | Expiration: 2023___ | |
| Odometer: 125,486 | | | |

2. TERM.

This Agreement shall commence upon execution by the parties and terminate on October 1, 2023, unless terminated earlier in accordance with the provisions of this Agreement (the “Term”). Those obligations concerning warranties and representations and other provisions which by their nature should survive termination of this Agreement, shall survive termination of this Agreement, including Sections 10, 16, 28, and 30.

3. COMPENSATION.

The rent for the Vehicle is **ONE THOUSAND DOLLARS (\$1,000.00)** per month (the “Rent”). The City shall pay SEMS the Rent on the fifteenth (15th) day each month during the Term of the Agreement. Rent for the first month shall be prorated from the date of delivery. The Rent shall be paid by the City to SEMS at its address set forth below in this Agreement.

4. INSURANCE.

During the term of the lease and until the return of the Vehicle, the City will maintain insurance acceptable to SEMS. The following minimum coverages will apply:

- a. Comprehensive collision coverage for the Vehicle, with a maximum deductible of **\$5,000.00** that stipulates that the coverage shall payout the LEAST of the following: (i) the cost to repair the Vehicle; (ii) the cost to replace a part or parts of the Vehicle with a new part or parts; the cost to replace the Vehicle with a new automobile of like kind and quality without deduction for depreciation; or (iv) the agreed value shown on the automobile schedule, which the parties agree shall be \$55,000.00; and
- b. Liability insurance for at least:
 - i. **\$100,000** per person and **\$300,000** per occurrence for bodily injury or death; and
 - ii. **\$500,000** per occurrence for property damage.

The City will list SEMS as “Loss Payee” or provide a similar insurance endorsement for the coverages in Section 4(a) and provide SEMS an indemnity under contract endorsement for the coverages in Section 4(b). City will provide SEMS written proof of insurance coverage upon request. Additionally, the City will inform SEMS at least thirty (30) days in advance, in writing, if any term of insurance changes or the policy has been cancelled. If City fails to maintain the required insurance, or fails to provide proof of insurance, City will be in default.

For claims arising under insurance that concern physical damage to the Vehicle, City will appoint SEMS as their attorney-in-fact to initiate, settle, or release the claim. SEMS may also sign any proofs of claim or loss on behalf of the City, and receive and sign for the City on any settlement, draft, or check. City also gives a security interest in any money paid under City’s insurance.

City will promptly notify SEMS of any accident or incident that may result in an insurance claim.

5. LICENSE PLATES AND REGISTRATION.

The Vehicle shall bear license plates, and the title to the Vehicle shall be registered in the name of SEMS. The annual registration or license fees shall be paid by SEMS. Unless otherwise specified, SEMS shall, where required, register each item of equipment to conform with the laws of the State of Texas.

6. DELIVERY OF VEHICLE.

SEMS shall use all reasonable diligence to speedily deliver the Vehicle leased under this Agreement to the City following the execution of this Agreement but shall not be liable to City for any failure or delay in obtaining the Vehicle or making delivery of the Vehicle, if SEMS shall have exercised reasonable diligence.

7. USE OF VEHICLE.

City agrees that it will not use or permit the use of the Vehicle in a negligent or improper manner, City agrees that it will not permit the Vehicle to become subject to any lien, charge, or encumbrance.

8. MAINTENANCE OF VEHICLE.

Unless otherwise agreed in writing by the parties, all service, materials, and repairs in connection with the use and operation of the Vehicle during the Term, including but not limited to gasoline, oil, batteries, repairs, maintenance, tires, tubes, and towing necessary for the proper use and operation of the Vehicle, are at City's expense. City agrees that the oil in the crankcase shall at all times be kept at proper level and shall be completely changed and the Vehicle lubricated at intervals recommended in the manual provided by the manufacturer of the Vehicle.

9. RISK OF LOSS.

City shall bear all risks of damage or loss of the Vehicle or any portions of damage or loss not covered by insurance. All replacements, repairs, or substitution of parts or equipment of the Vehicle shall be at the cost and expense of the City and shall be accessions to said Vehicle. The City shall at all times, and at City's expense, keep the Vehicle in good working order, condition, and repair, reasonable wear and tear excepted.

10. INDEMNITY.

As City is a unit of local government of the State of Texas and is subject to, and must comply with, the applicable provisions of the Texas Tort Claims Act, as set out in Civil Practices and Remedies Code, Section 101.001 et. seq. and the remedies authorized therein regarding claims or causes of action that may be asserted by breach of this Agreement. To the extent permitted by Texas law, City agrees to defend and indemnify SEMS any other agent of SEMS and their respective successors and assigns from and against any and all losses, damages, liabilities, suits, claims, demands, costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) which SEMS, any other agent of SEMS or any of their respective successors or assigns may incur by reason of City's breach or violation of, or failure to observe or perform, any term, provision or covenant of this Agreement, or as a result of any loss, damage, theft or destruction of the Vehicle or related to or arising out of or in connection with the use, operation or condition of the Vehicle. The provisions of this Section shall survive any expiration or termination of this Agreement. Nothing herein shall be deemed to affect the rights, privileges, and immunities of City and the foregoing indemnity provision is not intended to be a waiver of any sovereign immunity afforded to City pursuant to Texas law.

11. ADDITIONAL CHARGES.

The City agrees to pay all storage charges, parking charges, and fines. The City shall pay any fees or taxes which may be imposed with respect to the Vehicle by any duly constituted governmental authority as the result of the City's use or intended use of the Vehicle.

12. TERMINATION – END OF TERM.

This Agreement and lease of the Vehicle terminates at the expiration of the Term, unless terminated earlier in accordance with Section 13.

13. TERMINATION – DEFAULT.

Time is of the essence of this agreement. SEMS, at SEMS's option, may by written notice to City declare this Agreement in default on the happening of any of the following: (i) Default by the City in payment or performance of any of its obligations under the Agreement; (ii) Voluntary assignment of City's interest herein; (iii) Involuntary transfer of City's interest herein by operation of law; or (iv) Expiration or cancellation of any policy of insurance agreed to be paid for by City, the cessation in force according to its original terms of such insurance, or of any extension or renewal of such insurance during the Term of this Agreement. If the City does not cure the default within ten (10) days of receiving the notice of default, the Vehicle shall be surrendered and delivered to SEMS, and SEMS may take possession of the Vehicle wherever it may be found. If the City does not cure the default within ten (10) days of receiving the notice of default, City and City's successor in interest, whether by operation of law or otherwise, shall have no right, title, or interest in the Vehicle leased under this Agreement or the possession or use of such Vehicle, and SEMS shall retain all rents and other sums paid by City under this Agreement. The rights and remedies of SEMS under this Agreement are not exclusive but cumulative and in addition to all other rights and remedies provided by law.

14. SURRENDER OF VEHICLE.

On expiration of the Term, City shall surrender the Vehicle, in the same condition as when received, less reasonable wear and tear, and free from collision or upset damage, to SEMS at the address set forth for SEMS below in this Agreement or at any other location mutually agreed on by the parties.

15. NOTICES.

Notices required pursuant to the provisions of this Agreement shall be conclusively determined to have been delivered when (1) hand-delivered to the other party, its agents, employees, servants or representatives, (2) delivered by facsimile with electronic confirmation of the transmission, or (3) received by the other party by United States Mail, registered, return receipt requested, addressed as follows:

To CITY:

City of Burleson
City Manager's Office
Attn: City Manager
141 W. Renfro St.
Burleson, TX 76028

To SEMS:

16. WARRANTIES.

THERE ARE NO WARRANTIES, EXPRESSED OR IMPLIED, BY SEMS TO THE CITY, EXCEPT AS CONTAINED HEREIN, AND SEMS SHALL NOT BE LIABLE FOR ANY LOSS OR DAMAGE TO CITY NOR TO ANYONE ELSE OF ANY KIND AND HOWSOEVER CAUSED; WHETHER BY THE VEHICLE, THE REPAIR, MAINTENANCE, OR EQUIPMENT OF THE VEHICLE; THE FAILURE OF THE VEHICLE; OR THE INTERRUPTION OF SERVICE OR USE OF THE VEHICLE LEASED UNDER THIS

AGREEMENT.

17. ASSIGNMENT.

City agrees not to assign, transfer, sublet, pledge, or encumber any of its rights under this Agreement or the lease itself. This Agreement and the rights and interests of the City under this Agreement are subordinate to any security agreement executed by SEMS and any such assignee, covering the Vehicle.

18. NO WAIVER.

The failure of the City or SEMS to insist upon the performance of any term or provision of this Agreement or to exercise any right granted herein shall not constitute a waiver of the City's or SEMS's respective right to insist upon appropriate performance or to assert any such right on any future occasion.

19. LEASE ONLY.

This Agreement is one of leasing only and City shall not acquire any right, title, or interest to the Vehicle other than that of a lessee.

20. GOVERNING LAW / VENUE.

This Agreement shall be construed in accordance with the internal laws of the State of Texas. If any action, whether real or asserted, at law or in equity, is brought on the basis of this Agreement, venue for such action shall lie in state courts located in Tarrant County, Texas or the United States District Court for the Northern District of Texas.

21. SEVERABILITY.

If any provision of this Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

22. FORCE MAJEURE.

The City and SEMS shall exercise their best efforts to meet their respective duties and obligations as set forth in this Agreement, but shall not be held liable for any delay or omission in performance due to force majeure or other causes beyond their reasonable control (force majeure), including, but not limited to, compliance with any government law, ordinance or regulation, acts of God, acts of the public enemy, fires, strikes, lockouts, natural disasters, wars, riots, material or labor restrictions by any governmental authority, transportation problems and/or any other similar causes.

23. HEADINGS NOT CONTROLLING.

Headings and titles used in this Agreement are for reference purposes only and shall not be deemed a part of this Agreement.

24. REVIEW OF COUNSEL.

The parties acknowledge that each party and its counsel have reviewed and revised this Agreement and that the normal rules of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or exhibits hereto.

25. AMENDMENTS / MODIFICATIONS / EXTENSIONS.

No extension, modification or amendment of this Agreement shall be binding upon a party hereto unless such extension, modification, or amendment is set forth in a written instrument, which is executed by an authorized representative and delivered on behalf of such party.

26. ENTIRETY OF AGREEMENT.

This Agreement, including any exhibits attached hereto and any documents incorporated herein by reference, contains the entire understanding and agreement between the City and SEMS, their assigns and successors in interest, as to the matters contained herein. Any prior or contemporaneous oral or written agreement is hereby declared null and void to the extent in conflict with any provision of this Agreement.

27. SIGNATURE AUTHORITY.

The person signing this agreement hereby warrants that he/she has the legal authority to execute this agreement on behalf of the respective party, and that such binding authority has been granted by proper order, resolution, ordinance or other authorization of the entity. The other party is fully entitled to rely on this warranty and representation in entering into this Agreement.

28. NO WAIVER OF GOVERNMENTAL IMMUNITY.

Nothing contained in this Agreement shall be construed as a waiver of City's governmental immunity, or of any damage caps or limitations imposed by law, or any other legal protections granted to City by law, except to the extent expressly provided or necessarily implied herein.

29. MANDATORY OWNERSHIP DISCLOSURE PROVISION.

If required under law, SEMS shall submit completed Texas Ethics Commission Form 1295 Ownership Disclosure form to City at time of execution of Agreement pursuant to Texas Government Code Section 2252.908.

30. MANDATORY STATUTORY PROVISIONS.

SEMS acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate:

- i. Pursuant to Section 2271.002 of the Texas Government Code, SEMS certifies that either (i) it meets an exemption criterion under Section 2271.002; or (ii) it does not boycott Israel and will not boycott Israel during the term of the Agreement. SEMS acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

- ii. Pursuant to SB 13, 87th Texas Legislature, SEMS certifies that either (i) it meets an exemption criterion under SB 13, 87th Texas Legislature; or (ii) it does not boycott energy companies, as defined in Section 1 of SB 13, 87th Texas Legislature, and will not boycott energy companies during the term of the Agreement. SEMS acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
- iii. Pursuant to SB 19, 87th Texas Legislature, SEMS certifies that either (i) it meets an exemption criterion under SB 19, 87th Texas Legislature; or (ii) it does not discriminate against a firearm entity or firearm trade association, as defined in Section 1 of SB 19, 87th Texas Legislature, and will not discriminate against a firearm entity or firearm trade association during the term of the Agreement. SEMS acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
- iv. Pursuant to Subchapter F, Chapter 2252, Texas Government Code, SEMS certifies that either (i) it meets an exemption criterion under Subchapter F, Chapter 2252, Texas Government Code; or (ii) is not engaged in business with Iran, Sudan, or a foreign terrorist organization. SEMS acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
- v. By executing this Agreement, SEMS and each person signing on behalf of SEMS certifies, and in the case of a sole proprietorship, partnership or corporation, each party thereto certifies as to its own organization, that to the best of their knowledge and belief, no member of City Council, city manager, deputy city manager, city secretary, department heads, or deputy department heads of the City has direct or indirect financial interest in the award of this Agreement, or in the services to which this Agreement relates, or in any of the profits, real or potential, thereof, in violation of Section 132 of the Home Rule Charter of the City.

31. COUNTERPARTS; PDF SIGNATURES.

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Any pdf-format or other electronic transmission of any signature of a signatory shall be deemed an original and shall bind such signatory. For these purposes, “electronic transmission” means electronically scanned or signed and transmitted versions (e.g. via pdf file or facsimile transmission) of an original signature, or signatures electronically inserted via software such as Adobe Sign or DocuSign.

32. TEMPORARY USE BY SEMS.

SEMS may need use of the Vehicle from September 21, 2023, through September 25, 2023, (the “Temporary Use Period”). If SEMS shall need use of the Vehicle during the Temporary Use Period, it shall notify the City in writing by September 1, 2023. If SEMS elects to use the Vehicle during the Temporary Use Period, the parties agree to negotiate in good faith an amendment to this Agreement allowing such use and specifying necessary terms, such as surrendering possession of the Vehicle. If SEMS elects to use the Vehicle during the Temporary Use Period, the City shall not be entitled to any rent from SEMS or a reduction in Rent under this Agreement.

SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto have executed this Agreement:

CITY OF BURLESON:

**EINSTEIN GROUP LLC d/b/a
SPEEDWAY EMS**

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____