

## **MUNICIPAL ORDER 52-2022**

### **A MUNICIPAL ORDER AUTHORIZING AND DIRECTING THE MAYOR TO EXECUTE A BACKUP AMBULANCE SERVICE PROVIDER AND FINANCIAL SERVICE SUBSIDY AGREEMENT BETWEEN THE CITY OF OWENSBORO, DAVIESS COUNTY FISCAL COURT AND OWENSBORO HEALTH, INC. ENSURING CONTINUOUS AMBULANCE SERVICE IF THE CURRENT AMBULANCE SERVICE AGREEMENT IS TERMINATED.**

**WHEREAS**, Mercy Ambulance of Evansville, Inc., d/b/a AMR (“AMR”) currently provides emergency medical ambulance services and emergency medical services to the City of Owensboro and Daviess County; and

**WHEREAS**, Owensboro Health Inc. (“OH”) is willing to assume operational and financial responsibility for ambulance services if the current agreement with AMR is terminated; and

**WHEREAS**, the City of Owensboro, Daviess County Fiscal Court, and OH have agreed to execute the attached “Backup Ambulance Service Provider and Financial Service Subsidy Agreement” to ensure continuous ambulance service for citizens of Owensboro and Daviess County.

**NOW, THEREFORE, BE IT ORDERED BY THE CITY OF OWENSBORO, KENTUCKY, AS FOLLOWS:**

**Section 1.** That the Mayor of the City of Owensboro, be, and he hereby is, authorized and directed to execute the Backup Ambulance Service Provider and Financial Service Subsidy Agreement by and between the City of Owensboro, Daviess County Fiscal Court and OH, setting forth the obligations of the parties with respect to ambulance services.

**Section 2.** That the Mayor, City Manager, and appropriate staff members are hereby authorized to sign any and all other documents deemed necessary to the furtherance of the authority outlined herein.

**INTRODUCED, PUBLICLY READ AND FINALLY APPROVED ON ONE READING,** this the 20th day of December, 2022.

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Thomas H. Watson, Mayor

ATTEST:

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Beth Davis, City Clerk

**BACKUP AMBULANCE SERVICE PROVIDER  
AND  
FINANCIAL SERVICE SUBSIDY AGREEMENT**

THIS AGREEMENT ("**Agreement**") is effective as of the 1<sup>st</sup> day of January, 2023 (the "**Effective Date**") by and between the DAVIESS COUNTY FISCAL COURT, 212 St. Ann Street, Room 202, Owensboro, Kentucky 42303 (the "**County**"), the CITY OF OWENSBORO, 101 East 4<sup>th</sup> Street, Owensboro, Kentucky 42303 (the "**City**") and OWENSBORO HEALTH INC., a Kentucky nonprofit corporation, 1201 Pleasant Valley Road, Owensboro, Kentucky 42303 ("**OHI**").

W I T N E S S E T H:

WHEREAS, OHI provides regional medical services which may include medical transportation services; and

WHEREAS, the County and the City contract to operate the emergency ambulance service in Owensboro and Daviess County under the license held by the County; and

WHEREAS, the County and the City entered into a Memorandum of Agreement for Emergency Medical Ambulance Services and Establishing an Ambulance Contracting Authority (**ACA**) dated December 17, 2019, to monitor and regulate ambulance services operated under the County's license; and

WHEREAS, the County and the City solicited proposals to operate the emergency ambulance service in Owensboro and Daviess County under the license held by the County, and selected an operator, Mercy Ambulance of Evansville, Inc., d/b/a AMR ("**AMR**"); and

WHEREAS, on May 2, 2019, the County and the City entered into a ten (10) year emergency medical and ambulance services agreement with AMR which expires May 1, 2029 (the "**Current Ambulance Service Agreement**") with AMR to provide exclusive countywide ground emergency medical ambulance services and emergency medical services (the "**Services**"); and

WHEREAS, in order to ensure continuous uninterrupted services, City of Owensboro Ordinance 7-2019, Daviess County Fiscal Court Ordinance 860.8 and KRS 67.083(3)(d) authorize the County and the City to contract for emergency medical ambulance services and enter into an agreement with OHI whereby OHI agrees to assume operational and financial responsibility for the Services if the current Ambulance Service Agreement is terminated; and

WHEREAS, the County and the City agreed in the Current Ambulance Service Agreement to provide AMR an annual subsidy amounting to \$150,000.00 including provisions for limited agreed and negotiated increases in the subsidy; and

WHEREAS, the parties desire to enter into this Agreement to provide for OHI to assume responsibility for, and direct operation of, the Services, and payment of the subsidy under the terms and conditions set forth below if the Current Ambulance Service Agreement is terminated for any reason; and

NOW, THEREFORE, in consideration of these mutual covenants, the parties agree that:

1. Take-over Option and Trigger Event. The parties acknowledge that the provision of Services is necessary to preserve and promote public safety and welfare. If the City and the County or AMR terminate the Current Ambulance Service Agreement, the City and the County may elect to take over the provision of Services from AMR as more specifically outlined in the Current Ambulance Service Agreement. Upon such occurrence, the City and the County may designate OHI as the operator of the Services pursuant to the contingency plan to be developed and approved in accordance with Section 3 below. The City and the County shall provide OHI with prompt written notice of any action taken to terminate the Current Ambulance Service Agreement and thereafter shall take all appropriate steps necessary during the take-over to transition the Services from AMR to OHI.

2. OHI Responsibilities Upon Termination of the Current Ambulance Service Agreement. Subject to and in accordance with the terms of the Plan as described in Section 3 below, OHI agrees to assume financial responsibility for, and direct operation of, the Services if the Current Ambulance Service Agreement is terminated prior to its expiration.

3. Take-over Contingency Plan.

A. The County, the City, OHI, and the Ambulance Contracting Authority shall develop and approve a take-over contingency plan (the “*Plan*”) effective only if the Current Ambulance Service Agreement is terminated.

B. The Plan shall address the items necessary for OHI to assume full responsibility for the Services and on substantially the same terms and conditions as the Current Ambulance Service Agreement.

C. OHI shall develop and provide to the County and the City its proposal for assuming responsibility for the Services within Daviess County including providing the County and the City its ability and proposed time-line from notice by the current provider to operation take-over.

4. Payment of Current Ambulance Service Agreement Subsidy. For the next three years (contract years beginning July 1, 2023, 2024 and 2025) OHI agrees to pay to the City and the County an annual subsidy in an amount equal to the amount which the City and the County pay to AMR as a subsidy for emergency ambulance services under the Current Ambulance Service Agreement up to \$150,000.00 per year. The City and the County shall notify OHI of AMR’s request for an adjustment to the annual subsidy. OHI may participate, with the City, the County and AMR in the audit analysis and negotiations for any adjustment requested by AMR. If as a result of such adjustment procedure the annual subsidy is increased above \$150,000 per year beginning in the fourth contract year after the Effective Date, OHI agrees to pay to the City and the County an annual subsidy in an amount equal to the amount which the City and the County pay to AMR as a subsidy for emergency ambulance services under the Current Ambulance Service Agreement up to \$500,000.00 per year (the contract years beginning July 1, 2026, 2027 and 2028).

5. Term and Termination. The initial term of this Agreement is for one (1) year, commencing on January 1, 2023, and continuing through December 31, 2023 and, thereafter shall renew automatically for successive one (1) year terms. Additionally, if the County ceases to hold the license for emergency ambulance services and no longer has an obligation to provide the Services, this Agreement shall terminate as of the date the County ceases to maintain such license.

6. County and City Responsibilities.

A. The County and the City shall use their best efforts to enable and assist OHI to assume the Services and maintain uninterrupted emergency ambulance services to Owensboro and Daviess County by coordinating with OHI to develop and implement the Plan and the related transition to OHI from the current provider.

B. If AMR defaults or terminates the Current Ambulance Service Agreement, the County and the City shall designate OHI as the operator of the Services under substantially the same terms and conditions as the Current Ambulance Service Agreement to the extent permitted by law.

C. If the County and the City contract with another emergency ambulance provider the County and the City may release OHI of its obligations under this Agreement or OHI may elect to terminate this Agreement upon notice to the County and the City.

7. General Provisions.

A. This Agreement contains the entire agreement between the parties relating to the subject addressed and may be modified or amended only by the mutual written consent of the parties. Any prior or contemporaneous agreement, promise, negotiation, or representation, either oral or written, relating to the subject matter of this Agreement and not expressly set forth in this Agreement shall be of no force or effect.

B. No assignment of the rights, duties, or obligations acquired under this Agreement shall be made by any party without the express written approval of a duly authorized representative of the other parties. Any attempted assignment in violation of this provision shall be void.

C. This Agreement shall be binding and shall benefit the parties, their respective successors and permitted assigns. The parties recognize that this Agreement at all times is subject to applicable state, local and federal laws.

D. All notices, requests, demands, and any other communications required or permitted under this Agreement shall be in writing, delivered in person or via overnight courier with tracking service, or sent by certified mail, return receipt requested, to:

OHI:	Owensboro Health, Inc.
	Attention: President
	1201 Pleasant Valley Road
	Owensboro, Kentucky 42303

County:                   Daviess County Judge/Executive  
                              212 St. Ann Street  
                              P.O. Box 1716  
                              Owensboro, KY 42302

City:                     City of Owensboro  
                              Nate Pagan, City Manager  
                              101 East 4<sup>th</sup> Street  
                              Owensboro, Kentucky 42303

E.       The waiver by either party of a breach or violation of any provision of this Agreement shall not operate as, or be construed to be, a waiver of any subsequent breach of the same or other provisions.

F.       This Agreement shall be construed in accordance with and governed by the laws of the Commonwealth of Kentucky.

G.       If any provision of this Agreement is held to be unenforceable for any reason, the unenforceability shall not affect the remainder of the Agreement which shall remain in full force and effect and enforceable in accordance with its terms.

H.       The parties signing this Agreement state that they have the authority to bind the entity on whose behalf they are signing.

I.       This Agreement shall not be construed against the party or parties preparing it. It shall be construed as if all the parties and each of them jointly prepared this Agreement, and any uncertainty or ambiguity shall not be interpreted against one or more parties.

J.       This Agreement may be signed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[END OF TEXT; SIGNATURE PAGE TO FOLLOW]

**IN WITNESS WHEREOF**, the parties executed this Agreement effective as of the date first above written.

**County**

**DAVISS COUNTY FISCAL COURT**

\_\_\_\_\_  
Al Mattingly, Daviess County/Judge Executive

Date: \_\_\_\_\_

**City**

**CITY OF OWENSBORO**

\_\_\_\_\_  
Thomas H. Watson, Mayor

Date: \_\_\_\_\_

**OHI**

**OWENSBORO HEALTH, INC. by**

\_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_

Date: \_\_\_\_\_

## **EXHIBIT A**

### **Take-over Contingency Plan**

[Left blank intentionally – to be developed and added by mutual agreement of the parties]