

RESOLUTION NO. R-2022-13

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS APPROVING A CONTRACT WITH PHI HEALTH, LLC DBA PHI AIR MEDICAL FOR ANNUAL MEMBERSHIP FOR EMERGENCY AIR MEDICAL TRANSPORT IN THE AMOUNT OF THIRTY-ONE THOUSAND TWO HUNDRED SIXTY-TWO DOLLARS (\$31,262) ATTACHED AS EXHIBIT A; AUTHORIZING THE CITY MANAGER TO EXECUTE ALL NECESSARY DOCUMENTS FOR THE AGREEMENT; PROVIDING FOR A REPEALING CLAUSE AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City Council has appointed the City Manager as the Chief Administrative Officer of the City; and

WHEREAS, the City Manager is responsible for the proper administration of all affairs of the City; and

WHEREAS, the City Council identified "Community Safety" as a Focus Area; and

WHEREAS, the City of Bastrop has approximately 4,466 households in the Incorporated City of Bastrop; and

WHEREAS, PHI is an air ambulance company that is licensed in the State of Texas and that provides a membership-based program (the "PHI Cares Program") in compliance with all applicable laws and regulations to cover the uninsured or otherwise uncovered portion of the flight charges that may be incurred by members requiring emergency air medical transportation on a PHI aircraft; and

WHEREAS, the City of Bastrop desires to enter into this Agreement with PHI whereby the Residents within the City will be members of the PHI Cares Program and entitled to receive the privileges and benefits of the PHI Cares Program in accordance with the terms and limitations of this Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS:

SECTION 1. That the City Manager is hereby authorized to execute a contract with PHI Health, LLC dba PHI Air Medical, at a cost of Thirty-One Thousand Two Hundred Sixty-Two Dollars (\$31,262) attached as Exhibit A.


SECTION 2. That the City Council of the City of Bastrop has found PHI Health LLC, dba PHI Air Medical, to be subject matter experts in the field of providing air ambulance services.

SECTION 3. All orders, ordinances, and resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provisions of this Resolution shall be and remain controlling as to the matters resolved herein.

SECTION 4. That this resolution shall take effect immediately from and after its passage, and it is duly resolved.

DULY RESOLVED AND APPROVED by the City Council of the City of Bastrop this 12th day of April 2022.

APPROVED



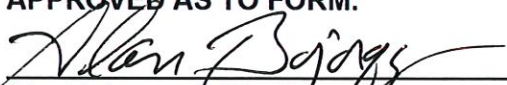
Connie B. Schroeder, Mayor

ATTEST:



Ann Franklin, City Secretary

APPROVED AS TO FORM:



Alan Bojorquez, City Attorney

**AGREEMENT FOR PHI CARES MEMBERSHIPS
FOR
THE CITY OF BASTROP, TEXAS**

This Agreement for PHI Cares Memberships for City Residents (this "Agreement") is made effective the **1st day of May 2022** (the "Effective Date") between **the City of Bastrop, Texas** ("City") and PHI Health, LLC d/b/a PHI Air Medical, a Louisiana limited liability company ("PHI"). City and PHI may hereinafter be referred to individually as a "Party" and collectively as the "Parties."

Recitals

WHEREAS, City has approximately **4,466 households** in the **Incorporated City of Bastrop, in the State of Texas**, with approximately **11,611 residents** living in these households (each a "Resident" and collectively, the "Residents");

WHEREAS, PHI is an air ambulance company that is licensed in the **State of Texas** and that provides a membership-based program (the "PHI Cares Program") in compliance with all applicable laws and regulations to cover the uninsured or otherwise uncovered portion of the flight charges that may be incurred by members requiring emergency air medical transportation on a PHI aircraft; and

WHEREAS, City desires to enter into this Agreement with PHI whereby the Residents within City will be members of the PHI Cares Program and entitled to receive the privileges and benefits of the PHI Cares Program in accordance with the terms and limitations of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and intending to be legally bound hereby, the Parties agree as follows:

**Article I.
Scope of Agreement and Term**

1.1 Contract for Ambulance Membership. This Agreement relates to the acquisition of PHI Cares memberships by City for the benefit of City Residents and covers the uninsured or otherwise uncovered portion of the flight charges that may be incurred by such Residents when requiring emergency air medical transportation on a PHI aircraft.

1.2 Term. The term of this Agreement commences as of the Effective Date set forth above and continues for a period of one (1) year, through **April 30, 2023** (the "Term"), unless otherwise terminated as provided for herein. At the end of the Term, the Parties may negotiate to extend this Agreement or enter into a new agreement.

**Article II.
PHI Memberships**

2.1 Annual Fee; Adjustment. Pursuant to this Agreement and effective during the Term of this Agreement, City is purchasing PHI Cares memberships for the households and the Residents residing in these households of City (individually, a "Member" and collectively, the "Members") for a total annual amount equal to **\$31,262.00** (the "Annual Fee"). The Annual Fee is based on an expectation of **4,466 households** at a rate of **\$7.00 per household**, which shall cover the Residents residing in these households. The Annual Fee shall be paid in advance on or before the Effective Date.

2.2 Compliance. City and PHI shall comply with all applicable federal and state laws and regulations governing membership programs.

2.3 Non-Exclusivity. It is understood and agreed by the Parties that PHI is not the exclusive carrier for air medical transports in City. Any calls for air medical transports in City shall be made in accordance with the protocols of the requesting EMS agency or referring hospital physician.

2.4 Terms and Conditions. The general terms and conditions of the PHI Cares Program are as described in the attached Exhibit "1," which is made a part of this Agreement (the "PHI Cares General Terms and Conditions"). In addition, the following specific terms shall apply to this Agreement:

- (a) **Location.** Transport must be for an Incorporated City Resident requiring PHI to provide air medical transport from a pickup location within the City of Bastrop, Texas or Bastrop County, Texas (the "City Service Area").
- (b) **Membership ID #.** PHI will provide the City with a supply of **5,000 membership cards** which the City will distribute and make available to the Residents of Bastrop, Texas. This membership card will contain the Membership ID # for the City of Bastrop and the contract expiration date.
- (c) **Notifying PHI.** It is the responsibility of City or any transported Resident of the Incorporated City of Bastrop to contact PHI and notify it that an Incorporated City Resident has been transported by PHI and to provide PHI with the name of such Resident. In addition, in order to avoid receiving a bill for their medical transport, Residents should inform the healthcare provider, dispatcher, or emergency personnel of their PHI Cares membership at the time an air transport is requested, as these personnel will not be aware of Residents' PHI Cares membership.
- (d) **Not Insurance Product.** MEMBERSHIP ONLY APPLIES TO TRANSPORT ABOARD A PHI AIRCRAFT. MEMBERSHIP IS NOT AN INSURANCE PRODUCT AND DOES NOT PAY FOR SERVICES PROVIDED BY OTHER AIR OR GROUND AMBULANCE SERVICE PROVIDERS.
- (e) **Coverage.** Each membership covers the entire household (i.e., each individual member of the household that is a Resident of City) except for any person in the household who is now or at the time of the transport request is a recipient of Medicaid benefits. Medicaid recipients are excluded from membership in accordance with applicable state law.
- (f) **Roster of Incorporated City Residents.** The City shall provide PHI with a roster each calendar quarter, which will contain, at a minimum a list of the physical address of each Incorporated City Resident.

2.5 Full National Household Membership Upgrade Option. Any individual who resides within the incorporated boundaries of City may elect to upgrade their membership to a full national household membership (covering the entire household, as defined below), which shall include coverage outside the City Service Area, for an additional **\$45.00 per year**; provided, however, that coverage would only extend to any current PHI Cares service areas and shall only apply to transport aboard a PHI aircraft. For a list of PHI Cares service areas, please see the PHI Cares website: www.phicare.com, or contact the membership office for a copy. To obtain this upgrade, City of Bastrop, Texas Residents are required to call the PHI Cares Membership office directly or complete a Membership Upgrade Form for each Resident requesting this option.

2.6 Household. For purposes of this Agreement and PHI Cares membership, a household is considered to include all immediate family members and up to 3 non-family members who reside in the same household.

2.7 Refunds. No refunds will be extended to City (or any individual) as a result of existing PHI Cares members, which are separate from this Agreement.

2.8 Conflicts. Should there be any conflict between the PHI Cares General Terms and Conditions and the terms set forth in this Agreement, the terms of this Agreement shall prevail.

Article III. Termination

3.1 Termination. Either Party may terminate this Agreement for any reason upon providing the other Party with at least thirty (30) days prior written notice. In the event that PHI terminates this Agreement for convenience pursuant to this Section 3.1, PHI shall refund City the prorated amount of the Annual Fee for the remainder of the Term. In the event that City terminates this Agreement for convenience pursuant to this Section 3.1, City shall not be entitled to a refund of any portion of the Annual Fee.

3.2 Immediate Termination. Either Party may terminate this Agreement with ten (10) days' prior written notice (provided such notice period is legally permitted) if: (1) the Attorney General of Texas renders an official opinion that voids, modifies, or otherwise affects any provision in this Agreement; or (2) a court of competent jurisdiction issues a judgment or ruling that voids, modifies, or otherwise affects any provision of this Agreement; or (3) a duly authorized statute, law, rule, or regulation is enacted or modified by a competent legislative authority in such a manner that materially modifies, voids, or affects this Agreement (including having any material effect on PHI's cost, as determined in PHI's reasonable discretion). If any one of the above-described events occurs, the Parties will exert their best efforts to agree on an alternative agreement in conformance with any such opinion, judgment, or legislative enactment to the extent feasible.

3.3 Termination for Default.

(A) City may terminate this Agreement for default if PHI breaches any material term of this Agreement or fails to perform as required under this Agreement and fails to cure or remedy such breach or failure of performance within fifteen (15) days of receiving written notice from City.

(B) PHI may terminate this Agreement for default if City breaches any term of this Agreement or fails to perform as required under this Agreement and fails to cure or remedy such breach or failure of performance within fifteen (15) days of receiving written notice from PHI.

(C) Remedies. In the event of a default by PHI and City's termination pursuant to Section 3.3(A) above, City's sole and exclusive remedy shall be the pro-rata refund of the Annual Fee for the remainder of the Term. In the event of a default by City and PHI's termination pursuant to Section 3.3(B) above, PHI's sole and exclusive remedy shall be to retain the Annual Fee for the Term.

Article IV. Indemnification and Limitation of Liability

4.1 Indemnification. TO THE EXTENT ALLOWED BY APPLICABLE LAW, EACH PARTY ("INDEMNITOR") SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE OTHER PARTY AND ITS EMPLOYEES, AGENTS, REPRESENTATIVES, SUCCESSORS AND ASSIGNS (COLLECTIVELY, THE "INDEMNIFIED PARTIES"), FROM AND AGAINST ALL COSTS, EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES, EXPENSES OF INVESTIGATION AND LITIGATION, AND COURT COSTS), LIABILITIES, DAMAGES, CLAIMS, SUITS, JUDGMENTS, ACTIONS, AND CAUSES OF ACTION WHATSOEVER, (COLLECTIVELY, "CLAIMS") TO THE EXTENT BUT ONLY TO THE EXTENT RESULTING OR ARISING FROM THE INDEMNITOR'S BREACH OF THIS AGREEMENT OR ANY NEGLIGENT ACT OR OMISSION OR WILLFUL MISCONDUCT OF THE INDEMNITOR OR ITS EMPLOYEES, AGENTS, OR REPRESENTATIVES.

4.2 Limitation of Liability. Notwithstanding anything herein to the contrary, in no event, whether as a result of contract, tort, strict liability or otherwise, shall PHI be liable to City or any Member for any punitive, indirect, incidental or consequential damages, including, without limitation, loss of profits, loss of use or loss of contract.

4.3 Survival. The provisions of this Article IV will survive the expiration or early termination of this Agreement or any extensions hereof.

Article V. Miscellaneous

5.1 Entire Agreement. This Agreement (including any and all exhibits and attachments hereto) constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all previous communication, representations or agreements, either oral or written, with respect to the matters addressed herein. All modifications or amendments to this Agreement must be in expressed in a written instrument duly executed by both Parties mutually agreeing to such modification or amendment.

5.2 Assignment and Delegation. The Parties each hereby bind themselves, their successors, assigns and legal representatives to each other with respect to the terms of this Agreement. Neither Party may assign any rights or delegate any duties under this Agreement without the other Party's prior written approval, which approval shall not be unreasonably withheld.

5.3 Severability. If any provision or application of this Agreement is held illegal, invalid, or unenforceable by any Court of competent jurisdiction, the invalidity of such provision will not affect or impair any of the remaining provisions of this Agreement, except as expressly set forth herein.

5.4 Applicable Law; Enforcement and Venue; Attorney's Fees. This Agreement shall be enforceable in Bastrop, Texas, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions herein, exclusive venue for same shall lie in Bastrop County, Texas. This Agreement shall be governed by and construed in accordance with the laws and court decisions of Texas. This Agreement will be interpreted and construed as broadly as possible consistent with the purposes stated herein. In the event of any litigation between the Parties arising out of or relating to this Agreement, the prevailing Party (as determined by the court) shall be entitled to recover its reasonable attorneys' fees, litigation expenses and court costs from the other Party.

5.5 Notice. Any notice required or permitted to be given pursuant to this Agreement shall be in writing and shall be personally delivered, sent via certified mail, postage prepaid, return receipt requested, or sent via facsimile to the following addresses:

If to City:

City of Bastrop
1311 Chestnut Street
Bastrop, Texas 78602
Attn: Paul Hofmann, City Manager
Email: phofmann@cityofbastrop.org

With a copy to:
Bojorquez Law Firm, P.C.
Attn: Alan Bojorquez
12325 Hymeadow Drive, Suite 2100
Austin, Texas 78750
alan@texasmunicipallawyers.com

If to PHI:

PHI Health, LLC
2800 N. 44th Street, Suite 800
Phoenix, Arizona 85008
Attn: David Motzkin, President
Email: dmotzkin@phiairmedical.com

With a copy to:
PHI Air Medical, L.L.C.
Attn: Ira Berkowitz, Vice President,
General Counsel
Email: iberkowitz@phiairmedical.com
2800 N. 44th Street, Suite 800
Phoenix, Arizona 85008

Any Party may change their address for purposes of this Section by giving the other Party written notice of the new address in the manner set forth above.

5.6 Independent Contractor Status. PHI is an independent contractor, and is not the City's employee. PHI's employees or subcontractors are not the City's employees. This Agreement does not create a partnership, employer-employee, or joint venture relationship. No Party has authority to enter into contracts as agent for the other Party. PHI and the City agree to the following rights consistent with an independent contractor relationship:

- (1) PHI has the right to perform services for others during the term hereof.
- (2) PHI has the sole right to control and direct the means, manner and method by which it performs its services required by this Agreement.
- (3) PHI has the right to hire assistants as subcontractors, or to use employees to provide the services required by this Agreement.
- (4) PHI or its employees or subcontractors shall perform services required hereunder, and the City shall not hire, supervise, or pay assistants to help PHI.
- (5) Neither PHI nor its employees or subcontractors shall receive training from the City in skills necessary to perform services required by this Agreement.
- (6) City shall not require PHI or its employees or subcontractors to devote full time to performing the services required by this Agreement.
- (7) Neither PHI nor its employees or subcontractors are eligible to participate in any employee pension, health, vacation pay, sick pay, or other fringe benefit plan of the City.

5.7 Counterparts; Authority. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute but one and the same instrument. Each individual executing this Agreement on behalf of a Party represents that he/she is authorized to enter into and deliver this Agreement and bind the Party hereto.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties hereto have entered into this Agreement as of the date and year written below, but which shall be effective for all purposes as of the Effective Date.

PHI HEALTH, LLC
d/b/a PHI AIR MEDICAL

CITY OF BASTROP, TEXAS

By: 

Name: David Motzkin

Title: President

Date: 03/14/2022

By: 

Name: Paul A. Nolan

Title: City Manager

Date: 4/14/22



EXHIBIT 1

PHI Cares Membership Terms and Conditions

Membership

PHI Cares is a membership program operated by PHI Health, LLC, which covers the uninsured or otherwise uncovered portion of the flight charges that may be incurred by members who are transported on a PHI medically configured aircraft as set forth herein. Membership is valid for one (1) year beginning five (5) days after your completed application and nonrefundable payment have been received and processed by the PHI Cares membership office. These Terms and Conditions also apply to renewing memberships, provided that payment of the annual membership fee is received within thirty (30) days of the renewal date.

As used herein, the terms "you," "your," and "Member" shall mean any members enrolled in the PHI Cares Program; the terms "our," "we," "us," and "PHI" shall mean PHI Health, LLC; the term "PHI Cares Program" shall mean the PHI Cares membership program operated by PHI; and the term "Terms and Conditions" shall mean the PHI Cares Program Terms and Conditions.

Billing

Members are charged an annual membership fee payable yearly in advance. The annual membership fee charged by PHI is based on certain factors, including whether or not you have healthcare insurance coverage.

A Member who receives a medically necessary transport through the PHI Cares Program is relieved from paying any charges related to the medical transport other than amounts paid or reimbursed to the Member by any available healthcare insurance, a third party payor, or a third party who may be legally responsible for the charges. In other words, PHI Cares accepts what your insurance or other third-party source of payment pays as "payment-in-full," relieving you of any other charges for the air medical transport.

PHI will bill your healthcare insurer or other third-party payor (for example, Medicare), or seek recovery from any legally liable third party (for example, a car accident which causes you injury as a result of someone else's fault or negligence) for the air medical transport. Should you receive payment directly from your healthcare insurer, other third-party payor, or from a legally liable third party for all or any portion of the charges for the air medical transport, you agree to promptly remit such payment to PHI. If any third party or his/her insurer who is legally liable pays for the air transport charges either through settlement of a claim or a judgment from a lawsuit, you agree to promptly remit the amount received by you for air transport charges included in such settlement or judgment.

Members who have no healthcare insurance coverage at the time of enrollment and no other third-party payor to cover air medical transport charges will be relieved by PHI from any patient transport charges for medically necessary air transport services on a PHI aircraft.

PHI Cares Members are responsible for and agree to pay for any charges that are not covered by the PHI Cares Program, including but not limited to air transport pick-ups outside of the PHI Cares service area or any ground ambulance transportation services that Members may incur in connection with any PHI air medical transport.

Eligibility & Availability

Medicaid participants are not eligible for membership in the PHI Cares Program.

Please note that a PHI aircraft may not be available at the time a flight request is made due to inclement weather, the PHI aircraft being in service at the time of the request, the PHI aircraft undergoing maintenance or repairs, weight limitations of the PHI aircraft, or other reasons that make the PHI aircraft unavailable to respond to a request. Further, medical or dispatch personnel may call another air ambulance provider in which event your PHI Cares membership will not cover the medical transport.

Passenger weights and other operating restrictions may limit our ability to transport a Member.

PHI, in consultation with other healthcare providers or dispatch agencies, reserves the right to determine whether air medical transport is medically necessary, safe, and appropriate under the circumstances.

Membership in the PHI Cares Program is not an insurance product. PHI Cares does not cover and will not pay or reimburse you for services performed by any other air medical transport services provider or any ground ambulance services provider.

Notwithstanding the foregoing, in addition to covering medically necessary transports on PHI aircraft, your membership will also cover medically necessary transports on PHI's partners' aircraft if such transports occur within PHI's service areas. Please visit our website at www.phicare.com or contact our Membership Department to obtain more information on our current air ambulance membership partners. Any medical transports on a PHI Cares partner aircraft shall be subject to the same Terms and Conditions stated herein.

Service Area

Membership provides household national coverage for medically necessary air transports on PHI medically configured aircraft to the closest appropriate facility within 200 miles for a rotor wing (helicopter) and 600 miles for a fixed wing (airplane). The point of pickup must be within the PHI Cares service area. For a list of service areas, please see the coverage map on the PHI Cares website: www.phicare.com/coverage.shtml or contact the membership office directly.

Notifying PHI Cares Membership Department of Transport

You should inform the healthcare provider, dispatcher, or emergency personnel of your PHI Cares membership at the time an air medical transport is requested, as these personnel will not be aware of your PHI Cares Membership. In addition, it is the responsibility of each Member to contact us if a registered and eligible household dependent has been flown by PHI. Please call our Membership Department at: *1.888.435.9744 (1.888. I Fly PHI), Monday-Friday, 0800 to 1600 Hours MST.*

Termination and Renewal of Coverage

PHI may terminate your membership for failure to comply with the Terms and Conditions of the PHI Cares membership program. PHI reserves the right to discontinue its PHI Cares Program at any time upon notice to Members. In such event, PHI shall return a pro rata portion of the membership fee. PHI also reserves the right to unilaterally modify the Terms and Conditions, including but not limited to the membership fee to be charged to Members who join or renew their membership after the effective date of such change.

It is your responsibility to renew your membership prior to the expiration of the one-year term. A completed renewal application and nonrefundable payment must be received within thirty (30) days of the renewal date. If you do not renew your membership, your membership and coverage thereunder will automatically terminate at the end of the one-year term. Renewal contracts may include changes in coverage.

Acknowledgment

You acknowledge that all information included in the completed application is correct to the best of your knowledge, including all health insurance information. If your healthcare insurance is no longer in effect at the time air medical services are rendered, your PHI Cares membership will not cover your air medical transport charges, unless you have notified PHI Cares of such cancellation and have paid the supplemental membership fee charged to PHI Cares members who do not have healthcare insurance. Any changes in your healthcare insurance information, including the cancellation of healthcare insurance coverage, must be reported to the PHI Cares membership office within five (5) business days of such change or cancellation.

By approving and submitting your application for PHI Cares membership, you agree to all of the Terms and Conditions set forth herein.