

City of Garden Grove

INTER-DEPARTMENT MEMORANDUM

To: Matthew J. Fertal

From: Dave Bertka

Dept: City Manager

Dept: Fire

Subject: CARE AMBULANCE CONSENT TO
TRANSFER AGREEMENT

Date: November 23, 2010

OBJECTIVE

To request City Council to approve an agreement consenting to the acquisition of Care Ambulance Service by FCA Corp.

BACKGROUND

Care Ambulance Services, Inc. intends to transfer ownership of all stock in the company to FCA Corp. in December 2010. The City of Garden Grove and Care Ambulance Services, Inc. entered into an Ambulance Service Agreement effective September 1, 2009 until August 31, 2014. In accordance to Section 17 of the Agreement titled Assignment and Delegation, any transfer or sale of ownership requires prior written consent of the City.

DISCUSSION

Care Ambulance has partnered with the City of Garden Grove for emergency ambulance transportation since 2004 and has provided excellent service. The Fire Department has met jointly with both Care and FCA, and it was discussed that no operational or administrative changes to the company will take place, including the company name. Rick Richardson will remain with the company and act in the capacity of CEO, and the current executive staff will also stay intact. The Fire Department feels very comfortable that the philosophy of Care Ambulance, and the current outstanding working relationships will remain intact.

FINANCIAL IMPACTS

There is no financial impact to the general fund. By approving the consent to transfer agreement the existing ambulance pass through fee will remain intact, which generates over \$250,000 annually.

RECOMMENDATION

It is recommended that City Council:

- Approve the Consent to Transfer Agreement amongst the City of Garden Grove, Care Ambulance Services, Inc, and FCA Corp regarding the Ambulance Service Agreement.
- Authorize the City Manager to execute the Consent to Transfer Agreement, including minor modifications as deemed appropriate by the City Manager, and any related implementing documents



DAVE BERTKA
Fire Chief

Attachment: Consent to Transfer Agreement

Recommended for Approval



Matthew Fertal
City Manager

CONSENT TO TRANSFER AGREEMENT

THIS CONSENT TO TRANSFER AGREEMENT ("Consent to Transfer Agreement") is made and entered into this ____ day of November, 2010 (the "Effective Date") by and between Care Ambulance Service, Inc., a California corporation (hereinafter, the "Transferor") and FCA Corp., a California corporation (hereinafter, the "Transferee") for the purpose of obtaining the consent of the _____ (hereinafter, the "City") to the transfer of ownership of all of Transferor's stock to Transferee (the "Transfer") consistent with the requirements under the Agreement specified hereinbelow for provision of Fire/EMS emergency ambulance transportation and/or related services.

RECITALS

WHEREAS, the Transferor and City entered into an agreement between the City of _____ and Care Ambulance Service, Inc. for provision of Fire/EMS Emergency Ambulance Transportation and/or Related Services dated _____ (the "Agreement"). A true and correct copy of the Agreement is attached hereto as **Exhibit A**;

WHEREAS, the Agreement requires that Transferor obtain the prior written consent of the City before the transfer of one hundred percent (100%) of the stock of Transferor;

WHEREAS, Transferor has made a request to the City that City consent to the transfer to Transferee of one hundred percent (100%) of the stock issued by Transferor; and

WHEREAS, City is willing to consent to the transfer upon approval and complete execution of this Consent to Transfer Agreement.

NOW THEREFORE, it is mutually understood and agreed by the parties as follows:

1. Consent of City. Upon valid approval and execution of this Consent to Transfer Agreement by all parties hereto, City consents to the transfer to Transferee of one hundred percent (100%) of Transferor's outstanding stock.

2. Representation and Warranty. Transferor and Transferee jointly and severally represent, warrant and guarantee that, during the term of the Agreement:

(a) Transferor will continue to perform all its duties, obligations and performance requirements as set forth in the Agreement at all times during the term of the Agreement; and

(b) In connection with the Transfer, (i) Transferor does not intend to terminate the employment of any members of the current management team (Bob Barry, Bill Weston, Laura Vartanian, Ben Baker and Mitch Felde), and (ii) Transferor intends to enter into private, confidential employment agreements with such members of the current management team, which will govern the terms of their respective employment relationships; and

(c) There will be no adverse impact upon Transferor's financial ability to perform its duties and obligations as set forth in the Agreement caused in whole or in part by the transfer. Transferee agrees to remedy any such adverse impact(s) within fifteen (15) days of receipt of written demand from City;

(d) Neither Transferor nor Transferee shall delegate, assign its rights or otherwise transfer its obligations in whole or in part, under the Agreement or under this Consent to Transfer Agreement, without the prior written consent of City, except as permitted by the Agreement. Except in connection with the contemplated Transfer, neither Transferor nor Transferee shall cause or permit a change in the shareholders in Transferor or other transfer of greater than ten percent (10%) of stock issued by Transferor to any other person or entity without the prior written consent of City.

3. Notices. All notices and demands hereunder and communications regarding the interpretations of the terms of this Consent to Transfer Agreement, or changes thereto, shall be effected by delivery in person or by deposit in the U.S. Mail, registered or certified mail, return receipt requested, postage prepaid and addressed as follows:

To Transferor: Care Ambulance Service, Inc.
1517 W. Braden Ct.
Orange, CA 92868

To Transferee: FCA Corp., a California corporation
c/o O'Melveny & Myers LLP
610 Newport Center Drive
Newport Beach, CA 92660

To City:

and

4. Binding Effect. This Consent to Transfer Agreement shall be binding on and inure to the benefit of the parties hereto, their respective heirs, executors, administrators, successors-in-interest, and assigns.

5. Integrated Agreement; Amendments. Nothing herein amends the terms or conditions set forth in the Agreement. This Consent to Transfer Agreement contains all of the agreements of the parties pertaining to consent to the transfer and cannot be amended or modified except by written agreement signed by and approved by all three parties.

6. Governing Law. This Consent to Transfer Agreement shall be governed by and construed in accordance with the laws of the State of California.

7. Effect of Partial Invalidity. If any term, provision, or application of this Consent to Transfer Agreement is held invalid or unenforceable, the remainder of this Consent to Transfer Agreement and any application of the terms and provisions shall not be affected thereby, but shall remain valid and enforceable.

8. Authority to Execute. Each of the undersigned represents and warrants that he or she is duly authorized to execute and deliver this Consent to Transfer Agreement and that such execution is binding on the entity for which he or she is executing this document.

This Consent to Transfer Agreement shall be effective upon execution by all parties.

(Signature page follows).

IN WITNESS WHEREOF, the parties hereto have caused this Consent to Transfer Agreement to be executed on the date first above written.

CARE AMBULANCE SERVICE, INC.

By: _____
Rick W. Richardson
President

Date: _____

By: _____
Dan Richardson
Secretary

Date: _____

CITY OF _____

By: _____

Date: _____

FCA CORP.

By: _____
Robert F. Heffner
President

Date: _____

By: _____
Dan Richardson
Director

Date: _____

Exhibit A

Agreement between City of _____ and Care Ambulance
Service, Inc. for provision of Fire/EMS Emergency Ambulance
Transportation and/or Related Services dated _____, 20____