

Austin American-Statesman

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AFFIDAVIT OF PUBLICATION

THE STATE OF TEXAS
COUNTY OF TRAVIS

Before me, the undersigned authority, a Notary Public in and for the County of Travis,
State of Texas, on this day personally appeared

Sammye Klein

Classified Advertising Agent of the Austin American-Statesman, a daily newspaper published in said County and State that is generally circulated in Bastrop, Bell, Blanco, Brazos, Burleson, Burnet, Caldwell, Colorado, Comal, Coryell, Fayette, Gillespie, Gonzales, Guadalupe, Hays, Kerr, Lampasas, Lee, Llano, Milam, Nueces, San Saba, Travis, Washington and Williamson Counties, who being duly sworn by me, states that the attached advertisement was published in said newspaper on the following date(s), to wit

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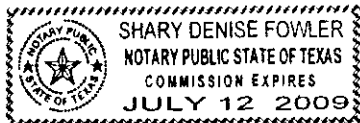
Classification Legal Notices (9980)

Lines 718

Cost \$3,211.46

and that the attached is a true copy of said advertisement

SWORN AND SUBSCRIBED TO BEFORE ME, this the 10 day of September 2007



Shary Denise Fowler

Notary Public in and for
TRAVIS COUNTY, TEXAS

Austin American-Statesman
305 South Congress Ave P O Box 670 Austin Texas 78767-0670 512-445-3832

MEDICAL TRANSFER SERVICE means the meaning prescribed in Chapter 10-2 of the City Code. **PUBLIC RIGHT OF WAY** means the surface of a public street, highway, lane, path, alley, sidewalk, boulevard, drive, bridge, tunnel, easement or similar property in which the City holds a property interest or exercises rights of management or control and which is consistent with the purposes for which it was acquired or dedicated, may be used for the operation of a medical transfer service.

PART 3. GRANT OF A FRANCHISE.

The Council grants to Acadian (Grantee) the nonexclusive right and privilege to operate a medical transfer service on the public right of way of the City subject to this Part.

(A) The expiration of MetroCare Services Austin L.P. (MetroCare) medical transfer service franchise with the City and the transfer of MetroCare of all its franchise vehicles and other assets to Acadian, such expiration and transfers to take place not later than Midnight on October 29, 2007.

(B) If Acadian accepts this Franchise, it shall not later than 20 days after the adoption of this ordinance, file with the City Clerk a letter acknowledging and accepting the provisions of this Franchise, and agree to be bound by the terms of this Franchise.

(C) The Grantee shall execute or cause to be executed all legal documents, insurance certificates and performance bonds required by the City. The documents are subject to review and approval by the City Attorney.

(D) The term of this franchise begins on October 30, 2007, and expires on the fifth anniversary of that date unless terminated in accordance with this Franchise.

(E) A reference in this Franchise to a Public Right of Way is not a representation or guarantee by the City that its interests or other rights in property are sufficient to permit its use for the operation of a medical transfer service and the Grantee will gain only those rights which the City has the right and power to give.

PART 4. EXTENSION OF FRANCHISE.

The Grantee may request an extension of the term of this franchise as provided by the Charter. The request for the extension shall be filed no later than five months prior to the expiration of the franchise.

PART 5. TRAINING.

The Grantee's employees may attend City in service training provided to EMS employees at no cost to the Grantee on a space available basis. The Director may make additional training available to the Grantee's employees on a fee basis.

PART 6. EMPLOYEES.

The employees and agents of the Grantee may not be the employees, agents or representatives of the City. The City may not direct or control the Grantee's employees and agents in the performance of their duties under this Franchise. The City is not liable for the acts or omissions of the Grantee's employees and agents.

PART 7. COMPLIANCE WITH LAW.

The Grantee's employees and agents shall comply with applicable federal, state and City laws, rules, regulations, codes and other requirements in connection with the operation of the medical transfer service and the conduct of any patient information.

PART 8. RATES AND CHARGES FOR SERVICE.

The City Council may after notice and hearing regulate the rates and charges and the Grantee charges for services provided under this Franchise.

PART 9. COMPENSATION TO THE CITY.

The Grantee shall pay to the City as compensation during each year of this Franchise a franchise fee as provided by Chapter 10-2 of the City Code as amended from time to time. The compensation is in addition to all special assessments and ad valorem taxes.

PART 10. CITY'S RIGHT TO PURCHASE.

(A) The City may purchase the Grantee's medical transfer service at any time within five years before the expiration of this Franchise.

(B) If the City elects to exercise its right to purchase the Grantee's medical transfer service, the City shall notify the Grantee in writing at least 90 days before the effective date of purchase.

(C) The City and Grantee shall

have 30 days following the date of the City's notice to negotiate and agree upon a purchase price. If they fail to reach agreement within such 30-day period, each party shall within 60 days following the date of the City's notice of intent to purchase, designate an appraiser experienced and knowledgeable in the valuation of similar services.

(1) Each appraiser shall conduct an independent appraisal of the fair market value of the Grantee's medical transfer service as a going concern as of the effective date of the purchase by the City.

(2) Each party shall be responsible for the appraisal fees of its own appraiser.

(3) In conducting the appraisal, the appraisers shall consider among other factors the documented start up costs incurred by Grantee in 2007 in expanding services to the City's corporate limits, the book value of the assets constituting the Grantee's medical transfer service, the age condition and remaining useful life of the Grantee's property utilized in performing services under this Franchise, and the discount rate to be used in streamlining the Grantee's actual customer base at the time the notice of purchase is given by the City.

(4) If the two independent appraisals result in purchase prices that are within 20 percent of each other, the purchase price to be paid by the City will be the average of the two appraisals. If the two independent appraisals are not within 20 percent of each other, then the two appraisers shall discuss their appraisals and attempt to arrive at a joint determination concerning the purchase price. If the two appraisers are not able to arrive at a joint determination of fair market value within 120 days after the City's notice of its intent to purchase, then the City and Grantee shall jointly select a third independent appraiser. The third appraiser shall submit a determination of the purchase price within thirty days of being selected, and the purchase price shall be the average of the three appraisals.

(5) The City and the Grantee shall each pay fifty percent (50%) of the costs of the third independent appraiser.

(6) The purchase price shall be payable in cash unless the Grantee elects to pay otherwise. If the City exercises the purchase option, the purchase price and serves no notice of the action on the Grantee, the Grantee shall immediately transfer to the City title to the Grantee's medical transfer service and all property real and personal of the Grantee's medical transfer system.

(7) The Grantee shall transfer the property free from liens and encumbrances unless the City agrees to assume the encumbrances in lieu of some portion of the purchase price.

(8) The Grantee shall execute and deliver warranty deeds and sale of real estate instruments of conveyance to the City to complete the transfer.

PART 11. ACCOUNTS, RECORDS, REPORTS AND INVESTIGATIONS.

Not later than 10 days after receipt of a request for information from the Director, the Grantee shall provide the City information affecting the maintenance, operation and repair of the Grantee's medical transfer service in the public right of way.

(A) The Grantee shall keep complete and accurate books of accounts and records of its business and operations under this Franchise. The accounts shall be maintained in accordance with generally accepted accounting principles.

(B) The Director may require the Grantee to keep additional records to identify account for and report revenue and deductible accounts.

(C) The Director may require the Grantee to provide other information relating to this Franchise in the form and manner prescribed by the Director.

(D) The Director may audit the Grantee.

PART 12. ANNUAL AUDIT.

The Grantee shall furnish to the Director an annual financial review audit performed by a Certified Public Accountant. The audit shall describe the Grantee's financial status and shall be performed at the Grantee's expense.

PART 13. QUALITY ASSURANCE REVIEW.

The Director may conduct periodic reviews, including actual on site surveys of the Grantee's physical plant and equipment, to determine at any time make inquiries pertaining to the Grantee's performance of the terms and conditions of this Franchise.

The Grantee shall respond to an inquiry not later than 3 days after a request by the Director.

PART 14. INSURANCE.

(A) The Grantee shall provide and maintain the following insurance:

(1) Workers' Compensation insurance in an amount under the limits of coverage established by Tex. Labor Code Chapter 401.001 et seq.

(2) General liability insurance with a minimum bodily injury limit of \$1,000,000 for each occurrence to include premises/operations, broad form property damages, personal liability and contractual liability coverage.

(3) Automobile liability insurance for all vehicles used in performing services under this Franchise with minimum limits for bodily injury of \$500,000 for each person and \$1,000,000 for each occurrence.

(4) The required insurance must be written by a solvent insurer licensed to do business in the State of Texas.

(5) The Grantee shall furnish the City with a certificate of coverage issued by the insurer.

(6) The City shall be named as an additional insured.

(7) The certificate of insurance shall contain transcripts from the office of the insurer evidencing those insured the location and the operations to which the insurance applies, the expiration date and a notice of cancellation clause.

(8) The Grantee may not cause any insurance to be canceled or permit any insurance to lapse. Insurance certificates shall include a clause that the policy may not be canceled or altered in any way until 10 days after the Director has received written notice as evidenced by return receipt of a request or certified letter.

(9) The City may review the insurance requirements of this section during the effective period of this Franchise and adjust insurance coverage and limits if the City's Risk Manager determines that an increase is required based on changes in statutory law, court decisions for the claims history of the industry as well as of the Grantee. The City agrees to review the coverage if the required insurance coverage increases.

PART 15. PERFORMANCE BOND.

(A) The Grantee shall file with the Director a surety bond in a form approved by the City Attorney to secure performance of the Grantee's obligations under the Franchise. The bond must be written by an insurance company licensed to do business in the state and an agent or attorney in the City for service of process.

(B) Instead of the surety bond described in this section, the Grantee may file with the Director a certificate of deposit or letter of credit in favor of the City. The certificate of deposit or letter of credit is subject to the conditions for a surety bond stated in this section.

(C) A surety bond under this chapter must include the following terms:

(1) The Grantee shall pay to the City all amounts due under the terms of this chapter.

(2) The Grantee shall pay fines, assessments and judgments levied against the Grantee by the City and by other officials that may levy fines, taxes, charges, assessments or judgments.

(3) The Grantee shall perform every obligation under this chapter (Franchise) and this chapter.

(4) Each surety bond must contain an endorsement that no cancellation or restriction of the bond is effective until the 30th day after the day the City receives notice by certified mail return receipt requested of the cancellation or restriction.

(5) The bond amount must be \$10,000.

PART 16. INDEMNITY.

The Grantee shall be independent contractor in the performance of this Franchise and shall indemnify and hold harmless the City its officers, agents and employees from any and all claims or losses which may result from any negligent or intentional act or omission of

the Grantee. Its agents, employees or subcontractors under this Franchise. The Grantee shall defend, indemnify and hold the City harmless against damages, costs, loss or expense for the repair, replacement, or restoration of the City's property, equipment, materials, structures and facilities which are damaged, destroyed or found to be defective as a result of an act or omission of the Grantee's agents, employees or subcontractors.

(A) The Grantee for itself and its agents, employees and subcontractors shall defend, indemnify and hold the City harmless against damages, costs, loss or expense for the repair, replacement, or restoration of the City's property, equipment, materials, structures and facilities which are damaged, destroyed or found to be defective as a result of an act or omission of the Grantee's agents, employees or subcontractors.

(B) The Grantee shall defend, indemnify and hold the City harmless against damages, costs, loss or expense for the repair, replacement, or restoration of the City's property, equipment, materials, structures and facilities which are damaged, destroyed or found to be defective as a result of an act or omission of the Grantee's agents, employees or subcontractors.

(C) The Grantee shall defend, indemnify and hold the City harmless against damages, costs, loss or expense for the repair, replacement, or restoration of the City's property, equipment, materials, structures and facilities which are damaged, destroyed or found to be defective as a result of an act or omission of the Grantee's agents, employees or subcontractors.

(D) The Grantee shall defend, indemnify and hold the City harmless against damages, costs, loss or expense for the repair, replacement, or restoration of the City's property, equipment, materials, structures and facilities which are damaged, destroyed or found to be defective as a result of an act or omission of the Grantee's agents, employees or subcontractors.

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(N) The Grantee shall defend, indemnify and hold the City harmless against damages, costs, loss or expense for the repair, replacement, or restoration of the City's property, equipment, materials, structures and facilities which are damaged, destroyed or found to be defective as a result of an act or omission of the Grantee's agents, employees or subcontractors.

(O) The Grantee shall defend, indemnify and hold the City harmless against damages, costs, loss or expense for the repair, replacement, or restoration of the City's property, equipment, materials, structures and facilities which are damaged, destroyed or found to be defective as a result of an act or omission of the Grantee's agents, employees or subcontractors.

(P) The Grantee shall defend, indemnify and hold the City harmless against damages, costs, loss or expense for the repair, replacement, or restoration of the City's property, equipment, materials, structures and facilities which are damaged, destroyed or found to be defective as a result of an act or omission of the Grantee's agents, employees or subcontractors.

(Q) The Grantee shall defend, indemnify and hold the City harmless against damages, costs, loss or expense for the repair, replacement, or restoration of the City's property, equipment, materials, structures and facilities which are damaged, destroyed or found to be defective as a result of an act or omission of the Grantee's agents, employees or subcontractors.

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(S) The Grantee shall defend, indemnify and hold the City harmless against damages, costs, loss or expense for the repair, replacement, or restoration of the City's property, equipment, materials, structures and facilities which are damaged, destroyed or found to be defective as a result of an act or omission of the Grantee's agents, employees or subcontractors.

view toward securing favorable treatment with respect to the awarding, amending or making of any determinations with respect to the performing of the Franchise. In the event this Franchise is canceled by the City under this provision, the City shall be entitled in addition to any other rights and remedies to recover from the Grantee a sum equal in amount to the cost incurred by the Grantee in providing the gratuities.

PART 18. ASSIGNMENT. This Franchise is not transferable, delegable or assignable without the approval of the Austin City Council as provided in Article XI, Section Four of the Charter and in Chapter 10-2 of the City Code.

PART 19. JURISDICTION AND VENUE. Jurisdiction and venue for litigation arising from this Franchise lies in Austin, Travis County, Texas.

PART 20. TERMINATION. In addition to the franchise revocation and suspension rights set forth in Chapter 10-2 of the Austin City Code and to all other rights and powers retained by the City under this Franchise, the City reserves the right to terminate this Franchise and all Franchise rights and privileges of the Grantee if the Grantee violates any provision of the City Charter, the City Code or this Franchise ordinance.

PART 21. SEVERABILITY. If any provision section, sentence or clause of this Franchise or its application to any person or set of circumstances is for any reason held unconstitutional void or invalid, the validity of the remaining portions of this Franchise shall not be affected.

All provisions of this Franchise are intended to be severable for this purpose.

PART 22. THIS ORDINANCE TAKES EFFECT ON OCTOBER 30, 2007.

PASSED AND APPROVED: Month 00 2007

APPROVED: David A. Smith, City Attorney

ATTEST: Shirley Gentry, City Clerk

ORDINANCE NO. 1 AN ORDINANCE GRANTING TO ACADIAN AMBULANCE SERVICE, INC. A FRANCHISE TO OPERATE A MEDICAL TRANSFER SERVICE. BE IT ORDAINED:

BY THE CITY COUNCIL OF THE CITY OF AUSTIN.

PART 1. FINDINGS.

(A) The City Council finds the following:

(1) Acadian Ambulance Service Inc. (Acadian) has filed an application under Section 10-2.61 of the City Code to operate and maintain a medical transfer service within the city limits of the City of Austin in accordance with Section 10-2.62(A) of the City Code.

(2) Acadian has met the requirements of Chapter 10-2 of the City Code.

(3) Acadian has met the requirements of Chapter 10-2 of the City Code.

(4) Public convenience will be served by the issuance of a medical transfer service franchise to Acadian.

(5) The proposed operation of the transfer service will be in compliance with all provisions of the City Code and all applicable state and federal statutes and regulations.

(6) The City Council approves the grant of a medical transfer service franchise to Acadian subject to the conditions in this ordinance.

PART 2. DEFINITIONS. DIRECTOR means the Director of the City of Austin Emergency Medical Services Department. GRANTEE means Acadian Ambulance Service, Inc., a Louisiana corporation.