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ORDINANCE NO.

**AN ORDINANCE GRANTING TO ACADIAN AMBULANCE SERVICE, INC.,
A RENEWAL OF 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 renew its franchise to operate and maintain a medical transfer service within the city limits of the City of Austin. Acadian's current medical transfer franchise term will expire on October 31, 2017. In accordance with Sections 10-2-62(A) of the City Code, the Austin/Travis County EMS Advisory Board has reviewed the application and recommended its approval.
- (2) Acadian seeks approval of a franchise to operate a medical transfer service under the City Charter and 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 granting the renewal of the 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.

(B) The City Council approves the renewal of a medical transfer services 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 authorized to do business in Texas.

43 MEDICAL TRANSFER SERVICE has the meaning prescribed in Chapter 10-2 of the
44 City Code.

45
46 PUBLIC RIGHT- OF- WAY means the surface of a public street, highway, lane, path,
47 alley, sidewalk, boulevard, drive, bridge, tunnel, easement or similar property in which
48 the City holds a property interest or exercises rights of management or control and which,
49 consistent with the purposes for which it was acquired or dedicated, may be used for the
50 operation of a medical transfer service.

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52 **PART 3. GRANT OF A FRANCHISE.**
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54 The Council grants to Acadian ("Grantee") the nonexclusive right and privilege to
55 operate a medical transfer service on the public right of way of the City subject to this
56 Part:
57

- 58 (A) If Grantee accepts this Franchise, it shall, not later than 20days after the
59 adoption of this ordinance, file with the City Clerk a letter acknowledging
60 and accepting the provisions of this Franchise, and agreeing to be bound by
61 the terms of this Franchise.
- 62
63 (B) The Grantee shall execute or cause to be executed all legal documents,
64 insurance certificates, and performance bonds required by the City. The
65 documents are subject to re-view and approval by the City Attorney.
- 66
67 (C) The term of this franchise begins on February 6, 2018, and expires on the
68 fifth anniversary of that date unless terminated in accordance with this
69 Franchise.
- 70
71 (D) A reference in this Franchise to a Public Right -of -Way is not a
72 representation or guarantee by the City that its interests or other rights in
73 property are sufficient to permit its use for the operation of a medical
74 transfer service and the Grantee will gain only those rights which the City
75 has the right and power to give.

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77 **PART 4. EXTENSION OF FRANCHISE.**
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79 The Grantee may request an extension of the term of this franchise as provided by the
80 Charter. The request for the extension shall be filed no later than eight months prior to the
81 expiration of the franchise.
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PART 5. TRAINING.

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

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PART 6. EMPLOYEES.

92 The employees and agents of the Grantee may not be the employees, agents, or
93 representatives of the City.

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

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PART 7. COMPLIANCE WITH LAW.

101 The Grantee, its employees, and agents shall comply with applicable federal, state and
102 City laws, rules, regulations, codes, and other requirements in connection with the
103 operation of the medical transfer service and the confidentiality of patient information.

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PART 8. RATES AND CHARGES FOR SERVICE

107 The City Council may, after notice and hearing, regulate by ordinance the rates, charges,
108 and fares the Grantee charges for services provided under this Franchise.

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PART 9. COMPENSATION TO THE CITY.

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

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PART 10. CITY'S RIGHT TO PURCHASE.

- 118 (A) The City may purchase the Grantee's medical transfer service at any time
119 within five years before the expiration of this Franchise.
- 120
- 121 (B) If the City elects to exercise its right to purchase the Grantee's medical
122 transfer service, the City shall notify the Grantee in writing at least 90 days
123 before the effective date of the purchase.
- 124
- 125 (C) The City and Grantee shall have 30 days following the date of the City's
126 notice to negotiate and agree upon a purchase price. If they fail to reach
127 agreement within such 30 day period each party shall, within 60 days

128 following the date of the City's notice of intent to purchase, designate an
129 appraiser experienced and knowledgeable in the valuation of similar
130 services.
131

- 132 (1) Each appraiser shall conduct an independent appraisal of the fair
133 market value of the Grantee's medical transfer service as a going
134 concern as of the effective date of the purchase by the City.
135
- 136 (2) Each party shall be responsible for the appraisal fees of its own
137 appraisers.
138
- 139 (3) In conducting the appraisals, the appraisers shall consider, among
140 other factors, the book value of the assets constituting the Grantee's
141 medical transfer service, the age, condition, and remaining useful life
142 of the Grantee's property utilized in performing services under this
143 Franchise, and the discounted future revenue stream considering the
144 Grantee's actual customer base at the time the notice of purchase is
145 given by the City, for the remaining useful life of the assets.
146
- 147 (4) If the two independent appraisals result in purchase prices that are within 20
148 percent of each other, the purchase price to be paid by the City will be the
149 average of the two appraisals. If the two independent appraisals are not
150 within 20 percent of each other, then the two appraisers shall discuss their
151 appraisals and attempt to arrive at a joint determination concerning the
152 purchase price. If the two appraisers are not able to arrive at a joint
153 determination of fair market value within 120 days after the City's notice of
154 its intent to purchase, then the City and Grantee shall jointly select a third
155 independent appraiser. The third appraiser shall submit a determination of
156 the purchase price within thirty days of being selected, and the purchase
157 price shall be the average of the three appraisals. The City and the Grantee
158 shall each pay fifty percent (50%) of the costs of the third independent
159 appraiser.
160
- 161 (D) The purchase price shall be payable in cash unless the parties mutually agree
162 otherwise. If the City exercises the purchase option, pays the purchase price,
163 and serves notice of the action on the Grantee, the Grantee shall immediately
164 transfer to the City title to the Grantee's medical transfer service and all
165 property, real and personal, of the Grantee's medical transfer system.
166

- 167 (E) The Grantee shall transfer the property free from liens and encumbrances
168 unless the City agrees to assume the encumbrances in lieu of some portion of
169 the purchase price.
170
171 (F) The Grantee shall execute and deliver warranty deeds, bills of sale, or other
172 instruments of conveyance to the City to complete the transfer.
173

174 **PART 11. ACCOUNTS, RECORDS, REPORTS AND INVESTIGATIONS.**
175

176 Not later than 10 days after receipt of a request for information from the Director, the
177 Grantee shall provide the City information affecting the maintenance, operation and
178 repair of the Grantee's medical transfer service in the public rights of way.
179

- 180 (A) The Grantee shall keep complete and accurate books of accounts and records
181 of its business and operations under this Franchise. The account shall be
182 maintained in accordance with generally accepted accounting principles.
183
184 (B) The Director may require the Grantee to keep additional records to identify,
185 account for, and report revenue and uncollectible accounts.
186
187 (C) The Director may require the Grantee to provide other information relating
188 to this Franchise in the form and manner prescribed by the Director.
189
190 (D) The Director may audit the Grantee.
191

192 **PART 12. ANNUAL AUDIT.**
193

194 The Grantee shall furnish to the Director an annual financial review audit performed by a
195 Certified Public Accountant. The audit shall describe the Grantee's financial status and
196 shall be performed at the Grantee's expense.
197

198 **PART 13. QUALITY ASSURANCE REVIEW.**
199

200 The Director may conduct periodic reviews, including actual on-site surveys of the
201 Grantee's physical plant and operation. The Director may, at any time, make inquiries
202 pertaining to the Grantee's performance of the terms and conditions of this Franchise. The
203 Grantee shall respond to an inquiry not later than 3 days after an inquiry by the Director.
204

205 **PART 14. INSURANCE.**
206

- 207 (A) The Grantee shall provide and maintain the following insurance:
208

- 209 (1) Workers' Compensation insurance in accordance with the limits of
210 coverage established by Tex. Labor Code Chapter 401.001 et seq.
211
212 (2) General liability insurance with a minimum bodily injury limit of
213 \$1,000,000 for each occurrence and a property damage limit of
214 \$500,000 for each occurrence to include premises/operations, broad
215 form property damages, personal liability, and contractual liability
216 coverage.
217
218 (3) Automobile liability insurance for all vehicles used in performing
219 services under this Franchise with minimum limits for bodily injury of
220 \$500,000 for each person and \$1,000,000 for each occurrence; and
221 property damage limit of \$100,000 for each occurrence. The
222 insurance must not contain a passenger liability exclusion.
223

224 (B) The required insurance must be written by a solvent company licensed to do
225 business in the State of Texas.
226

- 227 (1) Grantee shall furnish the City with a certificate of coverage issued by
228 the insurer.
229
230 (2) The City shall be named as an additional insured.
231
232 (3) The Certification of insurance shall contain transcripts from the office
233 of the insurer, evidencing those insured, the extent of the insurance,
234 the location and the operations to which the insurance applies, the
235 expiration date, and a notice of cancellation clause.
236

237 (C) The Grantee may not cause any insurance to be canceled, nor permit any
238 insurance to lapse. Insurance certifications shall include a clause that the
239 policy may not be canceled or altered in any way until 10 days after the
240 Director has received written notice as evidenced by return receipt of a
241 registered or certified letter.
242

243 (D) The City may review the insurance requirements of this section during the
244 effective period of this Franchise and adjust insurance coverage and limits if
245 the City's Risk Manager determines an increase is required based on changes
246 in statutory law, court decisions, or the claims history of the industry as well
247 as of the Grantee. The City agrees to review the coverage if the required
248 insurance coverage increases.
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251 **PART 15. PERFORMANCE BOND.**
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- 253 (A) The Grantee shall file with the Director a surety bond in a form approved by
254 the City Attorney to secure performance of the Grantee's obligations under
255 the Franchise. The bond must be written by an insurance company licensed
256 to do business in the state and with an agent or attorney in the city for
257 service of process.
258
- 259 (B) Instead of the surety bond described in this section, the Grantee may file
260 with the Director a certificate of depositor irrevocable letter of credit in
261 favor of the City. The certificate of deposit or letter of credit is subject to the
262 conditions for a surety bond stated in this section.
263
- 264 (C) A surety bond under this chapter must include the following terms:
265
- 266 (1) The Grantee shall pay to the City all amounts due under the terms of
267 this chapter.
268
 - 269 (2) The Grantee shall pay fines, assessments, and judgments levied
270 against the Grantee by a court, by the City, and by other officials that
271 may levy fines, taxes, charges, assessments, or judgments.
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 - 273 (3) The Grantee shall perform every obligation under the Grantee's
274 Franchise and this chapter.
275
 - 276 (4) Each surety bond must contain an endorsement that no cancellation or
277 restriction of the bond is effective until the 30th day after the day the
278 City receives notice, by certified mail return receipt requested, of the
279 cancellation or restriction.
280
 - 281 (5) The bond amount must be \$10,000.
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283 **PART 16. INDEMNITY.**
284

285 The Grantee is an independent contractor in the performance of this Franchise, and shall
286 indemnify and hold harmless the City, its officers, agents and employees from any and all
287 claims or losses which may result from any negligent or intentional act or omission of the
288 Grantee, its agents, employees or representatives under this Franchise. The Grantee shall
289 defend, indemnify and hold the City harmless against damages, costs, loss or expense for
290 the repair, replacement, or restoration of City's property, equipment, materials, structures
291 and facilities which are damaged, destroyed or found to be defective as a result of an act
292 or omission of Grantee, its agents, employees or representatives under this Franchise.
293

- 294 (A) The Grantee, for itself and its agents, employees, sub con-tractors, and the
295 agents and employees of subcontractors, shall defend, indemnify, and hold
296 the City, its successors, assigns, officers, employees and elected officials
297 harmless against claims, demands, suits, causes of action, and judgments for:
298
299 (1) damage to or loss of the property of a person including, but not
300 limited to the Grantee, its agents, officers, employees and
301 subcontractors, City's agents, officers and employees, and third parties
302 arising out of, incident to, concerning or resulting from a negligent or
303 intentional act or omission of the Grantee, its agents, employees, or
304 subcontractors, in the performance of all activities and services under
305 this Franchise, no matter how, or to whom, the loss may occur; and
306
307 (2) death, bodily injury, illness, disease, worker's compensation, loss of
308 services, or loss of income or wages to a person including but not
309 limited to the agents, officers and employees of the Grantee, the
310 Grantee's subcontractors and the City, and third parties, arising out of,
311 incident to, concerning or resulting from a negligent or intentional act
312 or omission of the Grantee, its agents, employees, or subcontractors,
313 in their performance of all activities and services under this Franchise,
314 no matter how, or to whom, the loss may occur.
315
316 (B) If damage, claim or loss is found by a court of competent jurisdiction to be
317 caused by the concurrent fault of both the Grantee and the City, then the
318 Grantee shall indemnify the City to the full proportionate extent that the
319 Grantee is determined to be at fault. It is the intention of the parties, and the
320 Grantee expressly agrees, that the provisions of this section shall not exclude
321 claims, damages, and losses caused in part, but not wholly, by the
322 negligence of the City, even if the City is more negligent than the Grantee.
323

324 The City shall give the Grantee prompt written notice of claims made or suits filed
325 against the City that relate to the Grantee's franchise activity, and shall cooperate with the
326 Grantee in the defense thereof. The Grantee shall have the right to investigate, defend,
327 and compromise a claim or suit to the extent of its own interests, including but not
328 limited to the extent to which Grantee may be liable for indemnification of City.
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330 **PART 17. NOTICES.** 331

- 332 (A) The Grantee shall direct all notices from the Grantee to the City under this
333 Franchise to the City Attorney and the Director of EMS, individually, at
334 P.O. Box 1088, Austin, Texas 78767, or to the officer designated by the City
335 Council.

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- (B) All notices to the Grantee under this Franchise shall be to the local corporate officer within the Austin city limits designated by the Grantee in writing.
 - (C) The Grantee shall maintain within the Austin city limits throughout the term of this Franchise an address for service of notices by mail.
 - (D) The Grantee shall also maintain within the Austin city limits a local telephone number operational during normal business hours for the conduct of matters related to this Franchise. The Grantee shall furnish a change in address or telephone number to the City at least 10 days before the change.

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PART 18. FRANCHISE CERTIFICATION.

350 The Grantee certifies that it complies with the Discrimination in Employment by City
351 Contractors requirements of Chapter 5-4 of the Austin City Code.

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PART 19. GRATUITIES.

355 The City may cancel this Franchise if it is found that gratuities in the form of
356 entertainment, gifts, or otherwise were offered or given by the Grantee or any agent or
357 representative to any City official or employee with a view toward securing favorable
358 treatment with respect to the awarding, amending or making of any determinations with
359 respect to the performing of the Franchise. In the event this Franchise is canceled by the
360 City under this provision, the City shall be entitled, in addition to any other rights and
361 remedies, to recover from the Grantee a sum equal in amount to the cost incurred by the
362 Grantee in providing the gratuities.

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PART 20. ASSIGNMENT.

366 This Franchise is not transferable, delegable, or assignable without the approval of the
367 Austin City Council as provided in Article XI, Section Four of the Charter and in Chapter
368 10-2 of the City Code.

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PART 21. JURISDICTION AND VENUE.

372 Jurisdiction and venue for litigation arising from this Franchise lies in Austin, Travis
373 County, Texas.

