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COA Law Department

MEDICAL TRANSFER SERVICE has 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, 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) If Grantee 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 agreeing to be bound by the terms of this Franchise.
- (B) 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.
- (C) The term of this Franchise begins on August 8, 2023, and expires on the fifth anniversary of that date unless terminated in accordance with this Franchise.
- (D) 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 eight 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.

66 **PART 6. EMPLOYEES.**

67 The employees and agents of the Grantee may not be the employees, agents, or
68 representatives of the City.

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

72 **PART 7. COMPLIANCE WITH LAW.**

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

76 **PART 8. RATES AND CHARGES FOR SERVICE.**

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

79 **PART 9. COMPENSATION TO THE CITY.**

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

83 **PART 10. CITY'S RIGHT TO PURCHASE.**

- 84 (A) The City may purchase the Grantee's medical transfer service at any time
85 within five years before the expiration of this Franchise.
- 86 (B) If the City elects to exercise its right to purchase the Grantee's medical
87 transfer service, the City shall notify the Grantee in writing at least 90 days
88 before the effective date of the purchase.
- 89 (C) The City and Grantee shall have 30 days following the date of the City's
90 notice to negotiate and agree upon a purchase price. If they fail to reach
91 agreement within such 30 day period each party shall, within 60 days
92 following the date of the City's notice of intent to purchase, designate an
93 appraiser experienced and knowledgeable in the valuation of similar
94 services.
- 95 (1) Each appraiser shall conduct an independent appraisal of the fair
96 market value of the Grantee's medical transfer service at any time as a
97 growing concern as of the effective date of the purchase by the City.

- 98 (2) Each party shall be responsible for the appraisal fees of its own
99 appraisers.
- 100 (3) In conducting the appraisals, the appraisers shall consider, among
101 other factors, the book value of the assets constituting the Grantee's
102 medical transfer service, the age, condition, and remaining useful life
103 of the Grantee's property utilized in performing services under this
104 Franchise, and the discounted future revenue stream considering the
105 Grantee's actual customer base at the time the notice of purchase is
106 given by the City, for the remaining useful life of the assets.
- 107 (4) If the two independent appraisals result in purchase prices that are
108 within 20 percent of each other, the purchase price to be paid by the
109 City will be the average of the two appraisals. If the two independent
110 appraisals are not within 20 percent of each other, then the two
111 appraisers shall discuss their appraisals and attempt to arrive at a joint
112 determination concerning the purchase price. If the two appraisers are
113 not able to arrive at a joint determination of fair market value within
114 120 days after the City's notice of its intent to purchase, then the City
115 and Grantee shall jointly select a third independent appraiser. The
116 third appraiser shall submit a determination of the purchase price
117 within 30 days of being selected, and the purchase price shall be the
118 average of the three appraisals. The City and the Grantee shall each
119 pay 50% of the costs of the third independent appraiser.
- 120 (D) The purchase price shall be payable in cash unless the parties mutually agree
121 otherwise. If the City exercises the purchase option, pays the purchase price,
122 and serves notice of the action on the Grantee, the Grantee shall immediately
123 transfer to the City title to the Grantee's medical transfer service and all
124 property, real and personal, of the Grantee's medical transfer system.
- 125 (E) The Grantee shall transfer the property free from liens and encumbrances
126 unless the City agrees to assume the encumbrances in lieu of some portion of
127 the purchase price.
- 128 (F) The Grantee shall execute and deliver warranty deeds, bills of sale, or other
129 instruments of conveyance to the City to complete the transfer.

130 **PART 11. ACCOUNTS, RECORDS, REPORTS AND INVESTIGATIONS.**

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

- 134 (A) The Grantee shall keep complete and accurate books of accounts and records
135 of its business and operations under this Franchise. The account shall be
136 maintained in accordance with generally accepted accounting principles.
- 137 (B) The Director may require the Grantee to keep additional records to identify,
138 account for, and report revenue and uncollectible accounts.
- 139 (C) The Director may require the Grantee to provide other information relating
140 to this Franchise in the form and manner prescribed by the Director.
- 141 (D) The Director may audit the Grantee.

142 **PART 12. ANNUAL AUDIT.**

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

146 **PART 13. QUALITY ASSURANCE REVIEW.**

147 The Director may conduct periodic reviews, including actual on-site surveys of the
148 Grantee's physical plant and operation. The Director may, at any time, make inquiries
149 pertaining to the Grantee's performance of the terms and conditions of this Franchise. The
150 Grantee shall respond to an inquiry not later than three days after an inquiry by the
151 Director.

152 **PART 14. INSURANCE.**

- 153 (A) The Grantee shall provide and maintain the following insurance:
- 154 (1) Workers' Compensation insurance in accordance with the limits of
155 coverage established by Tex. Labor Code Chapter 401.001 et seq.
- 156 (2) General liability insurance with a minimum bodily injury limit of
157 \$1,000,000 for each occurrence and a property damage limit of
158 \$500,000 for each occurrence to include premises/operations, broad
159 form property damages, personal liability, and contractual liability
160 coverage.
- 161 (3) Automobile liability insurance for all vehicles used in performing
162 services under this Franchise with minimum limits for bodily injury of
163 \$500,000 for each person and \$1,000,000 for each occurrence; and
164 property damage limit of \$100,000 for each occurrence. The insurance
165 must not contain a passenger liability exclusion.

- 166 (B) The required insurance must be written by a solvent company licensed to do
167 business in the State of Texas.
- 168 (1) Grantee shall furnish the City with a certificate of coverage issued by
169 the insurer.
- 170 (2) The City shall be named as an additional insured.
- 171 (3) The Certification of insurance shall contain transcripts from the office
172 of the insurer, evidencing those insured, the extent of the insurance,
173 the location and the operations to which the insurance applies, the
174 expiration date, and a notice of cancellation clause.
- 175 (C) The Grantee may not cause any insurance to be canceled, nor permit any
176 insurance to lapse. Insurance certifications shall include a clause that the
177 policy may not be canceled or altered in any way until 10 days after the
178 Director has received written notice as evidenced by return receipt of a
179 registered or certified letter.
- 180 (D) The City may review the insurance requirements of this section during the
181 effective period of this Franchise and adjust insurance coverage and limits if
182 the City's Risk Manager determines an increase is required based on changes
183 in statutory law, court decisions, or the claims history of the industry as well
184 as of the Grantee. The City agrees to review the coverage if the required
185 insurance coverage increases.

186 **PART 15. PERFORMANCE BOND.**

- 187 (A) The Grantee shall file with the Director a surety bond in a form approved by
188 the City Attorney to secure performance of the Grantee's obligations under
189 the Franchise. The bond must be written by an insurance company licensed
190 to do business in the state and with an agent or attorney in the city for
191 service of process.
- 192 (B) Instead of the surety bond described in this section, the Grantee may file
193 with the Director a certificate of deposit or irrevocable letter of credit in
194 favor of the City. The certificate of deposit or letter of credit is subject to the
195 conditions for a surety bond stated in this section.
- 196 (C) A surety bond under this chapter must include the following terms:
- 197 (1) The Grantee shall pay to the City all amounts due under the terms of
198 this chapter.

- 199 (2) The Grantee shall pay fines, assessments, and judgments levied
200 against the Grantee by a court, by the City, and by other officials that
201 may levy fines, taxes, charges, assessments, or judgments.
- 202 (3) The Grantee shall perform every obligation under the Grantee's
203 Franchise and this chapter.
- 204 (4) Each surety bond must contain an endorsement that no cancellation or
205 restriction of the bond is effective until the 30th day after the day the
206 City receives notice, by certified mail return receipt requested, of the
207 cancellation or restriction.
- 208 (5) The bond amount must be \$10,000.

209 **PART 16. INDEMNITY.**

210 The Grantee is an independent contractor in the performance of this Franchise, and shall
211 indemnify and hold harmless the City, its officers, agents and employees from any and all
212 claims or losses which may result from any negligent or intentional act or omission of the
213 Grantee, its agents, employees or representatives under this Franchise. The Grantee shall
214 defend, indemnify and hold the City harmless against damages, costs, loss or expense for
215 the repair, replacement, or restoration of City's property, equipment, materials, structures
216 and facilities which are damaged, destroyed or found to be defective as a result of an act
217 or omission of Grantee, its agents, employees or representatives under this Franchise.

- 218 (A) The Grantee, for itself and its agents, employees, subcontractors, and the
219 agents and employees of subcontractors, shall defend, indemnify, and hold
220 the City, its successors, assigns, officers, employees and elected officials
221 harmless against claims, demands, suits, causes of action, and judgments for:

- 222 (1) damage to or loss of the property of a person including, but not
223 limited to the Grantee, its agents, officers, employees and
224 subcontractors, City's agents, officers and employees, and third parties
225 arising out of, incident to, concerning or resulting from a negligent or
226 intentional act or omission of the Grantee, its agents, employees, or
227 subcontractors, in the performance of all activities and services under
228 this Franchise, no matter how, or to whom, the loss may occur; and
- 229 (2) death, bodily injury, illness, disease, worker's compensation, loss of
230 services, or loss of income or wages to a person including but not
231 limited to the agents, officers and employees of the Grantee, the
232 Grantee's subcontractors and the City, and third parties, arising out of,
233 incident to, concerning or resulting from a negligent or intentional act
234 or omission of the Grantee, its agents, employees, or subcontractors,

in their performance of all activities and services under this Franchise,
no matter how, or to whom, the loss may occur.

- (B) If damage, claim or loss is found by a court of competent jurisdiction to be caused by the concurrent fault of both the Grantee and the City, then the Grantee shall indemnify the City to the full proportionate extent that the Grantee is determined to be at fault. It is the intention of the parties, and the Grantee expressly agrees, that the provisions of this section shall not exclude claims, damages, and losses caused in part, but not wholly, by the negligence of the City, even if the City is more negligent than the Grantee.

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

PART 17. NOTICES.

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

PART 18. FRANCHISE CERTIFICATION.

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

PART 19. GRATUITIES.

The City may cancel this Franchise if it is found that gratuities in the form of entertainment, gifts, or otherwise were offered or given by the Grantee or any agent or representative to any City official or employee with a 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 20. 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 21. JURISDICTION AND VENUE.

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

PART 22. 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 23. 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 24. This ordinance takes effect on August 8, 2023.

PASSED AND APPROVED

_____, 2023 § _____
Kirk Watson
Mayor

APPROVED: _____
Anne L. Morgan
City Attorney

ATTEST: _____
Myrna Rios
City Clerk