

## PROFESSIONAL SERVICES CONTRACT

THIS CONTRACT is entered into this \_\_\_ day of \_\_\_\_\_ 2024, between the CITY OF STOCKTON, a municipal corporation ("City"), and **ROGER STRINGER & MCCLELLAND, INC.** whose address is **1981 NORTH BROADWAY, SUITE 385, WALNUT CREEK, CA 94596** ("Consultant") for the **AQUATICS RENOVATION – OAK PARK (PROJECT NO. CR23018)**, hereinafter referred to as "Project".

### RECITALS

- A. Consultant represents that it is licensed in the State of California and is qualified to provide the services proposed in the SCOPE OF WORK section of this Contract.
- B. City finds it necessary and advisable to use the services of the Consultant for the purposes provided in this Contract.

**NOW THEREFORE**, in consideration of the mutual promises, covenants, and conditions in this Contract, City and Consultant agree as follows:

**1. SCOPE OF SERVICES.** Subject to the terms and conditions set forth in this Contract, Consultant shall undertake and complete the services described in **Exhibit A**. Consultant shall provide said services at the time, place, and in the manner specified in **Exhibit C** and compatible with the standards of the profession. Consultant agrees that it shall produce a fully complete project that is acceptable to the City.

**2. COMPENSATION.** City shall pay Consultant for services outlined in **Exhibit A** according to the fee not to exceed the schedule detailed in **Exhibit B**, which is attached to this Contract and incorporated by this reference. Consultant agrees this fee is for full remuneration for performing all services and furnishing all staffing and materials called for in the scope of services. The payments shall be made on a monthly basis upon receipt and approval of Consultant's invoice. Total compensation for services and reimbursement for costs shall not exceed **\$206,000.00** or as otherwise mutually agreed to in a Contract Amendment.

**3. INSURANCE.** During the term of this Contract, Consultant shall maintain in full force and effect at its own cost and expense the insurance coverage as set forth in the attached **Exhibit D** and shall otherwise comply with the other provisions of **Exhibit D**.

**4. INDEMNITY AND HOLD HARMLESS.** With the exception that this section shall in no event be construed to require indemnification by Consultant to a greater extent than permitted under the public policy of the State of California, Consultant shall indemnify, and hold harmless City, its Mayor, Council, officials, and employees from and Professional Services Contract -ROGERS STRINGER & MCCLELLAND INC. – PROJECT NO. CR23018

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against any and all claims and causes of action which result in liabilities, judgments, awards, losses, damages, expenses, and costs (including reasonable attorneys' fees, expert and consultant fees, and other expenses of litigation) including, but not limited to, death or injury to persons, or damage to property, which arise out of any violation of federal, state, or municipal law or ordinance, to the extent damages are caused by the Consultant's negligent services provided under this Agreement, or are in any way caused by the negligent performance of work by the Consultant or Consultant's officers, agents, employees, or subcontractors. Consultant shall not be obligated to indemnify or defend City for claims finally determined by a court of law or arbitrator to arise from the negligence or willful misconduct of the City. It is the intent of the Parties that this indemnity obligation is at least as broad as is permitted under California law. To the extent California Civil Code sections 2782, et seq., limit the defense or indemnity obligations of Consultant to City, the intent hereunder is to provide the maximum defense and indemnity obligations allowed by Consultant under the law. The indemnity set forth in this section shall not be limited by insurance requirements or by any other provision of this Agreement.

With the exception that this section shall in no event be construed to require indemnification by Consultant to a greater extent than permitted under the public policy of the State of California, and in addition to the other indemnity obligations in this Agreement, Consultant shall indemnify, defend, and hold harmless City, its Mayor, Council, officials, representatives, and employees from and against claims, losses, expenses, and costs including, but not limited to, reasonable attorneys' fees, arising out of any claim brought against the City by an employee of Consultant, regardless of whether such claim may be covered by any applicable workers compensation insurance. Consultant's indemnification obligation is not limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Consultant under workers' compensation acts, disability acts, or other employee benefit acts.

**5. SCHEDULE AND TERM.** Consultant shall perform the scope of work as described in **Exhibit A** according to the schedule detailed in **Exhibit C**, which is attached to this Contract and incorporated by this reference. This Contract shall commence on the date written above and shall expire on **March 30, 2028**, unless extended by mutual agreement through the issuance of a Contract Amendment.

- a. Invoices submitted by Consultant to City must contain a brief description of work performed, time used, and include the City project number. Payment shall be made within thirty (30) days of approval of invoice by City.
- b. Upon completion of work and acceptance by City, Consultant shall have sixty (60) days in which to submit final invoicing for payment. An extension may be granted by City upon receiving a written request thirty (30) days in advance of said time limitation. City shall have no obligation or liability to pay any invoice for work performed which Consultant fails or neglects to submit within sixty (60) days, or any extension thereof granted by the City, after work is accepted by City.

**6. CONFORMANCE TO APPLICABLE LAWS.** Consultant shall comply with all applicable federal, State, and Municipal laws, rules, and ordinances. Consultant shall not discriminate in the employment of persons or in the provision of services under this Contract on the basis of any legally protected classification, including race, color, national origin, ancestry, sex or religion of such person.

a. TITLE VI

Title VI of the Civil Rights Act of 1964 requires that “no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.” (42 USC Section 2000d).  
<http://www.dol.gov/oasam/regs/statutes/titlevi.htm> .

The City of Stockton requires compliance with the requirements of Title VI in all of its programs and activities regardless of funding source.

b. DISCRIMINATION AND HARASSMENT POLICY

The City of Stockton has a Discrimination and Harassment Policy (**Exhibit E**). The purpose of this policy is to reaffirm the City’s commitment to demonstrating respect for all individuals by strictly prohibiting discrimination and harassment, including sexual harassment in the workplace, to define the types of behavior and conduct prohibited by this policy, and to set forth a procedure for reporting, investigating, and resolving complaints of discrimination and harassment in the workplace.

c. LABOR STANDARDS PROVISIONS/CALIFORNIA LABOR CODE

The bidder shall understand that conditions set forth in Chapter 1, Part 7, Division 2 of the California Labor Code shall be considered part of the contract agreement. [https://leginfo.legislature.ca.gov/faces/codes\\_displayText.xhtml?lawCode=LAB&division=2.&title=&part=7.&chapter=1.&article=2](https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=LAB&division=2.&title=&part=7.&chapter=1.&article=2).

d. PREVAILING WAGE RATES

Consultant and any subcontractor shall pay each employee engaged in the trade or occupation not less than the prevailing hourly wage rate. In accordance with the provisions of Section 1770 of the Labor Code, the Director of Department of Industrial Relations of the State of California has determined the general prevailing rates of wages and employer payments for health and welfare, pension, vacation, travel time, and subsistence pay

as provided for in Section 1773.1, apprenticeship or other training programs authorized by Section 3093 and similar purposes applicable to the work to be done. Consultant performing the work under this contract shall obtain a copy of the wage rate determination and shall distribute copies to each subcontractor. As the wage determination for each craft reflects an expiration date, it shall be the prime Consultant and each subcontractor's responsibility to ensure that the prevailing wage rates of concern is current and paid to the employee.

- i. The Consultant performing the work shall be responsible for obtaining a copy of the State wage rate determination. State wage rates may be obtained at <http://www.dir.ca.gov/OPRL/pwd/Determinations/Northern/Northern.pdf>. The Consultant shall be responsible for posting said wage rates at a prominent location at the work site and shall maintain same in a good readable condition for the duration of the work.
- ii. Should the Consultant choose to work on a Saturday, Sunday or on a holiday recognized by the Labor Unions, the Consultant shall reimburse the City the actual cost of engineering, inspection, superintendence, and or other overhead expenses which are directly chargeable to the contract. Should such work be undertaken at the request of the City, reimbursement will not be required. To conform strictly with the provisions of Division 2, Part 7, Chapter 1, Article 2, of the Labor Code of the State of California. To forfeit as a penalty to City the sum of TWENTY-FIVE AND NO/100 DOLLARS (\$25.00) for each laborer, worker, or mechanic employed by CONTRACTOR, or by any subcontractor under Consultant, in the execution of this contract, for each calendar day during which any laborer, worker, or mechanic is required or permitted to work more than eight (8) hours and who is not paid the general prevailing rate of per diem wages for holiday and overtime work in violation of the provisions of Sections 1770 to 1781 of the Labor Code of the State of California. That all sums forfeited under the provisions of the foregoing sections shall be deducted from the payments to be made under the terms of this contract.
- iii. PAYROLL RECORDS - The Consultant to whom the contract is awarded shall ensure that the prime and each subcontractor will, in accordance with Section 1776 of the Labor Code, maintain certified payroll records. A copy of said records shall be provided with each invoice to the Public Works Department, Attention: Contract Compliance Officer. It shall be the Consultant's responsibility to obtain copies of the current prevailing wage rate determination for all subcontractors. Additionally, certified payroll records must be uploaded to the DIR website as required by labor code.

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- iv. APPRENTICESHIP STANDARDS - The Consultant shall comply with the provisions established in Section 1777.5 of the Labor Code concerning the 1) certified approval by local joint apprenticeship committees for the employment and training of apprentices, and 2) contribution of funds to administer and conduct apprenticeship programs, if applicable to the job.

e. **SANCTIONS**

Deliverables must conform with all applicable federal, state, and local laws. Such conformity includes compliance with federal sanctions, and Contractor certifies that it has not and will not engage in prohibited transactions with sanctioned persons or entities.

**7. RIGHTS AND DUTIES OF CITY.** City shall make available to Consultant all data and information in the possession of City which both parties deem necessary to complete the work, and City shall actively aid and assist Consultant in obtaining such information as may be deemed necessary from other agencies and individuals.

**8. OBLIGATIONS OF CONSULTANT.** Throughout the term of this Contract, Consultant represents and warrants that it has or will have at the time this Contract is executed, all licenses, permits, qualifications, insurance, and approvals of whatsoever nature which are legally required for the Consultant to practice its professions, and Consultant shall, at its own cost and expense, keep in effect during the life of this Contract all such licenses, permits, qualifications, insurance, and approvals. Consultant shall meet with the Public Works Director or other personnel of City or third parties as necessary on all matters connected with the carrying out of Consultant's services. Such meetings shall be held at the request of either party hereto. Consultant further warrants that it will follow the best current, generally accepted and professional practices to make findings, render opinions, prepare factual presentations, and provide professional advice and recommendations regarding this project.

**9. OWNERSHIP OF WORK.** All reports, drawings, designs, plan review comments, work product, and all other documents completed or partially completed by Consultant in the performance of this Contract shall become and remain the property of the City. Any and all copyrightable subject matter in all materials is hereby assigned to the City and the Consultant agrees to execute any additional documents that may be necessary to evidence such assignment. All materials shall be delivered to the City upon completion or termination of the work under this Contract. If any materials are lost, damaged, or destroyed before final delivery to the City, the Consultant shall replace them at its own expense. Consultant shall keep materials confidential. Materials shall not be used for purposes other than performance of services under this Contract and shall not be disclosed to anyone not connected with these services unless the City expressly provides prior written consent.

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**10. CONTRACT AMENDMENTS.** City reserves the right to make such alterations as may be deemed necessary or advisable and to require such extra work as may be required for the proper completion of the work contemplated by Consultant. Any such changes will be set forth in a Contract Amendment which will specify, in addition to the work done in connection with the change made, adjustment of contract time, if any, and the basis of compensation for such work. A Contract Amendment will not become effective until approved by the authorized City official.

**11. TERMINATION.** The City may terminate this Contract at any time by mailing a notice in writing to Consultant. The Contract shall then be deemed terminated and no further work shall be performed by Consultant. If the Contract is so terminated, the Consultant shall be paid for that percentage of work actually completed at the time the notice of termination is received.

**12. CONSULTANT STATUS.** In performing the obligations set forth in this Contract, Consultant shall have the status of an independent contractor and Consultant shall not be considered to be an employee of the City for any purpose. All persons working for or under the direction of Consultant are its agents and employees, and are not agents of the City. Subcontractors shall not be recognized as having any direct or contractual relationship with the City. The persons engaged in the work, including employees of subcontractors and suppliers, will be considered employees of Consultant. The Consultant shall be responsible for the work of subcontractors, which shall be subject to the provisions of this Contract. The Consultant is responsible to the City for the acts and omissions of its subcontractors and persons directly or indirectly employed by them.

- a. If in the performance of this Contract any third persons are employed by Consultant, such persons shall be entirely and exclusively under the direction, supervision, and control of Consultant. All terms of employment including hours, wages, working conditions, discipline, hiring, and discharging or any other term of employment or requirement of law shall be determined by Consultant.
  - i. It is further understood and agreed that Consultant must issue W-2 forms or other forms as required by law for income and employment tax purposes for all of Consultant's personnel.
  - ii. As an independent contractor, Consultant hereby indemnifies and holds City harmless from any and all claims that may be made against the City based upon any contention by any third party that employer-employee relationship exists by reason of this Contract.

**13. ASSIGNMENT.** Consultant shall not assign, sublet, or transfer this Contract or any interest or obligation in the Contract without the prior written consent of the City,

and then only upon such terms and conditions as City may set forth in writing. Consultant shall be solely responsible for reimbursing subcontractors.

**14. HEADINGS NOT CONTROLLING.** Headings used in the Contract are for reference purposes only and shall not be considered in construing this Contract.

**15. NOTICES.** Any and all notices herein required shall be in writing and shall be sent by certified or registered mail, postage prepaid, addressed as follows:

To Consultant: Rogers Stringer &  
McClelland, Inc.  
1981 N. Broadway, Suite 385  
Walnut Creek, CA 94596

To City: Public Works Director  
City of Stockton  
22 E. Weber Ave., Rm. 301  
Stockton, CA 95202

**16. LICENSES, CERTIFICATIONS, AND PERMITS.** Prior to the City's execution of this Contract and prior to the Consultant's engaging in any operation or activity set forth in this Contract, Consultant shall obtain a City of Stockton business license, which must be kept in effect during the term of this Contract. Consultant covenants that it has obtained all certificates, licenses, permits and the like required to perform the services under this Contract.

**17. RECORDS AND AUDITS.** City reserves the right to periodically audit all charges made by Consultant to City for services under this Contract. Upon request, Consultant agrees to furnish City, or a designated representative, with necessary information and assistance.

Consultant agrees that City or its delegate shall have the right to review, obtain, and copy all records pertaining to performance of the Contract. Consultant agrees to provide City or its delegate with any relevant information requested, and shall permit City or its delegate access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purposes of determining compliance with this Contract. Consultant agrees to maintain such records for a period of three years from the date that final payment is made.

**18. CONFIDENTIALITY.** Consultant shall exercise reasonable precautions to prevent the unauthorized disclosure and use of City reports, information or conclusions.

**19. CONFLICTS OF INTEREST.** Consultant covenants that other than this Contract, Consultant has no financial interest with any official, employee, or other representative of the City. Consultant and its principals do not have any financial interest in real property, sources of income or investment that would be affected in any manner or degree by the performance of Consultant's services under this Contract. If such an interest arises, Consultant will immediately notify City.

20. **WAIVER.** In the event either City or Consultant at any time waive any breach of this Contract by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Contract, whether of the same or of any other covenant, condition, or obligation.

21. **GOVERNING LAW.** California law shall govern any legal action pursuant to this Agreement with venue for all claims in the Superior Court of the County of San Joaquin, Stockton Branch or, where applicable, in the federal District Court of California, Eastern District, Sacramento Division.

22. **NO PERSONAL LIABILITY.** No official or employee of City shall be personally liable to Consultant in the event of any default or breach by City or for any amount due Consultant.

23. **INTEGRATION AND MODIFICATION.** The response by Consultant to the Request for Proposals and the Request for Proposals on file with the City Clerk are hereby incorporated herein by reference to the extent that such documents do not differ from the provisions and terms of this Contract that shall supersede such response to Request for Proposals. This Contract represents the entire integrated agreement between Consultant and City, supersedes all prior negotiations, representations, or agreements, either written or oral, between the parties, and may be amended only by written instrument signed by Consultant and City. All exhibits and this contract are intended to be construed as a single document. Should any inconsistency occur between the specific terms of this Contract and the attached exhibits, the terms of this Contract will prevail.

24. **SEVERABILITY.** The provisions of this Contract are severable to the extent that should any of its provisions or terms be declared void in whole or in part by operation of law or agreement of the parties, the remainder of the provisions or terms not expressly declared void shall remain enforceable and in full effect.

25. **THIRD PARTY RIGHTS.** Nothing in this Contract shall be construed to give any rights or benefits to anyone other than City and Consultant.

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26. **AUTHORITY.** The undersigned hereby represent and warrant that they are authorized by the parties to execute this Contract.

IN WITNESS WHEREOF: the parties have executed this Contract the day and year first hereinabove written.

**CITY OF STOCKTON**

**ROGERS STRINGER & MCCLELLAND, INC.**

By: \_\_\_\_\_  
HARRY BLACK  
CITY MANAGER

By:  \_\_\_\_\_  
Signature

ATTEST:

James P. McClelland  
\_\_\_\_\_  
Print Name

BY: \_\_\_\_\_  
ELIZA R. GARZA, CMC  
CITY CLERK

Title: President

APPROVED AS TO FORM:

BY: \_\_\_\_\_  
DEPUTY CITY ATTORNEY



July 7, 2023

Mr. Amer Alamoudi  
City of Stockton  
22 East Weber Avenue, Room 301  
Stockton, California 95202

P: (209) 937-8129  
E: Amer.Alamoudi@stocktonca.gov

Regarding: Request for Proposals (Stockton #CR23018) - Oak Park Aquatics Center Renovation  
Requested Amendment to RSM Proposal Dated May 17, 2023  
RSM Proj. No. 031.2301

Mr. Alamoudi,

Thank you for taking the time to meet with us on June 29 to review our proposal for the Oak Park Aquatics Center Renovation project. Per your request in the June 29 meeting, we have amended our proposal, with the inclusion of geotechnical engineering services as the most significant change. Following is a copy of the Work Plan submitted on May 17. Amendments to the Work Plan can be found shown in red text.

#### **Work Plan**

#### **Project Information**

The Owner intends to improve and upgrade the Oak Park pool facility as follows:

1. Remove the existing chain-link fence that surrounds the inoperative splash pool area, demolish the existing splash pool, and construct a new spray ground for children. New water play features are to be provided.
2. Construct a roof enclosure over the current open Men's and Women's Dressing Rooms to mitigate vandalism.
3. Replace the perimeter fencing with new wrought iron fencing.
4. Associated elements of the new spray ground will include proper interface with the existing pool deck and deck drainage, new recirculation and filtration systems, surge tank, and the associated piping required for the new spray ground.
5. Associated elements of the overall facility will include a review of the existing facility's compliance with accessibility requirements, exiting requirements, and required plumbing fixtures as required by applicable codes.

The project shall be designed to conform to the 2022 California Building Code, and other applicable codes and ordinances.

The Owner intends to procure and deliver the Project via the Design-Bid-Build method.

#### **Scope of Services**

For the design and construction phases itemized below, RSM and its engineering subconsultant will provide the following professional services for the Project:

1. Aquatic design and engineering.
2. Architectural design.
3. Geotechnical engineering.
4. Structural engineering.
5. Civil engineering.

6. Electrical engineering.

**Task 1 - Document Existing Conditions**

- A. Provide a site observation visit to document existing conditions, including areas subject to alteration, site improvements intended to remain and the condition of existing pool mechanical room and equipment.
- B. Review available as-built drawings, maintenance and service records, and other information that may be pertinent to the design of the new spray ground, roof, and perimeter enclosure fence.
- C. Confirm with governing agencies the applicable codes and estimated permit application processing times.

**Task 2 - Geotechnical Investigation and Report**

**Task 2.1 - Field Exploration**

RSM's geotechnical subconsultant, Siegfried, will obtain the local drilling permit with San Joaquin County Department of Environmental Health. It is anticipated to take approximately five (5) business days to procure and approve the drilling permit. Prior to initiating our field explorations, the geotechnical consultant will mark the work area with white paint and contact Underground Service Alert (USA) for utility clearance.

Following the utility clearance, we will advance three (3) drilled borings across the site - one boring at the location of the new splash pad, one boring at the location of the new balance tank, and one boring within the dressing rooms for the proposed roof structure.

The drilled bores will be advanced with a truck mounted drill rig using hollow or solid stem augers. Samples will be collected with a standard penetration test sampler or California Modified type sampler liners at 2 ½, 5, 7 ½, and 10 feet in the upper 10 feet and at 5 foot intervals (typical) beyond with alternating samplers.

During the exploration, a representative from Siegfried will oversee the testing and collect samples. A continuous log will be maintained including the drilling conditions and the identification of the soils encountered. Bulk samples near the surface will be collected in the building footprints. They will be sealed to prevent moisture loss and transported to the laboratory for testing and analysis. The depth to initial groundwater will be measured and recorded during the drilling, if encountered.

The boring locations will be located by visual inspection of the existing improvements with confirmation from the aquatic and structural engineers, which is normally of sufficient accuracy for such work. The actual depths and number of borings may be revised in the field based on the conditions encountered in the specified locations.

We assume that the drill cuttings will be spread and disposed in landscape areas. We also assume the drillers will be up to 4 weeks out from authorization to proceed. It is anticipated that the field exploration will take approximately ½ day. If steel drums require transport and disposal offsite, additional fees are required.

**Task 2.2 - Laboratory Testing**

We will perform soils laboratory testing to evaluate the geotechnical characteristics of the samples obtained. Index testing consisting of moisture content, dry density, Atterberg Limits, and particle size analysis will be performed for the in-situ soils. Strength testing may consist of unconfined compressive strength, and/or direct shear. Corrosivity tests may be performed to determine the site corrosivity. The frequency of tests performed will depend on the conditions encountered.

Task 2.3 - Geotechnical Report Preparation

The results of the field exploration, laboratory tests and engineering analysis will be presented in a final Geotechnical Report prepared in accordance with the direction of a California Registered Geotechnical Engineer that will include the following:

- A. A description of the project
- B. Summary of the site, subsurface conditions, and groundwater conditions
- C. The engineering geologic and geologic hazards (GEOHAZARDS) that may be present at the site. This will include faulting, seismicity, and other hazards (i.e., lateral spreading, liquefaction, expansive soils, etc.)
- D. Conclusions and Recommendations related to the geotechnical engineering aspects of:
  1. Shallow and/or deep foundations.
    - Allowable bearing capacity.
    - Settlement.
    - Lateral Resistance.
  2. Mat Foundations.
  3. Retaining Walls including lateral earth pressures.
  4. Seismic Design Parameters per the 2022 CBC and the 2016 ASCE 7 standards based on mapped values.
  5. Site Corrosivity.
  6. Exterior Flatwork.
  7. Earthwork
    - Site preparation, stripping, and any over-excavation.
    - Moisture conditioning.
    - Compaction.
    - Subgrade stabilization.
  8. Temporary excavations
  9. Trench backfills including bedding and trench zone backfill Drainage
  10. Discussion of site infiltration
  11. Discussion of landscape amendments
- E. Presentation of the soil laboratory tests
- F. Graphics including a scaled site plan, boring location map, and boring logs, etc.
- G. Appendices containing results of our field exploration and laboratory testing.

Assumptions to Task 2:

The scope of services outlined above is based on the project requirements and the following assumptions:

- A. The field exploration will under the direct supervision of RSM's geotechnical consultant staff. A subcontracted geotechnical driller will be utilized to advance the borings and will be subject to prevailing wages. This task is estimated to take less than one (1) field day.
- B. Excess cuttings will be spread on onsite in landscape areas as directed by the City of Stockton.

- C. The exploration assumes access will be provided by the City of Stockton. Work will be performed within the existing property at a location mutually agreeable to you within the planned footprints and so that existing utilities are not impacted.
- D. Work will be performed with standard truck mounted drill rigs.
- E. Laboratory testing frequency and type may vary based on the actual conditions encountered.
- F. Geotechnical subconsultant staff will utilize the appropriate personal protective equipment typical for performing drilling services for geotechnical investigations.

**Task 3 - CEQA Review**

- A. RSM and its subconsultants shall determine applicable CEQA environmental clearance requirements for the project and review with the Owner. For the purposes of this Proposal, the CEQA Environmental Checklist will be referenced to outline the scope of this Task.
- B. The City of Stockton will be the Lead Agency.
- C. Given the limited scope of the Project, a Negative Declaration will be pursued.
- D. As directed by the Owner, RSM will prepare the required documentation required for the Owner to obtain CEQA environmental clearance for the Project.
- E. It is understood that the Owner will seek coverage under the San Joaquin Multi-Species Habitat Conservation Plan, and if coverage is granted, the preconstruction surveys and monitoring will be provided by a biological firm under contract with San Joaquin Council of Governments.

**Task 4 - Utility Coordination**

- A. RSM and its subconsultants will perform utility surveys and coordination with the Project's applicable utility providers during the design and construction of the Project. Services will include the following:
  - 1. Preparation of a Project limits map and request utility information from each utility provider within the Project limits.
  - 2. Preparation of Utility Letter "A" on Owner letterhead during preliminary design phase to the affected utility providers for Owner to review and approve prior to transmitting to utility providers. Information on existing utilities obtained as a result of the "A" letter will be transferred to base maps in both plan and profile view. Copies of the utility data obtained from utility providers will be provided to the Owner.
  - 3. Preparation of Utility Letter "B" on Owner letterhead during 65% design phase to the affected utility providers for Owner to review and approve prior to transmitting to utility providers. Two sets of half-sized 65% progress documents will be provided to each utility provider as attachments to the letters. The letters will request that utility providers verify any utility conflicts with proposed improvements and indicate whether any future utilities are proposed in the area that may require accommodation through the improved area. Information on existing utilities obtained as a result of the "B" letter will be used to determine potential utility conflicts and to resolve the conflicts identified. Copies of the utility data obtained from utility providers will be provided to the Owner.
  - 4. Preparation of Utility Letter "C" on Owner letterhead during 100% design phase to the affected utility providers for Owner to review and approve prior to transmitting to utility providers. Two sets of half-sized 100% plans will be provided to each utility provider as attachments to the letters. The letters will indicate to the utility providers whether any changes have been made to the project plans since the

Utility Letter "B" and will request written confirmation of utility relocations (if required) and respective utility relocation schedules. Copies of the utility data obtained from utility providers will be provided to the Owner.

5. RSM and its subconsultants shall meet with the utility companies as needed to identify potential or confirmed conflicts and relocations performed if necessary.
- B. Services to design utility conflict mitigation are not a part of the scope of this Proposal. Should utility conflicts be determined as a product of this Task 3, such design and engineering services for utility relocation shall be quantified in a subsequent proposal for Additional Services.

#### **Task 5 - Conceptual Design**

- A. During the conceptual design phase, RSM will provide the following services:
1. Prepare preliminary plans of the site, pools (existing lap pool to remain, proposed new spray ground and balance tank).
  2. Preliminary mechanical room layout plan will include proposed locations for the pump pit and the below floor backwash pit.
  3. Prepare preliminary roof plan and roof structural support concept. Proposed roof concept shall demonstrate added security measures for the facility and maintain natural ventilation properties.
  4. Review existing facility for compliance with exiting requirements.
  5. Review existing facility for compliance with accessibility requirements.
  6. Review existing facility for compliance with plumbing fixture requirements.
- B. Prepare three (3) schemes for the new spray ground with corresponding Opinions of Probable Construction Cost.
- C. Submit to the Owner for its review and comment.
- D. Attend one (1) meeting with the Owner to review its comments on the conceptual design package.

#### **Task 6 - Schematic Design Phase Services**

Based on the Owner-approved conceptual design, RSM and its subconsultants shall provide the services itemized below. Services shall include the preparation of schematic plans, elevations, and cross-sections for the spray ground and new bathhouse roof showing critical finish dimensions and features. Schematic Design drawings shall include the following:

- A. Architectural Design Documents:
1. Site:
    - a. Facility Accessibility Plan (public way and accessible parking stalls to facility entrance).
    - b. Facility Exiting Plan (required exits to the parking lot / public way).
    - c. Indicate appropriate location options for the balance tank.
    - d. General routing of spray ground piping.
  2. Bathhouse:
    - a. Floor Plan showing locations of proposed new roof vertical supports.
    - b. Preliminary mechanical room layout plan will include proposed equipment selections for the new spray ground.
    - c. Roof Plan.
    - d. Exterior Elevations.

- B. Aquatic Design Documents:
  - 1. Spray Ground:
    - a. Spray ground structures and finishes.
    - b. Spray ground spray features.
  - 2. Mechanical Room:
    - c. Circulation and filtration equipment.
    - d. Chemical delivery and storage.
- C. Structural Engineering Services: Structural engineering services will outline the following aspects of the project:
  - 1. Schematic roof framing plan.
- D. RSM shall submit to the Owner a Schematic Design package for Owner review and comment.
- E. RSM shall advise the Owner of any adjustments to the previous Opinion of Probable Construction Cost indicated by changes in requirements or general market conditions.

**Task 7 - Design Development Phase Services**

Based on the Owner-approved Schematic Design Documents and any adjustments authorized by the Owner in the Project program or schedule, RSM shall prepare, for approval by the Owner, Design Development Documents consisting of drawings and other documents to fix and describe the size and character of the Project as to aquatic, architectural, and structural systems.

- A. Architectural Design Documents:
  - 1. Bathhouse:
    - a. Develop floor plans and interior elevations of both changing rooms where impacted by proposed new roof structure.
    - b. Development of the Roof Plan for provision of storm water collection and discharge, including any transfer of storm water from the existing barrel roof.
    - c. Develop Exterior Elevations to address any conditions brought forth to be addressed by the Owner.
    - d. Develop outline specifications.
- B. Aquatic Design Documents:
  - 1. Spray Ground:
    - a. Develop concrete pad design and interface with existing deck to remain.
    - b. Finalize spray ground feature locations and anchorage.
    - c. Develop recirculation and water treatment systems plan.
    - d. Develop a spray ground piping plan.
    - e. Develop outline specifications.
- C. Structural Engineering Services: Structural engineering services will specify the following aspects of the Project:
  - 1. Detailed roof framing plan.
  - 2. Framing member connections.
  - 3. Roof structure connection to existing masonry walls (if occurs).
  - 4. Develop outline specifications.

- D. RSM shall submit to the Owner a Design Development package for Owner review and comment.
- E. RSM shall advise the Owner of any adjustments to the previous Opinion of Probable Construction Cost indicated by changes in requirements or general market conditions.

**Task 8 - Construction Document Phase Services**

Based on the Owner-approved Design Development Documents and any further requested adjustments in the scope, quality of the Project or the construction budget authorized by the Owner, RSM and its subconsultants will provide design and engineering services to prepare, for approval by the Owner, Construction Documents consisting of Drawings and Technical Specifications set forth in detail the requirements for the construction of the Project.

- A. RSM shall submit to the Owner progress sets of the Construction Documents at 50% and 90% completion for Owner review and comment.
- B. RSM shall advise the Owner of any adjustments to the previous Opinion of Probable Construction Cost indicated by changes in requirements or general market conditions.

**Task 9 - Agency Review Phase Services**

- A. RSM shall provide stamped and signed sets of its construction documents, calculations and equipment cut sheets required for the approval of governmental agencies having jurisdiction over the Project.
- B. RSM shall provide response revisions to address comments from governmental agencies and provide updated documents for resubmittal to said agencies.
- C. All permits from governmental agencies shall be obtained by the Owner or its selected General Contractor.

**Task 10 - Bidding Phase Services**

RSM shall assist the Owner in obtaining bids or negotiated proposals.

- A. RSM shall assist the Owner with the preparation of the Bid Invitation, Bid Instructions, and Bid Form.
- B. RSM shall assist the Owner with posting of the bidding documents on a local plan room.
- C. RSM will facilitate one (1) pre-bid meeting at the project site to review the scope of the Project and bidding procedures.
- D. RSM will respond to bidding general contractors' questions and substitution requests, and issue appropriate addenda and/or clarification.
- E. RSM will assist the Owner with review and analysis of submitted bids.

**Task 11 - Construction Administration Phase Services**

- A. RSM will attend one (1) pre-construction conference and provide updated drawings which shall include incorporation of all addenda incorporated into the plans and specifications prior to the pre-construction conference.
- B. RSM will review the Contractor's shop drawings and submittals. (Review of the Contractor's substitution requests during construction shall be considered Additional Services.)
- C. RSM will provide written clarification of the construction documents in response to the Contractor's written Requests for Information.
- D. RSM will attend weekly Owner-Architect-Contractor (OAC) meetings and provide site observation visits as appropriate to the progress of construction (for the purposes of this

Proposal, a maximum of six). The Contractor will be responsible for keeping minutes of each meeting.

- E. RSM will provide a final site observation visit to establish a contractor's punch list for the Project.
- F. RSM will prepare as-built documents based on redlines provided by the Contractor and provide to the Owner in electronic and full size mylar sheets for its records.

**Scope of Service Exclusions**

The following services are specifically excluded from RSM's scope of services as outlined above.

- A. The following items are not expected to be required for the Project:
  - 1. Entitlement processing, design review, public hearings.
  - 2. Off-site work, including grading, drainage, sewer, gas and water services.
  - 3. Any alterations to the existing parking lot and/or vehicular ingress/egress.
  - 4. Any repair or alterations to the existing lap pool.
  - 5. Geotechnical analytical sampling and testing.
  - 6. Dry utility design.
  - 7. Fire protection engineering services (provided on a design-build basis by the General Contractor).
  - 8. Security system design.
  - 9. Fire alarm design.
  - 10. Emergency power design & generator requirement
  - 11. LEED Certification process.
  - 12. Destructive testing.
  - 13. Record of survey or corner records.
  - 14. Potholing to determine location and/or elevation of underground utilities.
  - 15. Grading permit application and plan check fees.
  - 16. Construction inspection, supervision, and scheduling.
  - 17. Earthwork testing and observation.
  - 18. Material Testing and special inspection.
  - 19. Construction staking (to be provided by the General Contractor as a part of the construction contract).
  - 20. QSD/QSP services (to be provided by the General Contractor as a part of the construction contract).
- B. The following items may arise for inclusion with the Project. If such occurs, these can be provided as Additional Services upon written authorization by the Owner.
  - 1. Services provided by an underground utility locating, if required. Neither RSM nor its geotechnical subconsultant will be responsible for damage to underground utilities that are not accurately located within the exploratory locations.
  - 2. Design of site and/or permanent under pool de-watering, if required.
  - 3. Hazardous waste testing, monitoring and/or contingency plan for both site and building demolition work.
  - 4. Temporary or permanent shoring documents or coordination for any existing structures other than indication on construction documents.

**Additional Services**

Services in addition to those enumerated in the scope of services above shall be executed, upon prior written authorization, as Additional Services for an agreed upon fee between the Owner and RSM.

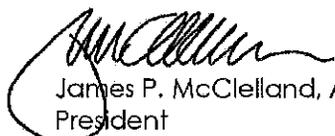
1. Any unforeseen condition exposed during excavation or demolition which requires drawing alteration or resulting in additional time or services and/or services required by any subsurface site conditions, e.g., inadequate soils or soil conditions requiring anything other than typical spread footings.
2. Services to comply with unprecedented or heretofore undocumented or unpublished Code interpretations; and discrepancies which occur between documents initially approved or disapproved by any governing agencies, and subsequently reversed by said governing agencies, field inspector on-site requirements and/or new agencies taking over jurisdiction, and such that time or services are required, including mediation and/or clarification.
3. Investigation, analysis or incorporation of non-standard building systems, components, or configurations.
4. Detailed justifications of design rationales or decisions.
5. Providing services in connection with evaluating substitutions proposed by the Contractor and making subsequent revisions to Drawings, Specifications and other documentation resulting therefrom.
6. Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation.
7. Providing services made necessary by the default of the Contractor, by major defects or deficiencies in the Work of the Contractor, or by failure of performance of either the Owner or Contractor under the Contract for Construction.

#### **Owner's Responsibilities**

The following items shall be the responsibility of the Owner to provide and/or contract with others separately:

- Establish and update an overall budget for the Project, including the Construction Cost, the Owner's other costs and reasonable contingencies related to those costs.
- Designate a representative authorized to act on the Owner's behalf with respect to the Project. The Owner or such authorized representative shall render decisions in a timely manner pertaining to documents submitted by the Architect in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.
- (Geotechnical engineering services removed.)
- Furnish special testing and inspection services during construction.
- Furnish hazardous waste testing, monitoring and/or contingency plan for both site and building demolition work, if such arise during the course of the Project.
- Cost of all permits, plan check fees and any/all other related fees.
- The proposed language of certificates or certifications requested of the Architect or Architect's consultants shall be submitted to the Architect for review and approval at least 14 days prior to execution. The Owner shall not request certifications that would require knowledge or services beyond the scope of this Proposal.

Sincerely,  
**Rogers Stringer & McClelland, Inc.**



James P. McClelland, AIA  
President



**Compensation**

RSM shall provide the services described in Scope of Services / Work Plan for a basic fee of \$206,000.00, including normal expenses.

Task 1 - Document Existing Conditions	\$ 5,000.00	
Task 2 - Geotechnical Investigation & Report	16,000.00	
Task 3 - CEQA Review	10,000.00	allowance
Task 4 - Utility Coordination	15,000.00	allowance
Task 5 - Conceptual Design Phase	20,000.00	
Task 6 - Schematic Design Phase	15,000.00	
Task 7 - Design Development Phase	25,000.00	
Task 8 - Construction Documents Phase	30,000.00	
Task 9 - Agency Review Phase	20,000.00	
Task 10 - Bidding Assistance Phase	20,000.00	
Task 11 - Construction Administration Phase	30,000.00	
<b>Total</b>	<b>\$206,000.00</b>	

Of the above stated fee, the portion attributable to Stockton based Siegfried is \$57,000.00.

**Expenses**

Normal expenses shall consist of travel expenses, document printing and reproduction, shipping, and express mailings. Such expenses are included in the above stated fee.

**Hourly Rate Schedule**

Principal	\$275.00/hour
Associate	\$240.00/hour
Project Architect	\$220.00/hour
Project Engineer	\$220.00/hour
Project Manager	\$160.00/hour
Job Captain	\$135.00/hour
Staff Engineer	\$135.00/hour
Revit Designer	\$135.00/hour
CAD Drafter	\$125.00/hour
Administration	\$150.00/hour
Office Aide	\$100.00/hour
Entitlement Presentations	\$300.00/hour
Consultation Services	
Testimony, Management Consulting	\$450.00/hour
Non-Testifying Forensic Support	\$350.00/hour
Mileage	0.70/per mile

*The rates and multiples set forth for the Hourly Rate Schedule shall be annually adjusted in accordance with normal salary review practices of RSM.*

**Payments**

All invoices shall be due and payable within thirty (30) days of the invoice date. Payment is not contingent upon governmental approvals. If not paid within thirty (30) days, RSM shall be paid interest at maximum allowable rate on the unpaid balance beginning thirty (30) days after the invoice date and continuing until the invoice is paid in full. RSM shall have the right to suspend all services until payment of undisputed sums is received without incurring any liability for damages due to suspension of such services. In the event legal action is required to collect professional fees, RSM shall be entitled to recover collection costs and reasonable attorney's fees.

**Project Schedule**

Revised January 24, 2024

Upon the commencement of the Project, RSM shall submit for the Owner's approval a detailed Microsoft Project schedule for Project which may be adjusted as the Project proceeds. Following is a general timeline anticipated for the project.

Task	Est. Start	Est. Completion
Task 1 - Document Existing Conditions	April 22, 2024	May 31, 2024
Task 2 - Environmental Services	June 1, 2024	October 31, 2024
Task 3 - Utility Coordination	June 1, 2024	October 31, 2024
Task 4 - Conceptual Design Phase	June 1, 2024	August 31, 2024
Task 5 - Schematic Design Phase	September 1, 2024	September 30, 2024
Task 6 - Design Development Phase	October 1, 2024	October 31, 2024
Task 7 - Construction Documents Phase	November 1, 2024	December 31, 2024
Task 8a - Agency Review Phase (Health) <sup>1</sup>	December 1, 2024	January 31, 2025
Task 8b - Agency Review Phase (Building)	February 1, 2025	March 31, 2025
Task 9 - Bidding Assistance Phase	April 1, 2025	April 30, 2025
Construction Contract Staff Report / City Council Award	May 1, 2025	August 15, 2025
Construction Contract Execution	August 16, 2025	September 14, 2025
Task 10 - Construction Administration Phase <sup>2</sup>	September 15, 2025	March 15, 2026

<sup>1</sup> Health Department and Building Department reviews are sequential.

<sup>2</sup> Construction period to start at end of 2025 summer swim season.

## **Insurance Requirements for Professional Services**

Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

### **MINIMUM SCOPE AND LIMIT OF INSURANCE**

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
2. **Automobile Liability:** Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if Consultant has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than **\$1,000,000** per accident for bodily injury and property damage.
3. **Workers' Compensation** insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease.  
***(Not required if consultant provides written verification it has no employees)***
4. **Professional Liability (Errors and Omissions)** Insurance appropriate to the Consultant's profession, with limit no less than **\$2,000,000** per occurrence or claim, **\$2,000,000** aggregate.

If the Consultant maintains broader coverage and/or higher limits than the minimums shown above, the City of Stockton requires and shall be entitled to the broader coverage and/or the higher limits maintained by the contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City of Stockton.

### **Other Insurance Provisions**

The insurance policies are to contain, or be endorsed to contain, the following provisions:

#### ***Additional Insured Status***

REV 2022-05-17

The City of Stockton, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; **and** CG 20 37 if a later edition is used). Additional insured Name of Organization shall read "City of Stockton, its officers, officials, employees, and volunteers." Policy shall cover City of Stockton, its officers, officials, employees, and volunteers for all locations work is done under this contract.

### ***Primary Coverage***

For any claims related to this contract, the **Contractor's insurance coverage shall be primary and non-contributory** and at least as broad as ISO CG 20 01 04 13 as respects the City of Stockton, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City of Stockton, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it. This requirement shall also apply to any Excess or Umbrella liability policies. The City of Stockton does not accept endorsements limiting the Contractor's insurance coverage to the sole negligence of the Named Insured.

### ***Umbrella or Excess Policy***

The Contractor may use Umbrella or Excess Policies to provide the liability limits as required in this agreement. This form of insurance will be acceptable provided that all of the Primary and Umbrella or Excess Policies shall provide all of the insurance coverages herein required, including, but not limited to, primary and non-contributory, additional insured, Self-Insured Retentions (SIRs), indemnity, and defense requirements. The Umbrella or Excess policies shall be provided on a true "following form" or broader coverage basis, with coverage at least as broad as provided on the underlying Commercial General Liability insurance. No insurance policies maintained by the Additional Insureds, whether primary or excess, and which also apply to a loss covered hereunder, shall be called upon to contribute to a loss until the Contractor's primary and excess liability policies are exhausted.

### ***Notice of Cancellation***

Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the City of Stockton.

### ***Waiver of Subrogation***

Contractor hereby grants to City of Stockton a waiver of any right to subrogation which any insurer of said Contractor may acquire against the City of Stockton by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this

provision applies regardless of whether or not the City of Stockton has received a waiver of subrogation endorsement from the insurer.

### ***Self-Insured Retentions***

Self-insured retentions must be declared to and approved by the City of Stockton. The City of Stockton may require the Contractor to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City of Stockton. The CGL and any policies, including Excess liability policies, may not be subject to a self-insured retention (SIR) or deductible that exceeds \$25,000 unless approved in writing by City of Stockton. Any and all deductibles and SIRs shall be the sole responsibility of Contractor or subcontractor who procured such insurance and shall not apply to the Indemnified Additional Insured Parties. City of Stockton may deduct from any amounts otherwise due Contractor to fund the SIR/deductible. Policies shall NOT contain any self-insured retention (SIR) provision that limits the satisfaction of the SIR to the Named. The policy must also provide that Defense costs, including the Allocated Loss Adjustment Expenses, will satisfy the SIR or deductible. City of Stockton reserves the right to obtain a copy of any policies and endorsements for verification.

### ***Acceptability of Insurers***

Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City of Stockton.

### ***Claims Made Policies***

If any of the required policies provide claims-made coverage:

1. The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided ***for at least five (5) years after completion of the contract of work.***
3. If coverage is canceled or non-renewed, and not replaced ***with another claims-made policy form with a Retroactive Date prior to*** the contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of ***five (5)*** years after completion of work.

### ***Verification of Coverage***

Contractor shall furnish the City of Stockton with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause **and a copy of the Declarations and Endorsements Pages of the CGL and any Excess policies listing all policy endorsements**. All certificates and endorsements and copies of the Declarations & Endorsements pages are to be received and approved by the City of Stockton before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The City of Stockton reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time. City of Stockton reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

### ***Subcontractors***

Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that City of Stockton is an additional insured on insurance required from subcontractors.

### ***Duration of Coverage***

CGL & Excess liability policies **for any construction related work, including, but not limited to, maintenance, service, or repair work**, shall continue coverage for a minimum of 5 years for Completed Operations liability coverage. Such Insurance must be maintained and evidence of insurance must be provided **for at least five (5) years after completion of the contract of work**.

### ***Special Risks or Circumstances***

City of Stockton reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

### **Certificate Holder Address**

The address for mailing certificates, endorsements and notices shall be:

City of Stockton  
Its Officers, Officials, Employees, and Volunteers  
400 E Main Street, 3<sup>rd</sup> Floor – HR  
Stockton, CA 95202

CITY OF STOCKTON, CALIFORNIA  
CITY MANAGER ADMINISTRATIVE DIRECTIVE

<b>Subject:</b>	<b>Directive No. HR-15</b>	<b>Page No. 1 of 14</b>
<b>DISCRIMINATION AND HARASSMENT POLICY</b>	<b>Effective Date:</b>  <b>5/1/2015</b>	<b>Revised From:</b> <b>7/27/09</b> <b>4/6/09</b> <b>3/1/2010</b> <b>(see below)</b>

PER-015 (Sexual Harassment in the Workplace) revised from 10/21/94, 5/1/95, 1/1/98  
PER-037 (Sexual Harassment Investigative Procedures) revised from 2/15/93

**I. PURPOSE**

The purpose of this policy is to reaffirm the City’s commitment to demonstrating respect for all individuals by strictly prohibiting discrimination and harassment, including sexual harassment in the workplace. This policy defines prohibited behavior and conduct, and sets forth a procedure for reporting, investigating and resolving complaints of discrimination, harassment, in the workplace, including retaliation and hostile work environment.

**II. POLICY**

- A. The City of Stockton prohibits any form of discrimination and/or harassment of any person based on race, religious creed, color, national origin, ancestry, military and veterans status, physical or mental disability, medical condition, genetic characteristics or information, denial of family and medical care leave, marital status, sexual orientation, sex (including gender, gender identity, gender expression, transgender, pregnancy, childbirth and breastfeeding), political affiliation, age (40 and older), concerted labor activity, or any other category or attribute consistent with state or federal law. All such discrimination and harassment is unlawful and shall not be tolerated. In addition, under the federal Affordable Care Act (ACA), the City of Stockton prohibits discrimination and/or harassment, or retaliation against an employee who obtains coverage, receives a tax credit or subsidy through the Health Care “Market Place” or “Exchange.”
- B. It is an unlawful employment practice to discriminate against or to harass an unpaid intern or volunteer on the basis of any legally protected classification unless an exception applies, such as a bona fide occupational qualification.
- C. The City will neither tolerate nor condone discrimination and/or harassment of employees by managers, supervisors, co-workers, or non-employees with whom City employees have a business service, or professional relationship.
- D. All City employees and non-employees share a responsibility to assist in

CITY OF STOCKTON, CALIFORNIA  
CITY MANAGER ADMINISTRATIVE DIRECTIVE

<b>Subject:</b>  <b>DISCRIMINATION AND HARASSMENT POLICY</b>	<b>Directive No. HR-15</b>	<b>Page No. 2 of 14</b>
	<b>Effective Date:</b>  <b>5/1/2015</b>	<b>Revised From:</b> <b>7/27/09</b> <b>4/6/09</b> <b>3/1/2010</b> <b>(see below)</b>

PER-015 (Sexual Harassment in the Workplace) revised from 10/21/94, 5/1/95, 1/1/98  
PER-037 (Sexual Harassment Investigative Procedures) revised from 2/15/93

maintaining an employment environment free of discrimination and harassment. This policy applies to all aspects of City employment, including, but not limited to, hiring, reassignment, placement, promotion, employment action, disciplinary action, layoff, reemployment, transfer, leave of absence, compensation and benefits, training; or other terms of treatment of that person in an unpaid internship, or another limited duration program to provide unpaid work experience for that person, or the harassment of an unpaid intern or volunteer.

- E. All allegations of discrimination and/or harassment shall be investigated immediately by the City, in accordance with this policy. If it is determined that any prohibited activity has occurred, remedial action shall be taken. Such action may include discipline up to and including discharge. In addition, under applicable law, individual supervisors and employees may be subject to personal liability and/or punitive damages in any litigation arising as a result of such conduct.
- F. All new hires shall attend harassment awareness training, and supervisors and managers shall attend harassment awareness and prevention training for supervisors every two years.
- G. The City of Stockton prohibits retaliation against any employee or non-employee by another employee, non-employee, supervisor, or manager for reporting, filing, testifying, assisting or participating in any manner in any investigation, proceeding, or hearing conducted by the employer or a federal or state enforcement agency.
- H. This policy applies to all officials, employees, volunteers, unpaid interns, agents, or contractors of the City.
- I. This policy shall be administered by the Director of Human Resources.

CITY OF STOCKTON, CALIFORNIA  
CITY MANAGER ADMINISTRATIVE DIRECTIVE

Subject:	Directive No. <b>HR-15</b>	Page No. <b>3 of 14</b>
<b>DISCRIMINATION AND HARASSMENT POLICY</b>	Effective Date:  <b>5/1/2015</b>	Revised From: <b>7/27/09</b> <b>4/6/09</b> <b>3/1/2010</b> <b>(see below)</b>

PER-015 (Sexual Harassment in the Workplace) revised from 10/21/94, 5/1/95, 1/1/98  
PER-037 (Sexual Harassment Investigative Procedures) revised from 2/15/93

**III. DEFINITION AND EXAMPLES OF DISCRIMINATION AND HARASSMENT**

- A. "Discrimination," as used in this policy, is any action, behavior, practice, or process that is intended to deny, or results in the denial of, employment rights, privileges, or benefits because of a person's race, religious creed, color, national origin, ancestry, military and veterans status, physical or mental disability, medical condition, genetic characteristics or information, denial of family and medical care leave, marital status, sexual orientation, sex (including gender, gender identity, gender expression, transgender, pregnancy, childbirth and breastfeeding), political affiliation, age (40 and older), concerted labor activity, or any other prohibition identified under state and federal law. The following are examples of conduct that may constitute discrimination:
1. Soliciting applications from a source where all or most of potential workers are of the same race or color.
  2. Considering a person's gender as the basis for differences in pay, work assignments, performance evaluations, training, discipline, or any other area of employment; and
  3. Questioning a job applicant about the existence, nature and severity of a disability.
- B. "Harassment," as used in this policy, consists of any conduct affecting another person because of his or her race, religious creed, color, national origin, ancestry, military and veterans status, physical or mental disability, medical condition, genetic characteristics or information, denial of family and medical care leave, marital status, sexual orientation, sex (including gender, gender identity, gender expression, transgender, pregnancy, childbirth and breastfeeding), political affiliation, age (40 and older), concerted labor activity, or any other category or attribute identified under state and federal law when such conduct has the purpose or the effect of: (1) creating an intimidating, hostile or offensive work environment; (2) unreasonably interfering with the employee's or non-employee's work performance; or (3)

CITY OF STOCKTON, CALIFORNIA  
CITY MANAGER ADMINISTRATIVE DIRECTIVE

<b>Subject:</b>  <b>DISCRIMINATION AND HARASSMENT POLICY</b>	<b>Directive No. HR-15</b>	<b>Page No. 4 of 14</b>
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PER-015 (Sexual Harassment in the Workplace) revised from 10/21/94, 5/1/95, 1/1/98  
 PER-037 (Sexual Harassment Investigative Procedures) revised from 2/15/93

otherwise adversely affecting an employee's or non-employee's employment opportunities.

Harassment may take many forms, including, but not limited to, the following examples:

1. Verbal Harassment: Epithets, derogatory and offensive comments or slurs based on race, religion, color, national origin, ancestry, physical or mental disability, marital status, pregnancy, medical condition, gender, sexual orientation, political affiliation, age, or any other category or attribute identified under state and federal law.
  2. Physical Harassment: Assault, impeding or blocking movement that results in the physical interference with normal work or movement on the basis of race, religion, color, national origin, ancestry, physical or mental disability, marital status, pregnancy, medical condition, gender, sexual orientation, political affiliation, age, or any other category or attribute identified under state and federal law.
  3. Visual Harassment: The displaying of posters, photography, notices, bulletins, e-mails, cartoons or drawings with derogatory and offensive content based on race, religion, color, national origin, ancestry, physical or mental disability, marital status, pregnancy, medical condition, gender, sexual orientation, political affiliation, age, or any other category or attribute identified under state and federal law.
- C. "Sexual harassment," as used in this policy, is a subcategory of harassment, and is specifically defined by law as unwanted sexual advances, requests for sexual favors or visual, verbal or physical conduct of a sexual nature when:
1. Submission to such conduct is made a term or condition of employment; or
  2. Submission to or rejection of such conduct is used as a basis for employment decisions affecting the individual; or

CITY OF STOCKTON, CALIFORNIA  
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<b>Subject:</b>  <b>DISCRIMINATION AND HARASSMENT POLICY</b>	<b>Directive No. HR-15</b>	<b>Page No. 5 of 14</b>
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3. Such conduct has the purpose or effect of unreasonably interfering with an employee's or non-employee's work performance or creating an intimidating, hostile or offensive working environment because of the persistent, severe or pervasive nature of the conduct.

Examples of Sexual Harassment include, but are not limited to the following:

- a. Unwelcome sexual overtures or propositions.
- b. Offering employment benefits or status in exchange for sexual favors.
- c. Making or threatening retaliation after a negative response to sexual advances.
- d. Visual conduct such as leering, making sexual gestures, displaying sexually suggestive objects or pictures, cartoons, calendars or posters.
- e. Verbal conduct such as using epithets or slurs, telling sexually explicit jokes, or making derogatory or suggestive comments about a person's body or dress.
- f. Written communications of a sexual nature distributed in hard copy, soft copy or via a computer network.
- g. Verbal abuse of a sexual nature, graphic verbal commentary about an individual's body, sexually degrading words to describe an individual, suggestive or obscene letters, notes or invitations.
- h. Physical conduct such as touching, assaulting, impeding or blocking movements.

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- i. Retaliation for making harassment reports or threatening to report harassment.
- D. Affordable Care Act (ACA) Anti-Retaliation  
Pursuant to section §1558 of the Affordable Care Act, the City prohibits discrimination or retaliation towards any employee who:
1. Receives a health insurance tax credit or subsidy through the Health Care “Marketplace” or “Exchange”, by which can trigger a penalty payable by the employer;
  2. Reports potential violations of protections afforded under Title I of the Act, which provides guaranteed availability protections among other things;
  3. Testifies in a proceeding concerning such violation;
  4. Assists or participates in a proceeding concerning a violation; or
  5. Objects to, or refuses to participate in, any activity, policy, practice, or assigned task that the employee reasonably believes to be in violation of any provision of the Title I of the Act.

An employee who believes that he or she has been discharged or otherwise discriminated against in violation of section §1558 of the Affordable Care Act may seek relief in accordance with the procedures, notifications, burdens of proof, remedies, and statutes of limitation set forth in section 2087(b) of title 15, United States Code.

**IV. REPORTING AND COMPLAINT PROCEDURES**

A. Immediate Action Required

The City’s reporting and complaint procedures provide for an immediate, thorough and objective investigation of discrimination or harassment claims, appropriate disciplinary action taken against any person found to have engaged in prohibited behavior, and appropriate alternative remedies to any

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employee or non-employee subject to discrimination or harassment. To accomplish this, such incidents must be reported immediately to a supervisor or manager.

1. Employee's and Non-Employee's Responsibilities when Subjected to Discrimination and/or Harassment
  - a. Employees or non-employees who believe they have been subjected to discrimination or harassment, or are aware of discrimination or harassment against others, shall report the situation immediately to his/her supervisor or manager, except as specified in subsection (b), below. Employees and non-employees shall report any such incidents occurring in the workplace, whether committed by coworkers, supervisors or managers, or third persons doing business with the City, such as customers or vendors, or other non-employees. If comfortable doing so, an employee or non-employee who has a complaint of discrimination or harassment is encouraged to directly inform the person(s) engaging in the behavior that such conduct is offensive and insist the behavior to stop.
  - b. Employees and non-employees must immediately contact a supervisor or manager to register a complaint of discrimination or harassment, unless that supervisor or manager is the individual engaging in the unwanted behavior. In that case, the employee or non-employee may contact someone at the next supervisory level. If the employee or non-employee feels uncomfortable dealing directly with his or her immediate supervisor or manager, he or she may contact the department head, or the Director of Human Resources (or either of their designees) to register a complaint of discrimination or harassment.
  - c. Employees and non-employees may file a formal complaint of harassment or discrimination with their department head or

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with Human Resources. To assist the City in conducting a thorough investigation, complaints shall be submitted in writing and shall include specific details of the incident(s), the names of the individuals involved, the names of any witnesses, and any documentary evidence (notes, pictures, cartoons, etc.) that will corroborate the allegations.

- d. Employees and non-employees shall immediately report any retaliation to a supervisor, manager, department head or Director of Human Resources (or designee). All retaliation complaints shall be immediately, objectively and thoroughly investigated in accordance with the investigation procedures. If a report of retaliation is substantiated, appropriate disciplinary action, up to and including discharge shall be taken.

2. Supervisor's or Manager's Responsibilities to Eliminate Discrimination and/or Harassment

- a. A supervisor or manager is responsible for enforcing the City's discrimination and harassment policy. Supervisors or managers must ensure that all employees and non-employees are aware of the City's policy through open discussion of the policy at staff meetings and by posting the policy in a conspicuous location accessible to all staff members.
- b. A supervisor or manager shall be cognizant of employees' and non-employees' behavior and shall not permit any employee or non-employee under their supervision to be subjected to or engage in any conduct prohibited by this policy.
- c. A supervisor or manager who observes conduct prohibited by this policy shall immediately direct the employee or non-employee to cease the conduct.

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- d. A supervisor or manager who receives a complaint of prohibited conduct is required to take the complaint seriously, and report the matter immediately to the department head; be supportive of the complainant; ensure there is no retaliation against the complainant; conduct an internal fact-finding review into the allegations; obtain as much detailed information as possible; thoroughly document the findings; communicate in written form to the parties the resolution of the complaint; and report to and consult with the Human Resources Department promptly, without delay.
  
- B. Confidentiality. The City will make every effort to protect the privacy and confidentiality of all parties involved, as well as any information and/or documentation obtained, to the extent possible consistent with a thorough investigation.
  
- C. Penalty for Non-Compliance. The City shall take disciplinary action, up to and including discharge, against any supervisor or manager who fails in his/her responsibility to take immediate action in response to an employee's or non-employee's complaint of discrimination or harassment. Further, such disciplinary action shall be taken against a supervisor or manager who fails to stop discriminatory or harassing conduct committed in his/her presence or to stop such conduct about which the supervisor or manager has knowledge.

V. INVESTIGATION PROCEDURES

A. Determination of Responsibility for Investigation

If a formal complaint is filed with the department head or the Director of Human Resources (or either of their designees), the department head and the Director of Human Resources shall consult with one another to determine whether the department or Human Resources shall conduct the fact-finding investigation into the allegations. Either the department head or the Director of Human Resources (or either of their designees), depending on who is

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responsible for the investigation, shall issue written notification to the complainant and alleged harasser(s). The notification shall specify the nature of the complaint, and inform the parties that an investigation into the allegations of discrimination and/or harassment shall be conducted.

B. Investigative Guidelines

The investigation shall include the following steps taken in the order best suited to the circumstances:

1. Identify and preserve the evidence.
2. Confirm the name and position of the complainant. Interview the complainant.
3. Allow the complainant the opportunity to place the complaint in writing.
4. Obtain the identity of the alleged harasser(s).
5. Obtain as many details as possible regarding the incident(s) that prompted the complaint, including the number of occurrences, dates, times, locations, and witnesses (if applicable).
6. Ascertain how the complainant felt about the alleged incident when it occurred; complainant's response(s) to the alleged behavior; and witness statements (if applicable).
7. Ascertain if any threats or promises were made in connection with the alleged harassment.
8. Ascertain if the complainant knows of or suspects that there are other victims of harassment by the same person(s).
9. Ascertain whether the complainant has spoken to anyone, especially

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supervisors, about the harassment.

10. Ascertain what resolution would be acceptable to the complainant.
11. Interview the alleged harasser to get his or her side of the story, including any possible motivation for a false allegation.
12. Interview witnesses who were identified by the complainant regarding the alleged harasser or other persons identified during the investigation.
13. Interview witnesses who were identified by the alleged harasser or other persons identified during the investigation.
14. Advise all participants that the investigation is "confidential" and not to engage in any retaliatory conduct, as such conduct is subject to disciplinary action up to and including discharge. Confidentiality will be maintained to the extent possible. An individual who is interviewed during the course of an investigation is prohibited from discussing the substance of the interview, except as otherwise directed by a supervisor or the Director of Human Resources. Any individual who discusses the content of an investigatory interview will be subject to discipline or other appropriate sanction.
15. Conduct follow-up interviews, if warranted.
16. Prepare report of findings and discuss with management and designated legal staff.

**VI. RESPONDING TO THE COMPLAINT**

- A. Following the completion of the fact-finding investigation, either the department head or the Director of Human Resources (or either of their designees), depending on who is responsible for the investigation, shall

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make a report of findings, along with a recommendation regarding the appropriate remedial action to be taken, if warranted. The recommendation shall be made after reviewing the findings of the investigation, giving consideration to all factual information, the nature of the alleged conduct, and the totality of the circumstances. If the investigation was conducted by the Director of Human Resources, or designee, the Director, or designee, shall confer with the affected department head and both shall concur on the remedial action to be taken, if any. If the investigation was conducted by the department head, the department head shall confer with the Director of Human Resources prior to making the report of findings and both shall concur on the remedial action to be taken, if any.

- B. If either the department head or the Director of Human Resources does not concur with the findings and recommendation of the other, the City Attorney (or designee) shall review and resolve the matter in dispute.
- C. Report of findings and recommendation shall be treated as a confidential document and no other distribution shall be made without first consulting with the City Attorney's Office. A completed investigation report will not be disclosed, except as it is deemed necessary to support a disciplinary action, to take remedial action, to defend the City in adversarial proceedings, or to comply with the law or court order.
- D. Either the department head or the Director of Human Resources (or either of their designees), depending on who is responsible for the investigation shall provide a written response to the complainant and the person alleged to have committed the misconduct, discrimination and/or harassment. The response shall include a copy of the City's discrimination and harassment policy and a memorandum indicating the City's determination as to whether the complaint is:
  - 1. Unsustained: The investigation failed to disclose sufficient evidence to substantiate the allegation(s).
  - 2. Unfounded: The investigation proved that the act(s) or omission(s)

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complained of did not occur. The finding also applies when the individual employee(s) named in the complaint were not involved in the act(s) or omission(s) alleged.

3. Sustained: The investigation disclosed sufficient evidence to substantiate the allegation(s) made in the complaint; appropriate action will be taken.

E. Details regarding any specific fact-findings or disciplinary action to be taken will not be communicated to the complainant. The City Attorney shall review the response for legal sufficiency before dissemination.

F. The City shall close and retain the investigation file, in accordance with applicable laws, regulations, and City policy regarding retention of City records.

**VII. DISCIPLINE**

Disciplinary action imposed as a result of any investigation conducted pursuant to this policy shall be commensurate with the severity of the offense, up to and including discharge, even for a first offense.

**VIII. ALTERNATIVE REMEDIES**

If upon exhausting all internal remedies to file, investigate, and respond to a charges of discrimination/harassment, pursuant to title VII of the Federal Civil Rights Act of 1964 (42 U.S.C §§ 2000e *et seq.*), any person has a right to file a charge of discrimination/harassment with the Equal Employment Opportunity Commission ("EEOC"). In addition, pursuant to the California Fair Employment and Housing Act (Gov. Code §§ 12900 – 12996.) a person may also file a complaint of discrimination/harassment with the California Department of Fair Employment and Housing ("DFEH"). Employees or non-employees who believe that they have been subjected to discrimination/harassment may file a complaint with either of these

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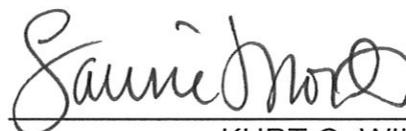
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agencies. Both the EEOC and DFEH serve as neutral fact-finders and attempt to assist parties in resolving disputes voluntarily.

**IX. COMMUNICATION OF POLICY**

This policy shall be provided to all managers, supervisors, employees, volunteers, unpaid interns, agents or contractors of the City and shall be posted in the appropriate places. All employees shall participate in City approved harassment awareness training as directed by management or Human Resources; and all supervisors, as required by law, shall participate in City approved interactive harassment awareness training and education sessions at least once every two years, or as otherwise specified by law.

APPROVED:



KURT O. WILSON  
CITY MANAGER

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