

**PROFESSIONAL SERVICES AGREEMENT
FOR MEDICAL SERVICES WITH SMG**

This Agreement (hereinafter "Agreement") is entered into by and between SMG, a Pennsylvania general partnership (hereinafter "Contractor") and the City of Stockton, a Municipal Corporation, (hereinafter "City"). The City and the Contractor hereinafter may be referred to collectively as the "Parties" or in the singular as "Party," as the context requires.

Recitals, the Parties have entered into this Agreement with reference to the following facts and circumstances:

- A. The Contractor is desirous of having the City assign the Stockton Fire Department (the "Fire Department") to provide emergency medical services to the Stockton Arena (the "Arena"), the Bob Hope Theatre (the "Theatre"), Oak Park Ice Rink (the "Ice Center") and Stockton Ballpark (the "Ballpark"), which together are individually and collectively, as the context requires, the "Facility" or the "Facilities".
- B. The City is willing to accommodate the needs of the Contractor for emergency medical services at the Facilities, so long as the City is compensated for said services.

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

1. Term:

This agreement shall be effective beginning October 31, 2016, and will remain in effect until midnight on February 24, 2021, unless canceled pursuant of the provisions of this Agreement.

2. Scope of Services:

The City, for the benefit of the Contractor, shall provide medical services within the City of Stockton, on an as needed basis (hereinafter the "services") as more particularly set forth in Exhibit "A", which is attached to this Agreement and incorporated by this reference. The Contractor acknowledges that the services performed pursuant to this Agreement either by the City or at its direction shall be rendered in accordance with the accepted practices and standards of the Fire Department's profession.

3. Compensation and Payment:

The City shall be compensated for said services including staff transportation and associated medical equipment and supplies in the amounts set forth in Exhibit "B." Services shall be based upon the total time which begins with reporting for duty, including wait time of staff as a result of gaps in scheduled events occurring in the same day, and ends upon the return of duty. City shall also be compensated for

the proportionate share of the cost of staff transportation, medical supplies, and equipment.

4. Rights and Duties of the Contractor:

The Contractor shall make available to the City all data and information in a timely manner in the possession of the Contractor which both parties deem necessary to schedule the contract, and the Fire Department shall actively aid and assist the Contractor in obtaining such information as may be deemed necessary from other agencies and individuals.

The Stockton Fire Chief (hereinafter referred to as "Chief") may authorize a staff person, as a representative, to confer with the Contractor relative to the Fire Department's services hereunder. The Contractor General Manager will work directly with the Chief or authorized representative of the Fire Department to coordinate medical services for the life of the agreement. The Agreement hereunder shall be reviewed from time to time by the Contractor and the Fire Department at the discretion of the Fire Department or Contractor. If the services are not to the satisfaction of the Contractor, the Contractor will inform the Fire Department in writing of the issues requiring additional attention.

5. Rights and Duties of the City:

The Fire Department represents and acknowledges that it has or will have at the time this agreement is executed, all licenses, qualifications, insurance, and approvals of whatsoever nature that are legally required to practice its profession, and that the Fire Department shall, at its own cost and expense, keep in effect during the life of this Agreement all such licenses, permits, qualifications, insurance, and approvals.

The Contractor General Manager shall meet with the Chief, designated representative, or other personnel of the City or third parties as necessary on all matters connected with the carrying out of the Fire Department medical services. Such meetings shall be held at the request of either party hereto.

6. Termination of the Agreement:

Either party shall have the right to terminate this Agreement at any time upon giving the other party written notice of its intention to terminate thirty (30) days prior to the effective date of said termination. The Contractor shall pay the Fire Department for all services satisfactorily performed pursuant to this Agreement up to the date of termination.

7. Notices:

Any notice, tender, delivery, or requests for payment to be given to any party herein in connection with this Agreement may be effected by personal delivery, in writing or by mail, and shall be deemed communicated as of the date of actual receipt. Mailed notices shall be addressed as set forth below:

To the City: Stockton Fire Department
Attn: Erik Newman, Fire Chief
400 East Main Street
Stockton, CA 95202

To the Contractor: SMG Stockton
Attn: Kendra Clark, General Manager
248 W. Fremont Street
Stockton, CA 95203

8. Independent Contractor:

Nothing in this Agreement shall be interpreted so as to cause the City Fire Department to be considered an employee of the Contractor. The Fire Department is employed solely as an independent contractor to render a professional service and is responsible for all obligations consistent with that status.

Subcontractors shall not be recognized as having any direct or contractual relationship with the Contractor. The persons engaged in the services, including employees of subcontractors and suppliers will be considered employees of the Fire Department. The Fire Department shall be responsible for the services of subcontractors, which shall be subject to the provisions of this Agreement.

9. Workers Compensation:

In accordance with the provisions of Section 3700 of the California Labor Code, the City shall secure at its own expense and maintain during the life of this agreement, workers' compensation coverage for its employees as necessary to protect the Fire Department and its employees under the Workers' Compensation Insurance and Safety Act, including coverage under United States Longshore and Harbor Workers' Act, when applicable. Such insurance shall be in a standard form and shall relieve the Contractor of all responsibility for such claims and/or liability. The City shall, prior to undertaking the work contemplated herein, supply the Contractor with a certificate of insurance evidencing that said coverages are in full effect.

10. Insurance:

The City is self-insured for General Liability/Automotive Liability, including bodily injury, property damage, and worker's compensation. Above its self-insured retention, City of Stockton is a member of California Joint Powers Risk Management Authority. The City shall provide thirty (30) days written notice to the Contractor prior to canceling or changing the terms of such coverage.

11. Indemnity and Hold Harmless:

To the fullest extent permitted by law, the City shall hold harmless, defend at its own expense, and indemnify the Contractor, its officers, representatives, agents, employees and volunteers, against any and all liability, claims, losses, damages, or expenses, including reasonable attorney's fees, arising from all acts or

omissions to act of the City of its officers, agents, or employees in rendering services under this agreement; excluding, however, such liability, claims, losses, damages, or expenses arising from the Contractor's sole negligence or willful acts. The duty to defend and the duty to indemnify and separate and distinct obligations. The indemnification obligations of this section shall survive the termination of this agreement.

12. Attorney's Fees:

Any claims, disputes or controversies arising out of, or in relation to, the interpretation, application or enforcement of this Agreement may be submitted to nonbinding mediation prior to the initiation of any suit or other litigation. The cost of said mediation shall be split equally between the parties.

In the event that legal action is brought by either party against the other, the prevailing party shall be reimbursed by the other for the prevailing party's legal costs, in addition to whatever other judgments or settlement sums, if any, may be due. Such legal costs shall include, but not be limited to, reasonable attorney's fees, court costs, expert witness fees and other documented expenses.

13. Non-Discrimination:

In performing services under this Agreement, the City shall not discriminate in the employment of its employees or in the engagement of any Subcontractors on the basis of race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, age, or any other criteria prohibited by law.

14. Assignment:

The City shall neither assign nor delegate its rights and/or duties under this Agreement without first obtaining Contractor's written consent to the assignment and/or delegation. Any such assignment or delegation made by the City without prior written consent of the Contractor will render this Agreement voidable at the sole discretion of the Contractor.

15. Applicable Law:

The provisions of this Agreement and any and all disputes arising therefrom shall be governed by the laws of the State of California in the jurisdiction of San Joaquin County.

16. Integration and Modification:

This Agreement represents the entire integrated contract between the City and Contractor, supersedes all prior negotiations, representations, agreements, or contracts either written or oral, between the parties, and may be amended only by written instrument signed by the Contractor and City.

All exhibits and this Agreement are intended to be construed as a single document. Should any inconsistency occur between the specific terms of this Agreement and the attached exhibits, the terms of this Agreement shall prevail.

17. Severability:

The provisions of this Agreement 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 parties, the remainder of the provisions or terms not expressly declared void shall remain enforceable and in full effect.

18. Third Party Rights:

Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the City and Contractor.

19. Authority:

The undersigned hereby represent and warrant that they are authorized by the parties to execute this agreement.

WHEREOF, the parties have executed this Agreement to be effective as provided:

CITY OF STOCKTON:

CONTRACTOR:

By:

By:

KURT WILSON
CITY MANAGER

KENDRA CLARK
GENERAL MANAGER, SMG

By:

ERIK NEWMAN
FIRE CHIEF

ATTEST:

APPROVED AS TO FORM AND CONTENT:

By:

By:

BONNIE PAIGE
CITY CLERK

LORI ASUNCION
DEPUTY CITY ATTORNEY

EXHIBIT "A"

SCOPE OF SERVICES

The Stockton Arena is a 10,040 seat indoor arena that hosts an average of one hundred thirty (130) events, annually, which consist of various sporting events along with concerts and other special type events. The Stockton Arena has one (1) first aid station that is located on the first floor. The City agrees to provide general emergency services (EMS), at the Advanced Life Support (ALS) level.

The City agrees to provide, at a minimum, the following staffing levels for each event at the Arena: One (1) Unit and Crew consisting of one (1) Emergency Medical Technician (EMT) and one (1) paramedic. The City agrees to position Staff to the First Aid Room, located on the first (1st) floor of the building. All patient care will be performed at the First Aid Room, if practicable.

The City agrees to provide services at the other event venues managed by Contractor, which include the Stockton Ballpark, the Bob Hope Theatre, and the Oak Park Ice Rink on an event-by-event basis. Services at these venues shall require prior confirmation and approval by the City.

The City also agrees to provide staff transportation, medical equipment, and supplies necessary to perform general emergency medical services at the Advanced Life Support (ALS) level.

The City agrees that staff for all other events shall be confirmed on an event-by-event basis. Other events include, but are not limited to, Concerts, Disney on Ice and the Circus. Staffing scenarios are based on attendance, but can vary depending on the type of event, and the City will utilize guidelines contained within the SFD Special Events EMS Plan, in cooperation with Arena staff, to determine the appropriate staffing level for any given event.

If an event requires ambulance transportation as a part of the service necessary for a given event, Contractor agrees to contract separately for such service using an approved ambulance provide which is permitted and licenses to provide this type of service by the San Joaquin County EMS Agency.

EXHIBIT "B"**COMPENSATION**

Services shall be based upon total staff time, which begin with reporting for duty and ends upon the return to duty. Compensation for services shall include wait time of staff as a result of gaps in scheduled events occurring on the same day.

If, in any event, the City in coordination with the Contractor determines a need for additional staff to provide EMS at the service level required, the City shall be compensated for the serviced provided by the additional staff over and above the minimum staffing level of one (1) Unit and Crew consisting of one (1) EMT and one (1) paramedic.

HOURLY COST ESTIMATE:

This estimate is based on FY2016-17 salary/add pay/insurance rates. The Salary/add pay/insurance/indirect cost rates vary each fiscal year.

		Firefighter Paramedic	Firefighter EMT
Base Salary Hourly Rate		\$ 27.32	\$ 27.32
Total Add Pay*		\$ 4.17	\$ 1.71
Premium Hourly Rate (base rate + add pay)		\$ 31.49	\$ 29.03
Overtime Salary Hourly Rate	150.00%	\$ 47.23	\$ 43.54
Plus:			
Worker's Comp	15.98%	\$ 7.54	\$ 6.95
Liability Insurance	4.51%	\$ 2.13	\$ 1.96
Medicare	1.45%	\$ 0.68	\$ 0.63
Unemployment Insurance	0.13%	\$ 0.06	\$ 0.05
OT Hourly Rate (Incl. Insurance)		\$ 57.64	\$ 53.13
Plus City Indirect Cost Allocation			
<i>Based on FY2010-11 Indirect Cost Allocation Report.</i>	9.61%	\$ 5.53	\$ 5.10
<i>Indirect rate is applied to overtime salary and all insurances except for Liability Insurance.</i>			
Total Overtime Hourly Cost Estimate		\$ 63.17	\$ 58.23

***Additional pay varies per employee.**

SUPPLY COST ESTIMATE:

The annual cost of medical supplies used for services provided at Contractor's various event venues is \$5,708.11. This cost will be billed monthly at \$476/month.

Description	Annual Cost*
Pharmaceuticals	\$ 1,105.61
Drug box and equipment	\$ 686.50
Airway bag and equipment	\$ 771.67
Airway roll	\$ 262.24
Pediatric bag and equipment	\$ 205.87
Trauma bag and equipment	\$ 556.89
Personal protective equipment	\$ 265.95
Cervical collar bag and equipment	\$ 127.66
Hardware, splints, boards and suction	\$ 1,725.72
Total Cost	\$ 5,708.11

**Based on information from Fire Captain John Votaw as of 9/25/2012.*

TRANSPORTATION & EQUIPMENT COST ESTIMATE:

The cost of transportation and equipment is \$5.56 per hour. This hourly rate will be applied to the total number of hours the unit and crew are required at the Stockton Arena and other venues.

Description	Annual Cost*
ISF rental rate of a Class 5B SUV	\$ 12,000.00
Fuel Cost	\$ 1,500.00
ISF rental rate of a defibrillator	\$ 2,695.00
Total Cost	\$ 16,195.00

**Based on FY2016-17 information provided by City Budget Office .*

Total annual cost of transportation and equipment = \$16,195

ATTACHMENT A

Hourly cost = \$16,195 divided by 2,912 hours = \$5.56 per hour

For example: If for the month of November, the City provides staff for five (5) events at the Stockton Arena that requires five (5) hours of EMS services for each event, then:

November Trans./Equip. Cost = 5 events x 5 hours/event x \$5.56/hour = \$139.00

The City will revisit the rates at the beginning of each fiscal year and will negotiate and provide a revised Exhibit "B" if necessary and shall be used as the basis of payment for the current fiscal year.

Cost per event excludes any type of (including stand by) ambulance service which must be contracted for by Contractor separately, with an agency that is permitted and licensed to provide this type of service in San Joaquin County.