


**TO:** James L. App, City Manager  
**FROM:** Ken Johnson, ES Chief   
**SUBJECT:** Emergency Services Department Physician  
**DATE:** December 21, 2004

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**NEEDS:** For the City Council to consider authorizing the Chief of Emergency Services to enter into a contract designating Brian Roberts, MD of Med Stop as the Department of Emergency Services Physician and to begin physical examinations.

**FACTS:**

1. Council Resolution 04-15 authorized the acceptance of a Federal Emergency Management Agency Assistance to Firefighters Grant in the amount of \$84,375.
2. Approximately \$26,000 of the grant funds were allocated to firefighter physical examinations (as specified in the grant application).
3. In accordance with Section 6.0 of the Purchasing and Payment Procedure Manual, Emergency Services solicited written requests for qualifications (RFQ) for firefighter physical examinations and designation as department physician.

**ANALYSIS &**

**CONCLUSION:** Medical professionals were invited to submit written proposals by November 12, 2004 for the medical evaluation of all firefighters and to serve as the department designated physician. Emergency Services received two qualifying proposals; \$29,400 and \$42,200.

Sufficient funds are available from the grant proceeds and the required match (previously allocated in the GF). City Council had conceptually approved this item with the earlier acceptance of FEMA grant funds.

Staff recommends authorization of the Chief of Emergency Services to enter into a contract with Med Stop, the lowest responsive provider.

**POLICY**

**REFERENCE:** Purchasing and Payment Procedures Manual, Sections 6.0  
City Council Resolution 04-15

**FISCAL**

**IMPACT:** Of the \$29,400, \$26,250 is reimbursable from the Federal Emergency Management Agency grant monies. The difference \$3,150, will be covered from existing budgetary resources.

For subsequent fiscal years, the Council has already approved a reoccurring General Fund appropriation to pay for these services. Thus, there is no direct impact upon General Fund reserves nor is a budget appropriation required.

**OPTIONS:**

- a. Adopt Resolution No. 04-xx authorizing the Chief of Emergency Services to enter into a contract for medical services with Med Stop.
- b. Amend, modify or reject above option.

RESOLUTION NO. 04-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PASO ROBLES  
AUTHORIZING A PHYSICIAN AGREEMENT AND FIREFIGHTER PHYSICALS

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WHEREAS, Council Resolution 04-15 authorized the acceptance of a Federal Emergency Management Assistance to Firefighters Grant in the amount of \$84,375; and

WHEREAS, \$26,250 of the grant funds were allocated to contract for physician services; and

WHEREAS, the City has determined that Dr. Brian Roberts of Med Stop has demonstrated the capacity to serve as the designated Emergency Services Physician; and

WHEREAS, Dr. Roberts has submitted a quotation of \$29,400.

THEREFORE, BE IT HEREBY RESOLVED that the City Council of the City of El Paso de Robles authorizes the Chief of Emergency Services to enter into a contract with Dr. Roberts of Med Stop and initiate firefighter physical evaluations for a sum not to exceed \$29,400.

PASSED AND ADOPTED by the City Council of the City of Paso Robles this 21st day of December 2004 by the following vote:

AYES:  
NOES:  
ABSTAIN:  
ABSENT:

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Frank R. Mecham, Mayor

ATTEST:

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Sharilyn M. Ryan, Deputy City Clerk

## PHYSICIAN SERVICES AGREEMENT

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_, by and between the CITY OF PASO ROBLES, California (hereinafter referred to as "CITY"), and \_\_\_\_\_ (hereinafter referred to as "PHYSICIAN").

### RECITALS

WHEREAS, CITY desires to retain a qualified physician to serve as the FD Physician for the period Fiscal Years Ending June 30, 2005, June 30, 2006 and June 30, 2007, with the option to extend the Agreement's duration to include Fiscal Year Ending June 30, 2008 and Fiscal Year 2009; and

WHEREAS, CITY desires to engage PHYSICIAN to provide services by reason of its qualifications and experience for performing such services, and PHYSICIAN has offered to provide the required services on the terms and in the manner set forth herein.

NOW, THEREFORE, in consideration of their mutual covenants, the parties hereto agree as follows:

#### 1. CONTRACT COORDINATION

- a. CITY. The Chief of Emergency Services shall be the representative of CITY for all purposes under this Agreement. The Chief, or his designated representative, hereby is designated as the Contract Manager for the CITY. He shall supervise the progress and execution of this Agreement.
- b. PHYSICIAN. PHYSICIAN shall assign a single Contract Manager to have overall responsibility for the progress and execution of this Agreement for PHYSICIAN. \_\_\_\_\_, is hereby designated as the Contract Manager for PHYSICIAN. Should circumstances or conditions subsequent to the execution of this Agreement require a substitute Contract Manager for any reason, the Contract Manager designee shall be subject to the prior written acceptance and approval of the CITY's Contract Manager. PHYSICIAN'S Contract Team is further described in Exhibit "A" attached hereto and incorporated herein by this reference. The individuals identified and the positions held as described in Exhibit "A" shall not be changed except by prior approval of CITY.

#### 2. ATTACHMENTS

Attached to this Agreement IS Exhibit A," Physician's Proposal to provide FD Physician services, dated \_\_\_\_\_.

#### 3. DUTIES OF PHYSICIAN

- a. Services to be furnished. PHYSICIAN shall provide all specified services as set forth in Exhibit "A" attached hereto and incorporated herein by this reference.
- b. Laws to be observed. PHYSICIAN shall:
  1. Procure all permits and licenses, pay all charges and fees, and give all notices which may be necessary and incidental to the due and lawful prosecution of the services to be performed by PHYSICIAN under this Agreement;

2. Keep itself fully informed of all existing and proposed federal, state and local laws, ordinances, regulations, orders, and decrees which may affect those engaged or employed under this Agreement, any materials used in PHYSICIAN's performance under this Agreement, or the conduct of the services under this Agreement;
  3. At all times observe and comply with and cause all of its employees to observe and comply with all said laws, ordinances, regulations, orders, and decrees mentioned above.
  4. Immediately report to the CITY's Contract Manager in writing any discrepancy or inconsistency it discovers in said laws, ordinances, regulations, orders, and decrees mentioned above in relation to any plans, drawings, specifications, or provisions of this Agreement.
- c. Release of reports and information. Any reports, information, data, or other material given to, or prepared or assembled by PHYSICIAN under this Agreement shall be the property of CITY and shall not be made available to any individual or organization by PHYSICIAN without the prior written approval of the CITY's Contract Manager.
  - d. Copies of reports and information. If CITY requests additional copies of reports, drawings, specifications, or any other material in addition to what the PHYSICIAN is required to furnish in limited quantities as part of the services under this Agreement, PHYSICIAN shall provide such additional copies as are requested, and CITY shall compensate PHYSICIAN for the costs of duplicating of such copies at PHYSICIAN's direct expense.
  - e. Qualification of PHYSICIAN. PHYSICIAN represents that it is qualified to furnish the services described under this Agreement.

#### 4. DUTIES OF CITY

CITY agrees to cooperate with PHYSICIAN and to perform that work described in Exhibit "A" attached hereto and incorporated by this reference.

#### 5. COMPENSATION

- a. ***The PHYSICIAN will perform the work in accordance with the fee schedule set forth in Exhibit "A".***
- b. ***Should the CITY require major changes in assumptions and/or methodology that require the PHYSICIAN to expend more hours than originally contemplated, the CITY and PHYSICIAN, together, shall develop an increased cost impact for City Council consideration and approval prior to proceeding with said work.***
- c. PHYSICIAN will bill CITY monthly on a time and material basis throughout the life of the program.
- d. Payment of undisputed amounts are due within 30 days of receipt of invoices.
- e. The PHYSICIAN may not charge more than the maximum amount shown in Exhibit "A" without prior approval of the CITY's Contract Manager or, if required, by the City Council of CITY.
- f. The CITY'S failure to discover or object to any unsatisfactory work or billing prior to payment will not constitute a waiver of City's right to:
  1. Require PHYSICIAN to correct such work or billings; or
  2. Seek any other legal remedy.

6. TIME FOR COMPLETION OF THE WORK

Program scheduling shall be as described in Exhibit "A" unless revisions to the exhibit are approved by the CITY's Contract Manager and PHYSICIAN's Contract Manager.

Time extensions may be allowed for delays caused by CITY, other governmental agencies, or factors not directly brought about by the negligence or lack of due care on the part of the PHYSICIAN.

7. TEMPORARY SUSPENSION

The CITY's Contract Manager shall have the authority to suspend this Agreement wholly or in part, for such period as he deems necessary due to unfavorable conditions or to the failure on the part of the PHYSICIAN to perform any provision of this Agreement. PHYSICIAN will be paid the compensation due and payable for work performed to the date of temporary suspension.

8. SUSPENSION: TERMINATION

- a. Right to suspend or terminate. The CITY reserves the right to terminate this Agreement for any reason by notifying PHYSICIAN in writing seven (7) days prior to termination and by paying the compensation due and payable for work performed to the date of termination; provided, however, if this Agreement is terminated for fault of PHYSICIAN, CITY shall be obligated to compensate PHYSICIAN only for that portion of PHYSICIAN services which are of benefit to CITY. Said compensation is to be arrived at by mutual Agreement of the CITY and PHYSICIAN and should they fail to agree, then an independent arbitrator is to be appointed and his decision shall be binding upon the parties.
- b. Return of materials. Upon such termination, PHYSICIAN shall turn over to the CITY immediately any and all copies of, studies, sketches, drawings, and other data, whether or not completed, prepared by PHYSICIAN, and for which PHYSICIAN has received reasonable compensation, or given to PHYSICIAN in connection with this Agreement. Such materials shall become the permanent property of CITY. PHYSICIAN, however, shall not be liable for CITY's use of incomplete materials or for CITY's use of complete documents if used for other than the project or scope of services contemplated by this Agreement.

9. INSPECTION

PHYSICIAN shall furnish CITY with every reasonable opportunity for CITY to ascertain that the services of PHYSICIAN are being performed in accordance with the requirements and intentions of this Agreement. All work done and all materials furnished, if any, shall be subject to the CITY's Contract Manager's inspection and approval. The inspection of such work shall not relieve PHYSICIAN of any of its obligations to fulfill its Agreement as prescribed.

10. OWNERSHIP OF MATERIALS

All materials prepared by or in possession of PHYSICIAN pursuant to this Agreement shall become the permanent property of CITY, and shall be delivered to the CITY upon demand.

11. ASSIGNMENT: SUBCONTRACTORS: EMPLOYEES

This Agreement is for the performance of PHYSICIAN and is not assignable by the PHYSICIAN without prior consent of the CITY in writing. The PHYSICIAN may employ other specialists to perform services as required with prior approval by the CITY.

12. NOTICES

All notices herein under shall be given in writing and mailed, postage prepaid, by Certified Mail, addressed as follows:

CITY: Ken Johnson  
Chief of Emergency Services  
City of Paso Robles  
900 Park Street  
Paso Robles, CA 93446  
(805) 227-7560 FAX (805) 237-4138  
email: kjohnson@prcity.com

PHYSICIAN: Contract Manager Name  
Title  
Firm Name  
Address  
Address  
Phone  
email:

or at such other address or to such other person that the parties may from time to time designate. Notices and consents under this section, which are sent by mail, shall be deemed to be received five (5) days following their deposit in the U.S. mail.

13. INTEREST OF PHYSICIAN

PHYSICIAN covenants that it presently has no interest, and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the services hereunder. PHYSICIAN further covenants that, in the performance of this Agreement, no sub-contractor or person having such an interest shall be employed. PHYSICIAN certifies that no one who has or will have any financial interest under this Agreement is an officer or employee of CITY. It is expressly agreed that, in the performance of the services hereunder, PHYSICIAN shall at all times be deemed an independent contractor and not an agent or employee of CITY.

14. INDEMNITY

PHYSICIAN hereby agrees to indemnify and save harmless CITY, its officers, agents and employees of and from:

- a. Any and all claims and demands which may be made against CITY, its officers, agents, or employees by reason of any injury or death of or damage to any person or corporation caused by any negligent act or omission of PHYSICIAN under this Agreement or of PHYSICIAN's employees or agents;
- b. Any and all damage to or destruction of the property of CITY, its officers, agents or employees occupied or used by or in the care custody, or control of PHYSICIAN, or in proximity to the site of PHYSICIAN's work, caused by any

negligent act or omission of PHYSICIAN under this Agreement or of PHYSICIAN's employees or agents;

- c. Any and all claims and demands which may be made against CITY, its officers, agents, or employees by reason of any injury to or death of or damage suffered or sustained by any employee or agent of PHYSICIAN under this Agreement, however caused, excepting, however, any such claims and demands which are the result of the sole negligence or willful misconduct if CITY, its officers, agents, or employees;
- d. Any and all claims and demands which may be made against CITY, its officers, agents, or employees by reason of any infringement or alleged infringement of any patent rights or copyrights or claims caused by the use of apparatus, appliance, or materials produced or furnished by PHYSICIAN under this Agreement; and
- e. Any and all penalties imposed or damages sought on account of the violation of any law or regulation or if any term or condition of any permit, when said violation of any law or regulation or of any term or condition of any permit is due to negligence on the part of the PHYSICIAN.
- f. PHYSICIAN, at its own cost, expense, and risk, shall defend CITY from any and all claims, demands, suits, actions, or other legal proceedings, including those to enforce any penalty that may be brought against CITY, its officers, agents or employees, and pay and satisfy any judgment or decree that may be rendered against CITY, its officers, agents, or employees in any such suit, action or other legal proceeding, when same were due to negligence of the CONSULTANT.

#### 15. WORKERS COMPENSATION

PHYSICIAN certifies that it is aware of the provisions of the Labor Code of the State of California, which require every employer to be insured against liability for workers compensation or to undertake self-insurance in accordance with the provisions of that code, and it certifies that it will comply with such provisions before commencing the performance of the work of this Agreement.

#### 16. INSURANCE

- a. PHYSICIAN shall provide proof of comprehensive general liability insurance with limits of not less than one million (\$1,000,000) per occurrence satisfactory to the CITY. The CITY shall be named as an "additional insured" with respects to said insurance.
- b. Termination of this Agreement shall not release PHYSICIAN from its obligations referenced in Section 14, above, as to any claims, so long as the event upon which such claim is predicated shall have occurred prior to the effective dates of any such termination and arose out of or was in any way connected with performance or operations under this Agreement by PHYSICIAN, its employees, agents or contractors, or the employee, agent or contractor of any one of them.
- c. Submission of insurance certificates or submission of other proof of compliance with the insurance requirements in the Agreement does not relieve PHYSICIAN from liability referenced in subsection a, above. The obligations of this article shall apply whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

17. PERSONNEL

The PHYSICIAN represents that it has, or will secure at its own expense, all personnel required in performing the services under this Agreement. All of the services required hereunder will be performed by the PHYSICIAN or under PHYSICIAN'S supervision, and all personnel engaged in the work shall be qualified to perform such services.

18. AGREEMENT BINDING

The terms, covenants, and conditions of this Agreement shall apply to, and shall bind, the heirs, successors, executors, administrators, assigns, and subcontractors of both parties.

19. WAIVERS

The waiver by either party of any breach or violation of any term, covenant, or condition of this Agreement or of any provision, ordinance, or law shall not be deemed to be a waiver of any subsequent breach or violation of the same or of any other term, covenant, condition, ordinance, or law. The subsequent acceptance by either party of any fee or other money which may become due hereunder shall not be deemed to be a waiver of any term, covenant, or condition of this Agreement or of any applicable law or ordinance.

20. COSTS AND ATTORNEY'S FEES

The prevailing party in any action between the parties to this Agreement brought to enforce the terms of this Agreement or arising out of this Agreement may recover its reasonable costs and attorney's fees expended in connection with such an action from the other party.

21. DISCRIMINATION

No discrimination shall be made in the employment of persons under this Agreement because of the race, color, national origin, ancestry, religion or sex of such person.

If PHYSICIAN is found in violation of the nondiscrimination provisions of the State of California Fair Employment Practices Act or similar provisions of federal law or executive order in the performance of this Agreement, it shall thereby be found in material breach of this Agreement. Thereupon, CITY shall have the power to cancel or suspend payable to PHYSICIAN the sum of Twenty-five Dollars (\$25) for each person for each calendar day during which such person was discriminated against, as damages for said breach of contract, or both. Only a finding of the State of California Fair Employment Practices Commission or the equivalent federal agency or officer shall constitute evidence of a violation of contract under this paragraph.

If PHYSICIAN is found in violation of the nondiscrimination provisions of this Agreement or the applicable affirmative action guidelines pertaining to this Agreement, PHYSICIAN shall be found in material breach of the Agreement. Thereupon, CITY shall have the power to cancel or suspend this Agreement, in whole or in part, or to deduct from the amount payable to PHYSICIAN the sum of Two Hundred fifty Dollars (\$250) for each calendar day during which PHYSICIAN is found to have been in such noncompliance as damages for said breach or contract, or both.

22. AGREEMENT CONTAINS ALL UNDERSTANDINGS

This document (including all exhibits referred to above and attached hereto) represents the entire and integrated Agreement between CITY and PHYSICIAN and supersedes all prior negotiations, representations, or Agreements, either written or oral. This document may be amended only by written instrument, signed by both CITY and PHYSICIAN. All provisions of this Agreement are expressly made conditions. This Agreement shall be governed by the laws of the State of California.

IN WITNESS WHEREOF, CITY and PHYSICIAN have executed this Agreement the day and year first above written.

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CITY OF PASO ROBLES

By \_\_\_\_\_  
\_\_\_\_\_(Name)  
\_\_\_\_\_(Title)

By \_\_\_\_\_  
Ken Johnson  
Chief