

## **AGREEMENT FOR SERVICES**

THIS AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2021, by and between the City of Merced, a California Charter Municipal Corporation, whose address of record is 678 West 18<sup>th</sup> Street, Merced, California 95340, (hereinafter referred to as “City”) and Merced Faculty Associates Medical Group, Incorporated, a California Corporation, whose address of record is 374 W. Olive Avenue, Suite A, Merced, California 95348, (hereinafter referred to as “Consultant”).

WHEREAS, City is undertaking a project to provide occupational medical services; and,

WHEREAS, Consultant represents that it possesses the professional skills to provide occupational medical services in connection with said project.

NOW, THEREFORE, the parties hereto, in consideration of the mutual covenants hereinafter recited, hereby agree as follows:

1. **SCOPE OF SERVICES.** The Consultant shall furnish the following services: Consultant shall provide the occupational medical services described in Exhibit “A” attached hereto.

No additional services shall be performed by Consultant unless approved in advance in writing by the City, stating the dollar value of the services, the method of payment, and any adjustment in contract time. All such services are to be coordinated with City and the results of the work shall be monitored by the Director of Human Resources or designee. However, the means by which the work is accomplished shall be the sole responsibility of the Consultant.

2. **TIME OF PERFORMANCE.** All of the work outlined in the Scope of Services shall be completed in accordance with the Schedule outlined in Exhibit “A” attached hereto and incorporated herein by reference. By mutual agreement and written addendum to this Agreement, the City and the Consultant may change the requirements in said Schedule.

3. **TERM OF AGREEMENT.** The term of this Agreement shall commence upon the day first above written and shall end on December 31, 2024. This Agreement may be extended for two (2) one (1) year terms upon written approval by the City.

4. COMPENSATION. Payment by the City to the Consultant for actual services rendered under this Agreement shall be made upon presentation of an invoice detailing services performed under the Scope of Services, in accordance with the fee schedule set forth in Exhibit "B" attached hereto and incorporated herein by reference. The Consultant agrees to provide all services required under the Scope of Services in Exhibit "A" within the compensation amounts set forth in Exhibit "B".

5. METHOD OF PAYMENT. Compensation to Consultant shall be paid by the City after submission by Consultant of an invoice delineating the services performed.

6. RECORDS. It is understood and agreed that all plans, studies, specifications, data magnetically or otherwise recorded on computer or computer diskettes, records, files, reports, etc., in possession of the Consultant relating to the matters covered by this Agreement shall be the property of the City, and Consultant hereby agrees to deliver the same to the City upon termination of the Agreement. It is understood and agreed that the documents and other materials including but not limited to those set forth hereinabove, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use.

7. CONSULTANT'S BOOKS AND RECORDS. Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement. Any records or documents required to be maintained shall be made available for inspection, audit and/or copying at any time during regular business hours, upon oral or written request of the City.

8. INDEPENDENT CONTRACTOR. It is expressly understood that Consultant is an independent contractor and that its employees shall not be employees of or have any contractual relationship with the City. Consultant shall be responsible for the payment of all taxes, workers' compensation insurance and unemployment insurance. Should Consultant desire any insurance protection, the Consultant is to acquire same at its expense.

In the event Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City, Consultant shall indemnify, protect, defend, and hold harmless the City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

9. INDEMNITY. Consultant shall indemnify, protect, defend (with legal counsel selected by the City), save and hold City, its officers, employees, and agents, harmless from any and all claims or causes of action for death or injury to persons, or damage to property resulting from intentional or negligent acts, errors, or omissions of Consultant or Consultant's officers, employees, volunteers, and agents during performance of this Agreement; Consultant shall indemnify, protect, defend (with counsel selected by the City) save and hold City, its officers, employees and agents harmless from any and claims or causes of action for any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct, negligent acts, or omissions of Consultant or its employees, subcontractors, or agents, or by the quality or character of Consultant's work, or resulting from the negligence of the City, its officers, employees, volunteers and agents, except for loss caused by the sole negligence or willful misconduct of the City or its officers, employees, volunteers or agents. It is understood that the duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall survive the termination of this Agreement and shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

10. INSURANCE. During the term of this Agreement, Consultant shall maintain in full force and effect at its own cost and expense, the following insurance coverage:

a. Workers' Compensation Insurance. Full workers' compensation insurance shall be provided with a limit of at least One Hundred Thousand Dollars

(\$100,000) for any one person and as required by law, including Employer's Liability limits of \$1,000,000.00 per accident. The policy shall be endorsed to waive the insurer's subrogation rights against the City.

b. General Liability.

- (i) Consultant shall obtain and keep in full force and effect general liability coverage at least as broad as ISO commercial general liability coverage occurrence Form CG 0001.
- (ii) Consultant shall maintain limits of no less than One Million Dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage.
- (iii) The City, its officers, employees, volunteers and agents are to be named as additional insureds under the policy, as respects liability arising out of work or operations performed by or on behalf of the Consultant.
- (iv) The policy shall stipulate that this insurance will operate as primary insurance for work performed by Consultant and its sub-contractors, and that any other insurance or self-insurance maintained by City or other named insureds shall be excess and non-contributory.
- (v) Consultant shall maintain its commercial general liability coverage for three (3) years after completion of the work and shall add an additional insured endorsement form acceptable to the City naming the City of Merced, its officers, employees, agents and volunteers for each year thereafter for at least three (3) years after completion of the work. Copies of the annual renewal and additional insured endorsement form shall be sent to the City within thirty (30) days of the annual renewal.

c. Automobile Insurance.

- (i) Consultant shall obtain and keep in full force and effect an automobile policy of at least One Million Dollars (\$1,000,000) per accident for bodily injury and property damage.

- (ii) The City, its officers, employees, volunteers and agents are to be named as additional insureds under the policy, as respects automobiles owned, leased, hired or borrowed by the Consultant.
- (iii) The policy shall stipulate that this insurance will operate as primary insurance for work performed by Consultant and its sub-contractors, and that any other insurance or self-insurance maintained by City or other named insureds shall be excess and non-contributory.

d. Medical Malpractice/Professional Liability Insurance. Consultant shall carry medical malpractice/professional liability insurance in the minimum amount of Three Million Dollars (\$3,000,000).

e. Qualifications of Insurer. The insurance shall be provided by an acceptable insurance provider, as determined by City, which satisfies all of the following minimum requirements:

- (i) An insurance carrier admitted to do business in California and maintaining an agent for service of process within this State; and,
- (ii) An insurance carrier with a current A.M. Best Rating of A:VII or better (except for workers' compensation provided through the California State Compensation Fund).

f. Certificate of Insurance. Consultant shall complete and file with the City prior to engaging in any operation or activity set forth in this Agreement, certificates of insurance evidencing coverage as set forth above and which shall provide that no cancellation or expiration by the insurance company will be made during the term of this Agreement, without thirty (30) days written notice to City prior to the effective date of such cancellation—including cancellation for nonpayment of premium.

g. Notwithstanding any language in this Agreement to the contrary, Consultant shall be entitled to be paid pursuant to the terms of this Agreement until Consultant has obtained the insurance required by this Section 10 and provided documentation of said insurance to the City. In addition to any other remedies City may have, City reserves the right to withhold payment if Consultant's insurance policies are not current.

## 11. PREVAILING WAGES.

A. Labor Code Compliance. If the work performed under this Agreement falls within Labor Code Section 1720(a)(1) definition of a “public works” the Consultant agrees to comply with all of the applicable provisions of the Labor Code including, those provisions requiring the payment of not less than the general prevailing rate of wages. The Consultant further agrees to the penalties and forfeitures provided in said Code in the event a violation of any of the provisions occurs in the execution of this Agreement.

B. These wage rate determinations are made a specific part of this Agreement by reference pursuant to Labor Code Section 1773.2. General Prevailing Wage Rate Determinations may be obtained from the Department of Industrial Relations Internet site at <http://www.dir.ca.gov/>.

C. After award of the Agreement, and prior to commencing work, all applicable General Prevailing Wage Rate Determinations, if applicable, are to be obtained by the Consultant from the Department of Industrial Relations. These wage rate determinations are to be posted by the Consultant at the job site in accordance with Section 1773.2 of the California Labor Code.

D. Consultant agrees to include prevailing wage requirements, if applicable, in all subcontracts when the work to be performed by the subcontractor under this Agreement is a “public works” as defined in Labor Code Section 1720(a)(1) and Labor Code Section 1771.

12. ASSIGNABILITY OF AGREEMENT. It is understood and agreed that this Agreement contemplates personal performance by the Consultant and is based upon a determination of its unique personal competence and experience and upon its specialized personal knowledge. Assignments of any or all rights, duties or obligations of the Consultant under this Agreement will be permitted only with the express written consent of the City.

13. TERMINATION FOR CONVENIENCE OF CITY. The City may terminate this Agreement any time by mailing a notice in writing to Consultant that the Agreement is terminated. Said Agreement shall then be deemed terminated, and no further work shall be performed by Consultant. If the Agreement is so terminated, the Consultant shall be paid for that percentage of the phase of work actually completed, based on a pro rata portion of the compensation for said phase satisfactorily completed at the time the notice of termination is received.

14. CONFORMANCE TO APPLICABLE LAWS. Consultant shall comply with its standard of care regarding all applicable Federal, State, and municipal laws, rules and ordinances. No discrimination shall be made by Consultant in the employment of persons to work under this contract because of race, color, national origin, ancestry, disability, sex or religion of such person.

Consultant hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act (8 U.S.C.A. 1101 *et seq.*), as amended; and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Consultant so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement, and should any agency or instrumentality of the federal or state government, including the courts, impose sanctions against the City for such use of unauthorized aliens, Consultant hereby agrees to, and shall, reimburse City for the cost of all such sanctions imposed, together with any and all costs, including attorneys' fees, incurred by the City in connection therewith.

15. WAIVER. In the event that either City or Consultant shall at any time or times waive any breach of this Agreement by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Agreement, whether of the same or any other covenant, condition or obligation. Waiver shall not be deemed effective until and unless signed by the waiving party.

16. INCONSISTENT OR CONFLICTING TERMS IN AGREEMENT AND EXHIBITS. In the event of any contradiction or inconsistency between any attached document(s) or exhibit(s) incorporated by reference herein and the provisions of the Agreement itself, the terms of the Agreement shall control.

Any exhibit that is attached and incorporated by reference shall be limited to the purposes for which it is attached, as specified in this Agreement. Any contractual terms or conditions contained in such exhibit imposing additional obligations on the City are not binding upon the City unless specifically agreed to in writing, and initialed by the authorized City representative, as to each additional contractual term or condition.

17. AMBIGUITIES. This Agreement has been negotiated at arms' length between persons knowledgeable in the matters dealt with herein. Accordingly, any rule of law, including, but not limited to, Section 1654 of the Civil Code of California, or any other statutes, legal decisions, or common-law principles of similar effect, that would require interpretation of any ambiguities in this

Agreement against the party that drafted this Agreement is of no application and is hereby expressly waived.

18. VENUE. This Agreement and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this agreement shall be held exclusively in a state court in the County of Merced.

19. AMENDMENT. This Agreement shall not be amended, modified, or otherwise changed unless in writing and signed by both parties hereto.

20. INTEGRATION. This Agreement constitutes the entire understanding and agreement of the parties and supersedes all previous and/or contemporaneous understanding or agreement between the parties with respect to all or any part of the subject matter hereof.

21. AUTHORITY TO EXECUTE. The person or persons executing this Agreement on behalf of the parties hereto warrants and represents that he/she/they has/have the authority to execute this Agreement on behalf of their entity and has/have the authority to bind their party to the performance of its obligations hereunder.

22. COUNTERPARTS. This Agreement may be executed in one or more counterparts with each counterpart being deemed an original. No counterpart shall be deemed to be an original or presumed delivered unless and until the counterparts executed by the other parties hereto are in the physical possession of the party or parties seeking enforcement thereof.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first above written.

CITY OF MERCED  
A California Charter Municipal  
Corporation

BY: \_\_\_\_\_  
City Manager

ATTEST:  
STEPHANIE R. DIETZ, CITY CLERK

BY: \_\_\_\_\_  
Assistant/Deputy City Clerk

APPROVED AS TO FORM:

BY: Kimberly May 12/7/21  
City Attorney Date

ACCOUNT DATA:

BY: \_\_\_\_\_  
Verified by Finance Officer

*{Signatures continued on next page}*

CONSULTANT  
MERCED FACULTY ASSOCIATES  
MEDICAL GROUP, INCORPORATED,  
a California Corporation

BY: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Typed Name)

Its: \_\_\_\_\_  
(Title)

BY: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Typed Name)

Its: \_\_\_\_\_  
(Title)

Taxpayer I.D. No. \_\_\_\_\_

ADDRESS: 374 W. Olive Ave., Suite A  
Merced, CA 95348

TELEPHONE: \_\_\_\_\_

FAX: \_\_\_\_\_

E-MAIL: \_\_\_\_\_

## Scope of Service

### A LEVEL SERVICES (Pre-employment)

Pre-employment physical examinations including alcohol/drug screen. The annual number is estimated to be less than one hundred (100).

Bi-annual Department of Transportation (DOT) physical examinations for Class A and B driver's license holders, which are currently estimated to be less than ninety (90).

Annual Self-Contained Breathing Apparatus (SCBA) physical examinations pursuant to Exhibit #1 for an annual number estimated to be less than seventy-five (75).

Hepatitis B vaccination series with a confirming positive blood test pursuant to Exhibit #2, excerpt from City's Infection Control Plan. It should be noted that this program has been in effect for several years and a substantial number of the covered employees have already had the series or signed letters of declination.

Cholinesterase Baseline Testing – Plasma and RBC, with or without physical examination, upon request.

Provide fitness-for-duty examinations upon request.

### B LEVEL SERVICES (Workers' Compensation)

Act as the designated Primary Care Facility for the City of Merced's self-insured workers' compensation program for approximately 500 employees.

All proposals must clearly indicate your normal hours of operation.

Provide a listing, by name and specialty, for all personnel who will be involved in rendering medical services under this contract at any and all locations.

Include any sample forms utilized in your facility for reporting workers' compensation injuries.

Agree to meet no less than quarterly with the City of Merced and their third-party administrator to discuss claims handling and any other applicable issues.

Be available, on a daily basis, for telephone communication with either the employer or their worker's compensation administrator.

Agree to join and accept rates as negotiated through our contracted Medical Provider Network (MPN):

Tristar Risk Management  
100 Oceangate, Suite 700  
Long Beach, CA 90802  
Contact: Cresence Boland  
Office: 714-543-0700 Ext.1211  
Fax: 714-245-4711  
Cresence.Boland@tristargroup.net

There is no membership fee for joining the MPN. Any prospective bidders may contact Ms. Boland with any questions regarding the MPN. In either case, payment under this contract will be deemed to be payment in full and no additional monies may be solicited from or billed to the industrially injured employee.

#### C LEVEL SERVICES (Drug and Alcohol testing)

The following services must be provided in accordance with the City of Merced Drug and Alcohol Testing Policies and Procedures (See Exhibit #3):

Pre-employment for persons applying for or transferring into a position requiring a commercial driver's license; and all new hires for safety sensitive positions.

Post-accident testing will be required when a commercial driver is involved in an accident resulting in the loss of life or is cited for being at fault in an accident causing bodily injury.

Reasonable suspicion testing will be done when a trained company representative observes behavior or appearance that is characteristic of drug or alcohol misuse.

Random Testing – the successful bidder must agree to:

Assume total responsibility for the establishment, maintenance and operation of the pool of commercial drivers who must be randomly tested each year. Twenty-five percent (25%) of the pool will be tested for alcohol and fifty percent (50%) for drugs.

Contract directly with a NIDA approved laboratory for the processing of all drug tests. Verifying documentation must be included in proposal.

Contract directly with or employ a certified Breath Alcohol Technician (BAT). Verifying documentation must be included with the proposal.

Contract directly with a Medical Review Officer who is qualified by medical licensing and experience to meet Department of Transportation (DOT) standards. Verifying documentation must be included with your proposal.

#### D LEVEL (Public Safety)

Provide pre-employment and/or annual examination for persons currently employed applying for or transferring into a public safety position. Must be conducted in accordance with:

- POST – Peace Officer Standards and Training for Police Officers
- NFPA – National Fire Protection Association for Fire Fighters



MERCED FACULTY ASSOCIATES  
MEDICAL GROUP, INC

**ADMINISTRATIVE OFFICES**

PO BOX 3768  
1763 GROGAN AVENUE  
MERCED, CA 95344-3768  
P 209.725.7149 • F 209.726.0679  
WWW.MFAMG.COM

**MFA**

127 W EL PORTAL DRIVE  
MERCED, CA 95348  
P 209.723.3704 • F 209.723.0272  
P 209.383.3381 • F 209.723.0272

**MFA ATWATER**

1675 SHAFFER ROAD  
ATWATER, CA 95301  
P 209.383.5500 • F 209.383.6910

**MFA BILLING DEPARTMENT**

1763 GROGAN AVENUE  
MERCED, CA 95341  
P 209.725.7149 • F 209.726.0134

**MFA@ EL PORTAL**

3385 G STREET, STE A  
MERCED, CA 95340  
P 209.725.3122 • F 209.725.3128

**MFA G STREET**

3393 G STREET, STE C  
MERCED, CA 95340  
P 209.580.4172 • F 209.233.9859

**MFA GATEWAY**

378 W OLIVE AVENUE, STE D  
MERCED, CA 95348  
P 209.725.7560 • F 209.725.7561

**MFA LIFETIME HEALTH CARE**

374 W OLIVE AVENUE, STE B  
MERCED, CA 95348  
P 209.383.3076 • F 209.383.6301

**MFA LIVINGSTON**

746 MAIN STREET  
LIVINGSTON, CA 95334  
P 209.398.2145 • F 209.398.2323

**MFA PARKSIDE**

535 W 25TH STREET  
MERCED, CA 95340  
P 209.722.9066 • F 209.383.1522  
Lesley Xiong, MD P 209.723.4395

**MFA PODIATRY**

378 W OLIVE AVENUE, STE C  
MERCED, CA 95348  
P 209.384.3198 • F 209.725.1603

**DELHI MEDICAL CLINIC**

9696 STEPHENS STREET  
DELHI, CA 95315  
P 209.667.0702 • F 209.667.6737

**FOUNTAIN VIEW RADIOLOGY**

378 W OLIVE AVENUE, STE B  
MERCED, CA 95348  
P 209.384.3024 • F 209.384.2982

**FOUNTAIN VIEW URGENT CARE**

374 W OLIVE AVENUE, STE A  
MERCED, CA 95348  
P 209.384.5766 • F 209.383.4230

**HILMAR FAMILY MEDICAL CENTER**

19901 FIRST STREET, STE 4  
HILMAR, CA 95324  
P 209.656.8701 • F 209.656.8704

**MERCED WOUND CARE**

378 W OLIVE AVENUE, STE A  
MERCED, CA 95348  
P 209.205.1103 • F 209.723.2543

**OLIVEWOOD MEADOWS**

**OCCUPATIONAL HEALTH CENTER**  
374 W OLIVE AVENUE, STE A  
MERCED, CA 95348  
P 209.205.1001 • F 209.205.1004

# Proposal for City of Merced Medical Services

**Date:** June 16, 2021  
**Closing Date:** June 21, 2021  
**Submitted By:** Merced Faculty Associates Medical Group, Inc.  
James Rabago, MD – Medical Director

Olivewood Meadows Occupational Health Center

## A Level Service (Pre-employment)

- |   |                 |
|---|-----------------|
| 1. Pre-employment Physical exams                    | \$100.00        |
| Urine Drug screen DOT/Non-DOT                       | \$45.00/\$40.00 |
| 2. Bi-Annual Physicals DOT Physicals                | \$110.00        |
| 3. Spirometry (SCBA)                                | \$70.00         |
| 4. Hepatitis B vaccination (series of 3 injections) | \$105.00 each   |
| 5. Cholinesterase Baseline testing                  | \$15.00 draw    |
| fee   |                 |
| (Separate lab fee from Quest diagnostic)            |                 |
| 6. Fitness for Duty examinations                    | \$100.00        |

## B Level Services (Workers Compensation)

Our primary facility, Olivewood Meadows Occupational Health Center, is open Monday through Friday from 8:00am-5:00pm closed from 12:00pm-1:00pm.

After hours, emergencies are to be directed to the local emergency room.

We are available for telephone communication with employer or the work comp insurance company.

### Medical Personal:

James Rabago, MD – Family Medicine  
Habib Rashed, PA

**Industrial Medicine Clinics:**

County of Merced Marchini	Fineline Industries	Amie
Scholle Master	Golden Valley Health Centers	Service
California Dairy Target Cornerstone	Fed Ex Balance Staffing	UPS
Quad Graphics	Merced County Office Of Education	

\*\*\*\* Many additional clients, listing available upon request\*\*\*\*

**Frequently Used Specialist:**

Black Rascal Physical Therapy	Dr Randi Galli
Sierra Pacific Ortho	Dr David Bybee
Elportal Imaging	Garvey Chiropractic
Dr Mario Sablan	Natural Vision Center
Fountain View Radiology	Elportal Dental Office
Dr Donald Carter	Dr Reddy
Yosemite Physical Therapy	Dr Levin

**C Level Services**

1. Pre-employment urine drug screen handling fee (you are required to set up your own lab account)  
\$15.00
2. Post-accident and reasonable suspicion urine drug screening  
\$15.00
3. Post-accident and reasonable suspicion breathe alcohol screening (BAT)  
\$25.00

**We will assume total responsibility for the establishment, maintenance and operation of the pool of commercial drivers who must comply with random drug testing.**

**We are contracted with Alere laboratories and have an MRO that is NIDA approved.**

**We are using an electronic Chain of Custody form with eScreen capabilities.**

**We have a full time Breath Alcohol Technicians (BAT) on staff. Certificate is attached.**

**D Level** (Public Safety)

1. Post Physicals-to include complete physical examination (skin, head, eyes, ears, nose, throat, mouth, neck, nodes, chest lungs, cardiovascular, abdomen, musculoskeletal, nervous system, genitalia/rectal) EKG, can draw up lab orders to send to Quest as needed, PPD as indicated.  
\$200.00
2. NFPA-National Fire Protection Associates physical to include a complete detailed in D level #1. Pulmonary Function Test (when available due to COVID-19) annual audiogram, annual PPD and respiratory exam  
\$200.00