RESOLUTION APPROVING A CONTRACT WITH DAMERON HOSPITAL ASSOCIATION TO PROVIDE OCCUPATIONAL HEALTH SERVICES IN PERSONNEL MATTERS, FOR A TERM NOT TO EXCEED TEN (10) YEARS

The City of Stockton currently has a contract with Dameron Hospital Association to provide occupational health services. The contract expires on December 15, 2008.

In anticipation of the expiration of the contract with Dameron Hospital Association, the City Council authorized, on June 26, 2007, the issuance of a Request for Proposal to provide occupational health services in personnel matters (City Council Resolution 07-0258).

In response to the RFP, the City received four (4) proposals. The Selection Committee reviewing the proposals unanimously determined that Dameron Hospital Association is best suited to provide occupational health services to the City, and, accordingly, recommends that the City enter into a new contract with Dameron Hospital Association.

The proposed contract will be for an initial term of five (5) years, renewable on a year-to-year basis for up to five (5) additional years. The services to be provided by Dameron Hospital Association include applicant pre-employment physicals and drug screens; a variety of periodically required annual physicals; annual on-site pulmonary function testing; annual on-site flu shots; fitness for duty evaluations and reports; Department of Transportation (D.O.T.) required random drug testing and Medical Review Officer (MRO) services; hepatitis and HIV occupational exposure testing, counseling and follow-up; expert witness testimony before a commission or court; medical file/record maintenance; and research on new occupational health issues.

In addition, a physician with Dameron Hospital Association may also be called upon to fulfill the role of “City Health Officer” for Code Enforcement/Public Health consultation purposes, and also be a member for the City’s Health Plan Appeals Committee, as needed; now, therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF STOCKTON, AS FOLLOWS:

That the contract for Occupational Health Services in personnel matters between the City of Stockton and Dameron Hospital Association, which includes Exhibits “A”, “B”, and “C”, is hereby approved, as attached and incorporated herein by this reference.

The City Manager is hereby authorized and directed to execute the contract with Dameron Hospital Association for occupational health services on behalf of the City of Stockton.
The City Manager is authorized to take such other actions as are appropriate to carry out the purpose and intent of this Resolution.

PASSED, APPROVED and ADOPTED DEC. 2, 2008.

EDWARD J. CHAVEZ
MAYOR OF THE CITY OF STOCKTON

ATTEST:

KATHERINE GONG MEISSNER
CITY CLERK OF THE CITY OF STOCKTON
AGREEMENT

ARTICLE 1
PARTIES AND PURPOSE

Section 1.1 Parties

THIS AGREEMENT is entered into on December 2, 2008, by and between the CITY OF STOCKTON, a municipal corporation hereinafter “CITY”, and DAMERON HOSPITAL ASSOCIATION, a corporation (hereinafter “CONTRACTOR”).

Section 1.2 Purpose

CITY wishes to enter into an agreement with CONTRACTOR for Industrial Medical Services in Personnel Matters (hereinafter “Services”).

ARTICLE 2
SCOPE OF SERVICES

Section 2.1 Scope of Services

CONTRACTOR, for the benefit and at the direction of CITY, shall perform the scope of services as set forth in Exhibit “A”, attached and incorporated by this reference.

Section 2.2 Initial Term

The term of this agreement shall be for a period of five (5) years commencing December 16, 2008, and terminating December 15, 2013; provided, however, that either CITY or CONTRACTOR shall have the right to terminate this Agreement upon thirty (30) days written notice to the other party.

Section 2.3 Option to Renew

This Agreement may be renewed by mutual consent of the parties, under the same terms and conditions as are applicable during the initial term. CONTRACTOR shall give CITY written notice of its election to renew this Agreement by delivery to CITY of a written request for renewal not less than ninety (90) days prior to the expiration of this Agreement.

If such a request is made and the parties mutually agree that there has been satisfactory contract performance, CITY may authorize extensions of the Agreement for
one (1) year periods of time; but in no event shall the original term of this Agreement, together with any extensions, exceed ten (10) years.

No extension to this Agreement is valid unless expressly agreed to by the parties in accordance with the provisions of this section.

Section 2.4 Meetings

CONTRACTOR shall attend meetings as needed, to be determined by CITY in consultation with CONTRACTOR.

Section 2.5 Staffing

CONTRACTOR acknowledges that CITY has relied on CONTRACTOR's special capabilities and on the qualifications of CONTRACTOR's principals and staff as identified in its proposal to CITY. The scope of services shall be performed by CONTRACTOR, unless agreed to otherwise by CITY in writing.

CONTRACTOR certifies that it is prepared to and can perform all services within the scope of services within the time frame specified. CONTRACTOR certifies that it has complied with any and all applicable licensing requirements.

Section 2.6 Subcontracts

CITY acknowledges that CONTRACTOR may subcontract certain portions of the scope of services to subcontractors. Should any subcontractors be replaced or added after CITY's approval, CITY shall be notified within ten (10) days and said subcontractors shall be subject to CITY's approval prior to initiating any services. CONTRACTOR shall remain fully responsible for the complete and full performance of said services and shall pay all such subcontractors.

ARTICLE 3

COMPENSATION

Section 3.1 Compensation

CONTRACTOR's compensation for all work under this Agreement shall conform to the provisions of Exhibit "B" attached and incorporated by this reference.
Section 3.2  Method of Payment

CONTRACTOR shall submit invoices for work completed on a monthly basis, providing, without limitation, details as to procedure(s) performed, rate, and indicating to what aspect of the scope of services said work is attributable. Invoices submitted shall be consistent with Exhibit “B”.

Payment will be made within thirty (30) days after invoices are received and accepted by the City Manager.

Section 3.3  Auditing

Upon CITY’s request, CONTRACTOR shall allow CITY access to any books, documents, papers, and records of CONTRACTOR and/or subcontractors, which CITY deems to be directly pertinent to the project for the purpose of making audits, examinations, excerpts, and transcriptions.

CONTRACTOR shall, in the performance of this Agreement, comply with all applicable federal and state laws. CONTRACTOR shall review, at reasonable intervals, its forms and procedures to ensure such compliance. CITY shall be permitted to conduct periodic audits and on-site visits to monitor compliance.

ARTICLE 4

MISCELLANEOUS PROVISIONS

Section 4.1  Nondiscrimination

In performing services under this Agreement, CONTRACTOR 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.

Section 4.2  Insurance Requirements

CONTRACTOR shall comply with the insurance requirements set forth in Exhibit “C”, attached to this Agreement and incorporated by this reference.

Section 4.3  Successors and Assigns

CITY and CONTRACTOR each bind themselves, their partners, successors, assigns, and legal representatives to this Agreement without the written consent of the
others. CONTRACTOR shall not assign or transfer any interest in this Agreement without the prior written consent of CITY. Consent to any such transfer shall be at the sole discretion of CITY.

Section 4.4 Notices
Any notice required to be given by the terms of this Agreement shall be deemed to have been given when the notice is personally served, or sent by certified mail or express or overnight delivery, postage prepaid, addressed to the respective parties as follows:

To CITY:
City of Stockton
Attn: Dir of Human Resources
22 East Weber Street
Stockton CA 95202

To CONTRACTOR:
Occupational Health Services
Dameron Hospital Association
Attn: Corky J. Hull, M.D.
420 W. Acacia Street, Suite 19
Stockton CA 95203

Section 4.5 Cooperation of CITY
CITY shall cooperate fully in a timely manner in providing relevant information that it has at its disposal.

Section 4.6 CONTRACTOR not Employee of CITY
It is understood that CONTRACTOR is not acting hereunder in any manner as an employee of CITY, but solely under this Agreement as an independent contractor. CITY shall not under any circumstances be liable to CONTRACTOR or any person or persons acting for or under it or to any third party for any deaths, injuries, or property damage received or claimed, unless any such liability arises by virtue of the sole negligence by CITY, its officers, agents, or employees. CONTRACTOR agrees to indemnify, defend and hold CITY free and harmless from any and all liability therefore, which is due to any negligent acts, errors, or omissions of CONTRACTOR or any of its officers, agents, employees, or subcontractors.

Section 4.7 Nonassignability
CONTRACTOR shall neither assign nor delegate its rights and/or duties under this Agreement without first obtaining CITY’s written consent to the assignment and/or delegation. Any assignment or delegation made by CONTRACTOR without CITY’s prior written consent will render this Agreement voidable at the sole discretion of CITY.
Section 4.8  Contract Terms Prevail

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.

CONTRACTOR's Response to CITY's Request for Proposal is hereby incorporated by reference as though fully set forth herein. Should any inconsistency occur between this Agreement and CONTRACTOR's Response to CITY's Request for Proposal, the terms of this Agreement shall prevail.

Section 4.9  Applicable Law

This Agreement shall be governed by the laws of the State of California.

Section 4.10  Severability

The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

Section 4.11  Captions

The captions of the sections and subsections of this Agreement are for convenience only and shall not be deemed to be relevant in resolving any question of interpretation or intent.

Section 4.12  Entire Agreement

This Agreement represents the entire and integrated agreement between CITY and CONTRACTOR and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by written instrument signed by CITY and CONTRACTOR.

Section 4.13  Authority

The undersigned hereby represent and warrant that they are authorized by the parties to execute this Agreement.
IN WITNESS WHEREOF, CITY and CONTRACTOR have executed this Agreement as of the date first above written.

CITY OF STOCKTON, a Municipal Corporation

By: ________________________________  
J. GORDON PALMER, JR.  
City Manager

"CITY"

DAMERON HOSPITAL ASSOCIATION, a corporation

By: ________________________________

Its: ________________________________

______________________________  
(Printed Name)  
"CONTRACTOR"

ATTEST:

By: ________________________________

KATHERINE GONG MEISSNER  
City Clerk of the City of Stockton

APPROVED AS TO FORM:

By: ________________________________

MICHON JOHNSON  
Deputy City Attorney
SCOPE OF SERVICES

Dameron Hospital Association (CONTRACTOR) will, under the supervision of its on-site licensed physician, provide:

1. Pre-employment physicals, which vary in scope depending on job classification.
2. Fitness for duty evaluations and reports.
3. Department of Transportation (D.O.T.) required physicals for California Class A and B driver's license.
4. Bomb Squad physicals.
5. Expert witness testimony before commission or court concerning a medical decision.
6. Hepatitis testing following occupational exposure, with required documentation, reports, and follow-up.
7. HIV testing following occupational exposure, with required documentation, reports, and follow-up.
8. Other industrial medical services, as the need arises.

CONTRACTOR must possess all required physician (or facility) certifications and qualifications required for the services it performs, including D.O.T. drug testing, and must agree to utilize a Department of Health and Human Services (DHHS) certified drug testing laboratory.
### FEE SCHEDULE

Pre-employment Physical Exam and Annual Required Exams for various job classes may include some or all of the following protocol, depending on job class:

**Pre-employment Medical History and Physical Exam (Including Vision Test)** $50.00  
**Pre-employment Medical Review & Summary** $30.00  
**Annual HAZMAT Exam or Bomb Squad Physical Exam** $75.00  
**D.O.T. Physical for Initial or Renewal of Class A or B Driver’s License** $50.00  
**Audiogram** $20.00  
**“H.I.N.T. Test” – (Hearing In Noise Test)
**Specialized testing for hearing problems** $175.00  

#### Drug Screen

- **D.O.T. Panel** $13.50  
- **MRO Service/Review (DOT)** $10.00  
- **Non-D.O.T. Panel** $13.00  
- **MRO Service/Review (Non DOT - Positive)** $25.00  
- **Collection Fee** $20.00  

**Breath Alcohol Test (per test)** $20.00  

**After hours ER charge for drug screen and/or breath alcohol** $0.00  

#### Laboratory Tests

- **Comprehensive Metabolic Panel** $10.00  
- **Lipid Panel** $16.00  
- **Complete Blood Count** $7.00  
- **Urinalysis, Microscopic** $5.00  

**Blood Group and Typing (if additional charge)** $20.00  

**Glucose** separate specimen handling fee $10.00  

**Hemocult (stool guaiac)** $10.00  

**Musculoskeletal Evaluation** (for strength and flexibility) $60.00  

**Pulmonary Function Test** $25.00  

**Lumbar Spine:**  
- **3-view X-Ray** $91.00  

**EXHIBIT “B”**  
Page 1
<table>
<thead>
<tr>
<th>Service</th>
<th>Fee</th>
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<tbody>
<tr>
<td>2-view X-Ray</td>
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<tr>
<td>Resting EKG</td>
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<tr>
<td>Stress EKG</td>
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<tr>
<td>TB Skin Test</td>
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<tr>
<td>Chest X-Ray</td>
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<tr>
<td>1-view</td>
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<tr>
<td>2-view</td>
<td>$62.00</td>
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Annual required physicals may include some of the following additional protocol:

<table>
<thead>
<tr>
<th>Service</th>
<th>Fee</th>
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<tbody>
<tr>
<td>Cholinesterase Test</td>
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<tr>
<td>Separate specimen handling fee</td>
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<tr>
<td>Tetanus</td>
<td></td>
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<tr>
<td>Separate injection fee</td>
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<tr>
<td>Hepatitis</td>
<td></td>
</tr>
<tr>
<td>A Antibody Titer</td>
<td>$10.00</td>
</tr>
<tr>
<td>B Antibody Titer</td>
<td>$10.00</td>
</tr>
<tr>
<td>C Antibody Titer</td>
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<tr>
<td>Separate specimen-handling fee</td>
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<td>Vaccination – Hepatitis B (per dose)</td>
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<tr>
<td>Hepatitis B Vaccination Booster</td>
<td>$50.00</td>
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<tr>
<td>Separate injection fee</td>
<td>$10.00</td>
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<tr>
<td>HIV</td>
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<tr>
<td>HIV Antibody Titer</td>
<td>$13.00</td>
</tr>
<tr>
<td>Separate specimen-handling fee</td>
<td>$10.00</td>
</tr>
<tr>
<td>Counseling and follow-up appointments</td>
<td>$50.00</td>
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</table>

<table>
<thead>
<tr>
<th>Service</th>
<th>Fee</th>
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</thead>
<tbody>
<tr>
<td>Fitness for Duty</td>
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<tr>
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<td>Complex Case</td>
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<tr>
<td>Expert Witness Testimony (per hour)</td>
<td>$150.00</td>
</tr>
<tr>
<td>Facility Fee (per exam)</td>
<td>$25.00</td>
</tr>
</tbody>
</table>

*Fees for other exams/tests/services will be negotiated as the need arises.*
INSURANCE REQUIREMENTS

Vendor shall procure and maintain for the duration of the Agreement, insurance against all 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 vendor, its agents, representatives, volunteers, or employees.

1. INSURANCE Throughout the life of this Contract, the Vendor shall pay for and maintain in full force and effect with an insurance company(s) (Company) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A: VII" in Best Insurance Key Rating Guide, the following policies of insurance:

A. COMMERCIAL OR COMPREHENSIVE GENERAL LIABILITY insurance which shall include Contractual Liability, Products and Completed Operations coverage's, Bodily Injury and Property Damage Liability insurance with combined single limits of not less than $1,000,000 per occurrence, and if written on an Aggregate basis, $2,000,000 Aggregate limit (CG 0001).

B. COMMERCIAL (BUSINESS) AUTOMOBILE LIABILITY insurance, endorsed for "any auto" with combined single limits of liability of not less than $1,000,000 each occurrence. (CA 0001)

C. WORKERS’ COMPENSATION insurance as required under the California Labor Code and Employers Liability Insurance with limits not less than $1,000,000 per accident/injury/disease.

D. MALPRACTICE LIABILITY insurance shall be maintained at all times during the term of this agreement with a minimum policy coverage of $1,000,000. This policy shall insure CONTRACTOR, its employees, agents, and servants.

Deductibles and Self-Insured Retentions must be declared and are subject to approval by the CITY.

The Policy(s) shall also provide the following:

1. The Commercial General Liability and Automobile Liability insurance shall be written on ISO approved occurrence form (see item 1 and 2 above) and endorsed to name: CITY OF STOCKTON (CITY), its officers, agents, employees and volunteers as additional insured’s. ISO Endorsement CG 20 11 11 85 (or equal) is acceptable.

2. For any claims related to products provided under this contract, the Vendor’s insurance coverage shall be primary insurance as respects the City of Stockton its officers, agents, employees and volunteers. Any coverage maintained by the CITY shall be excess of the Vendor’s insurance and shall not contribute with it. Policy shall waive right of recovery (waiver of subrogation) against the CITY.

3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days’ prior to written notice by certified mail, return receipt requested, has been given to the CITY. Further, the thirty (30) day notice shall be unrestricted, except for workers’ compensation, which shall permit ten (10) days advance notice. The Insurer shall provide the CITY with notification of any cancellation, major change, modification or reduction in coverage.
4. Regardless of these contract minimum insurance requirements, the Vendor and its insurer shall agree to commit the Vendor’s full policy limits and these minimum requirements shall not restrict the Vendor’s liability or coverage limit obligations.

5. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the California Civil Code.

6. The Company shall furnish the City of Stockton with the Certificates and Endorsement for all required insurance, prior to the CITY’s execution of the Agreement and start of work.

7. Proper address for mailing certificates, endorsements and notices shall be: City of Stockton, Attention: Risk Services, 425 N. El Dorado Street, Stockton, CA 95202.

8. Upon notification of receipt by the CITY of a Notice of Cancellation, major change, modification, or reduction in coverage, the Vendor shall immediately file with the CITY a certified copy of the required new or renewal policy and certificates for such policy.

Any variation from the above contract requirements shall only be considered by and be subject to approval by the CITY’s Risk Services (209) 937-8629. Our fax is (209) 937-8833.

If at any time during the life of the Contract or any extension, the Vendor fails to maintain the required insurance in full force and effect, all work under the Contract shall be discontinued immediately, and all payments due or that may become due to the Vendor shall be withheld until acceptable replacement coverage notice is received by the CITY. Any failure to maintain the required insurance shall be sufficient cause for the CITY to terminate this Contract. In the event of insurance cancellation, the CITY reserves the right to purchase insurance or insure or self-insure) for the above required coverage’s at the Vendor’s full expense.

If the Vendor should subcontract all or any portion of the work to be performed in this contract, the Vendor shall cover the sub-Vendor, and/or require each sub-Vendor to adhere to all subparagraphs of these Insurance Requirements section. Similarly, any cancellation, lapse, reduction or change of sub-Vendor’s insurance shall have the same impact as described above.

2. **INDEMNIFICATION**

   a) The Vendor shall indemnify, hold harmless and defend the City of Stockton (CITY) and each of its Mayor, Council, officers, officials, employees, volunteers and agents from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by CITY the Vendor or any other person and from any and all claims, demands an actions in law or equity (including reasonable attorney’s fees and litigation expense), arising or alleged to have arisen directly or indirectly out of the active or passive negligence of the Vendor or any of its employees or agents in the performance of this contract. The Vendor’s obligations under the preceding sentence shall apply regardless of whether the CITY or any of its Mayor, council, officers, officials, employees, volunteers or agents are actively or passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the active negligence or by the willful misconduct of the CITY.
b) If the Vendor should subcontract all or any portion of the work to be performed under this agreement, the Vendor shall require each sub-Vendor to indemnify, hold harmless and defend the CITY, its officers, officials, employees and agents in accordance with the terms of the preceding paragraph.

INSURER:

POLICY NUMBER:

THIS ENDORSEMENT CHANGES THE POLICY, PLEASE READ IT CAREFULLY
This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART.

SCHEDULE
1. Designation of Premises (Part Leased to You):
2. Name of person or Organization (Additional Insured): City of Stockton, its Council, Officers, Agents, Employees, Authorized Representatives, and Volunteers are Additional Insured's.
3. Additional premium:

WHO IS INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule but only with respect to liability arising out of the ownership, maintenance or use of that part of the premises leased to you and shown in the Schedule and subject to the following additional exclusions:

This insurance does not apply to:
1. Any “occurrence” which takes place after you cease to be a tenant in that premises.
2. Structural alteration, new construction or demolition operations performed by or on behalf of the person or organization shown in the schedule.

Modifications to ISO form CG 20 11 11 85:

1. This insurance shall be primary as respects the City of Stockton (CITY) or if excess, shall stand in an unbroken chain of coverage excess of the Named Insured’s scheduled underlying primary coverage. In either event, any other insurance maintained by the CITY shall be in excess of this insurance and shall not be called upon to contribute with it.
2. The insurance afforded by this policy shall not be canceled, changed, or modified except after thirty (30) day advance written notice has been given to the CITY. (10 days advance written notice for non-payment of premium).
3. The Insurer named above waives any right of recovery the Insurer may have against the CITY when the Insured has agreed to such waiver in writing prior to the loss.

Signature – Authorized Representative of Insurer

Name of Insurance Company

CG 20 11 11 85 Insurance Services Office, Inc. Form (Modified)

EXHIBIT “C”