

CITY OF SAN ANTONIO
HUMAN RESOURCES DEPARTMENT
INTERDEPARTMENTAL CORRESPONDENCE

AGENDA ITEM NO. 35

TO: Mayor and City Council

THROUGH: Terry M. Brechtel, City Manager

FROM: Elisa Peña Bernal, Human Resources Director

COPIES: Travis M. Bishop, Assistant City Manager; City Attorney's Office; Finance Department; File

SUBJECT: Dental Health Maintenance Organization (DHMO) Contract

DATE: October 16, 2003

SUMMARY AND RECOMMENDATION

This Ordinance authorizes the City Manager or her designee to execute a contract with Private Medical-Care Inc. (a wholly owned affiliate of Delta Dental Plan of California) at an estimated annual amount of \$548,931 to provide Dental Health Maintenance Organization (DHMO) services to civilian employees who select this voluntary premium deduction program under the City's Self-Funded Health Benefits Program. The term of this contract is three (3) years, beginning January 1, 2004 and ending December 31, 2006, with an option to extend the contract for up to two (2) one (1) year extensions, subject to and contingent upon funding and approval by City Council.

Staff recommends approval of this Ordinance.

BACKGROUND INFORMATION

The City's Employee Benefits program offers full time non-uniformed active employees and their eligible dependents a DHMO dental plan option providing affordable co-payments for services offered through a managed network of dental providers in the community.

Prior to recommendation of this contract, an RFP Review Committee represented by members from Human Resources, Finance, City Attorney's Office, Public Works, Community Initiatives, Parks and Recreation and the Health Department reviewed the extension agreement offered by the current vendor, Fortis Dental. The Committee recommended release of a Request for Proposal due to numerous changes proposed to the benefit level including higher co-payments for service, added expense associated with lab fees and conversion of orthodontic coverage to a discount arrangement which would significantly increase the cost to participants in the plan.

The Human Resources Department advertised a Request for Proposal (RFP) for DHMO services June 22, 2003 in the Express News. The RFP was posted on the City web site and mailed to 15 vendors licensed to provide DHMO service in Texas. A Pre-Proposal Conference was held on July 9, 2003 and the RFP closed on July 22, 2003. The six (6) RFP responses received by the deadline were reviewed by a Technical Committee to insure compliance with the conditions of the RFP. The Technical Committee consisted of representatives from the City Attorney's Office, Economic Development, Finance, and Human Resources Department. The Technical Committee found one proposal to be non-responsive to the type of service requested by the DHMO RFP document.

An RFP Selection Committee was assembled to review the remaining five (5) eligible proposals, and to select and interview potential finalists. The Selection Committee represented various City departments including:

Human Resources, Finance, Health, Purchasing, Community Initiatives, Public Works, Alamodome, Parks & Recreation and the Library. The Committee identified four (4) finalists for interview and scored them according to the evaluation criteria listed in the RFP which included the following: responsiveness to the RFP (35%), evaluation of the proposed pricing schedule (25%), respondent's background and capability to provide the services required (20%), and SBEDA objectives (20%).

As a result of this RFP process the Selection Committee recommends that Private Medical-Care Inc. (a wholly owned affiliate of Delta Dental Plan of California) be awarded the contract to provide DHMO services under the City's Self-Funded Health Benefits Program. While this selection results in a monthly premium increase of \$2 for employee only, \$3 for employee plus one dependent and \$3 for employee plus two or more dependents, this plan avoids additional lab fee expense while maintaining competitive co-payments for services including orthodontic treatment. The contract includes a three-year guarantee on the monthly premiums for service.

POLICY ANALYSIS

Approval of this contract will allow for the continuation of a DHMO plan option to be offered along with the CitiDent self-funded dental plan to eligible employees and dependents during open enrollment under the City's 2004 Flexible Benefits Program.

FINANCIAL IMPACT

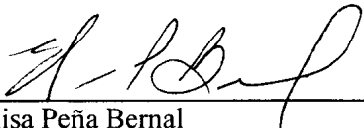
Funds are appropriated annually, by fiscal year, in the Employee Benefits Self-Insurance Fund. This ordinance will authorize the first nine (9) months of this contract in FY2003-2004 and the remaining twenty-seven (27) months will be authorized in FY 2004-2005 and FY 2005-2006 contingent upon subsequent funding. The DHMO program is an optional benefit paid for by the employee, therefore the estimated annual cost of \$548,931 is a direct pass-through to the vendor. The monthly premium of \$12 for employee only, \$19 for employee plus one dependent, or \$28 for employee plus two or more dependents will be deducted from payroll on a biweekly basis for enrolled participants.

COORDINATION

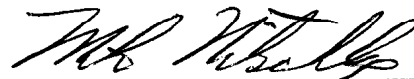
This proposed ordinance has been reviewed and coordinated with the following departments: Human Resources, Finance, Legal, Economic Development, Asset Management, Health, Purchasing, Community Initiatives, Alamodome, Parks & Recreation, Public Works and the Library.

SUPPLEMENTAL COMMENTS

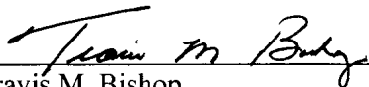
The required Discretionary Contracts Disclosure is attached.



Elisa Peña Bernal
Human Resources Director



Milo Nitschke
Finance Director



Travis M. Bishop
Assistant City Manager

Approved:



Terry M. Brechtel
City Manager

Attachments

EVALUATION SUMMARY

Project: DHMO

Department: Human Resources

	Max Possible Points	Fortis	Delta	SafeGuard	Humana
Responsivness to the RFP	35	24.4	30.1	28.6	19.4
<i>Requested information included and thoroughness of response.</i>					
<i>Understanding and acceptance of the scope of services. Acceptance of the RFP and Contract terms. Clarity and conciseness of the response.</i>					
Evaluation of the Proposed Pricing Schedule	25	19.8	21.6	20.6	15.4
Respondent's background and capability to provide the services requested	20	15.7	18.8	17.5	13.5
<i>Background of Respondent. Respondent's support personnel, including professional qualifications and length of time working in Respondent's capacity. Relevant experience of Respondent. Specific experience with public entity clients, especially with large municipalities. Resources available to support this project, including total number of employees, number and location of offices, number and types of equipment available.</i>					
<u>Sub Total</u>	80	59.9	70.5	66.7	48.3
SBEDA	20				
<i>Local Business Enterprise</i>		0	0	0	6
<i>Historically Underutilized Enterprise</i>		0	0	0	0
<i>Prime Contractor compliance with SBEDA policy</i>		0	0	0	0
<u>Grand Total</u>	100	59.9	70.5	66.7	54.3

City of San Antonio
Discretionary Contracts Disclosure*

*For use of this form, see City of San Antonio Ethics Code, Part D, Sections 1&2
Attach additional sheets if space provided is not sufficient.
State "Not Applicable" for questions that do not apply.*

This form is required to be supplemented in the event there is any change in the information under (1), (2), or (3) below, before the discretionary contract is the subject of council action, and no later than five (5) business days after any change about which information is required to be filed.

Disclosure of Parties, Owners, and Closely Related Persons

For the purpose of assisting the City in the enforcement of provisions contained in the City Charter and the Code of Ethics, an individual or business entity seeking a discretionary contract from the City is required to disclose in connection with a proposal for a discretionary contract:

(1) the identity of any **individual** who would be a party to the discretionary contract:

Not applicable

(1) the identity of any **business entity**¹ that would be a party to the discretionary contract:

Private Medical-Care, Inc.

and the name of:

(A) any individual or business entity that would be a **subcontractor** on the discretionary contract;

Not applicable

and the name of:

(A) any individual or business entity that is known to be a **partner**, or a **parent** or **subsidiary** business entity, of any individual or business entity who would be a party to the discretionary contract;

Delta Dental Plan of California

¹ A *business entity* means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, unincorporated association, or any other entity recognized by law.

- (1) the identity of any *lobbyist* or *public relations firm* employed for purposes relating to the discretionary contract being sought by any individual or business entity who would be a party to the discretionary contract.

Not applicable

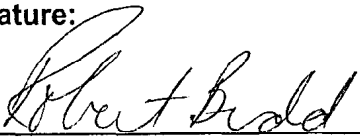
Political Contributions

Any individual or business entity seeking a discretionary contract from the city must disclose in connection with a proposal for a discretionary contract all political contributions totaling one hundred dollars (\$100) or more within the past twenty-four (24) months made directly or indirectly to any *current* or *former member* of City Council, any *candidate* for City Council, or to any *political action committee* that contributes to City Council elections, by any individual or business entity whose identity must be disclosed under (1), (2) or (3) above. Indirect contributions by an individual include, but are not limited to, contributions made by the individual's spouse, whether statutory or common-law. Indirect contributions by an entity include, but are not limited to, contributions made through the officers, owners, attorneys, or registered lobbyists of the entity.

To Whom Made:	Amount:	Date of Contribution:
Not Applicable		

Disclosures in Proposals

Any individual or business entity seeking a discretionary contract with the city shall disclose any known facts which, reasonably understood, raise a question² as to whether any city official or employee would violate Section 1 of Part B, Improper Economic Benefit, by participating in official action relating to the discretionary contract.

Signature: 	Title: Regional Vice President Company: Private Medical-Care, Inc.	Date: July 18, 2003

² For purposes of this rule, facts are "reasonably understood" to "raise a question" about the appropriateness of official action if a disinterested person would conclude that the facts, if true, require recusal or require careful consideration of whether or not recusal is required.

DENTAL CARE SERVICES CONTRACT

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This CONTRACT is made and entered into by and between the **CITY OF SAN ANTONIO** (hereinafter referred to as "**CITY**"), a Texas municipal corporation, acting by and through its City Manager pursuant to Ordinance No. _____, passed and approved on _____ 2003, Alpha Dental Programs, Inc. d/b/a DeltaCare, having its principal place of business at 1431 Greenway Drive, Suite 520, Irving, Texas 75038 (hereinafter referred to as "**VENDOR**"), acting by and through Robert Elliott, President and Chief Executive Officer.

I. PURPOSE

- 1.1 The purpose of this CONTRACT is to state the terms and conditions under which the **VENDOR** shall provide a DENTAL CARE PROGRAM for the **CITY**.

II. DESCRIPTION OF SERVICES

- 2.1 The **VENDOR** shall perform all the services as set forth in the **CITY'S** Request for Proposal, the **VENDOR'S** Proposal dated July 21, 2003, and the Employee Combined Evidence of Coverage and Disclosure Form (EOC), attached hereto respectively as Exhibits "A," "B" and "C" and incorporated herein. The **VENDOR** understands and agrees that Exhibits A, B and C are a part of this CONTRACT, as though fully set out herein, and that all obligations, conditions, tasks, products, and representations set forth in said documents are required to be fulfilled by the **VENDOR** as completely and fully as are the obligations, conditions, tasks, products and representations imposed by this CONTRACT.
- 2.2 The terms of this CONTRACT shall be final and binding where there is any conflict between the terms of the Request for Proposal, the **VENDOR'S** Proposal or EOC and the terms of this CONTRACT; the **CITY'S** Request for Proposal shall control where it conflicts with the **VENDOR'S** Proposal or EOC.
- 2.3 The **VENDOR** shall work with the Human Resources Director or designee and appropriate **CITY** officials to perform any and all related tasks required by the **CITY** in order to fulfill the purposes of this CONTRACT.
- 2.4 The **VENDOR** shall deliver to the **CITY** semi-annual utilization reports, which result from its services to the **CITY**. The **VENDOR** further agrees to deliver other reports and documents as specified in 3.1, Timely Reporting, resulting from its services to the **CITY** as they become available. Such reports and documents

shall be in a format satisfactory to the **CITY** and shall be provided at no charge to the **CITY**.

- 2.5 The **VENDOR** shall provide **CITY** employees enrolled in **VENDOR'S** plan access to dental services through the **VENDOR'S** provider network.
- 2.6 The **VENDOR** shall meet monthly with representatives of the **CITY'S** Employee Benefits Division. The **CITY** shall give the **VENDOR** at least twenty-four (24) hours notice of such meetings.
- 2.7 In the event of any written complaint to the State Board of Insurance, the **CITY** requires the **VENDOR** to notify it of the complaint within two (2) business days of receipt
- 2.8 The **VENDOR** will develop and oversee a detailed transition plan to be used at the commencement of the **CONTRACT**; such plan shall result in no additional cost to the **CITY** and will include preparation, distribution and cost of participant ID cards, plan design information and plan access.
- 2.9 The **VENDOR** shall maintain a sufficient network of providers accessible throughout the **CITY'S** geographical area for plan participants and shall not alter its network so as to significantly impact such access by the **CITY'S** plan participants.
- 2.10 The **VENDOR** warrants and certifies that the **VENDOR** and any other person designated by it to provide services herein has the requisite training, license and/or certification to provide said service.
- 2.11 The **VENDOR** shall designate local administrative support and an account representative who shall be located within the geographical area of the **CITY**.
- 2.12 The **VENDOR** will provide DENTAL CARE SERVICES according to the Schedule of Benefits, as set out in the **VENDOR'S** Proposal and EOC, attached hereto and incorporated herein as Exhibits B and C.
- 2.13 The **VENDOR'S** premium fee schedule for the number of **CITY** plan participants in each category shall be as follows:

• Employee only	\$12.00	per month
• Employee + one Dependent	\$19.00	per month
• Employee + two or more Dependents	\$28.00	per month

This premium fee schedule shall be in effect for the entire three-year term of this contract. If the term of this **CONTRACT** is extended by the **CITY** as provided for in Section 6.1 below, the premium fee schedule shall be mutually agreed upon by the **CITY** and **VENDOR**.

- 2.14 Eligibility for **CITY** plan participants shall become effective the first day of the month following enrollment.

III. PERFORMANCE MEASURES

3.1

PERFORMANCE GUARANTEES

VENDOR will place 10% of DeltaCare administration fee* at risk. While performance is monitored monthly, penalties, if any, will be based on annual performance results and paid annually. Measurement will begin the month after **CITY** has completed all aspects of the implementation process including: 1) a completed and signed group application; and 2) complete eligibility specifications.

VENDOR is committed to the highest level of service and is dedicated to consistently meeting or exceeding **CITY's** expectations in the following areas:

Performance Requirement	Expected Standards/Results	% of Admin. Fee at Risk
Account Management	An Account Executive and Service Representative will be assigned as contacts for CITY to:	Total 1.5%
	a) Successfully oversee all implementation activities, including participation in informational meetings for employees;	.50%
	b) Schedule meetings with CITY to ensure smooth service of the account and on an as needed basis to discuss and resolve open issues; and	.50%
	c) Return phone calls from CITY's primary contacts within 24 hours.	.50%
	CITY will monitor and evaluate VENDOR's account management performance on an ongoing basis, and will report to VENDOR at any time the CITY determines these Performance Guarantees are not being met.	
Customer Service Responsiveness	Over the course of a contract year:	Total 1.5%
	a) 85 percent of all customer calls to VENDOR's Customer Relations department will be answered within 30 seconds; and	.75%
	b) Call abandonment rate will be less than 5 percent.	.75%
	Performance will be measured globally and reported annually.	
Customer Satisfaction	Overall customer satisfaction is measured by a survey distributed to a random sampling of CITY enrollees. 80 percent of satisfaction survey participants will be satisfied or very satisfied. Measurement will be reported annually based on the results of the last 12-month period.	Total 1.5%
Quality Management	a) VENDOR will provide a written response that acknowledges grievance within five business days to 95 percent of enrollees filing a grievance.	.375%
	b) VENDOR will guarantee to resolve 85 percent of all quality of care grievances within 30 days after receiving grievance, and to resolve 95 percent of all quality of care grievances within 60 days after receiving grievance.	.75%

	c) All new contract dentists will be credentialed upon application and will be recredentialed, at a minimum, once every 3 years. Performance will be measured globally and reported annually.	.375%
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Performance Requirement	Expected Standards/Results	% of Admin. Fee at Risk
Network Access	85 percent of all facilities open to new enrollees shall have appointment access for non-specific time requests not to exceed four weeks for routine/initial visits and six weeks for hygiene appointments. Performance will be measured globally and reported annually, based on current panel status.	Total 1%
Network Stability	a) Annual turnover of contract dentists will be less than 10 percent. Performance will be measured globally and reported annually. b) Overall provider satisfaction is measured by a survey distributed to a random sampling of VENDOR providers. 85 percent of provider satisfaction participants will be satisfied or very satisfied. Measurement will be reported annually based on the results of the last 12-month period.	Total 1% .50% .50%
Claims Processing	Over the course of a contract year: a) 85 percent of all specialty care preauthorizations will be processed within 10 business days; and b) 85 percent of all specialty care and out-of-area emergency claims will be processed within 15 business days after receiving complete information. Performance will be measured globally and reported annually.	Total .75% .375% .375%
Eligibility Administration	a) 95 percent of group submitted eligibility will be processed within three business days; b) 98 percent of ID cards will be issued within 10 business days after receipt of accurate eligibility data. Performance will be measured on a group-specific basis and reported annually.	Total .75% .375% .375%
Group Reports	VENDOR will provide annual group-specific financial and service utilization reports within 60 business days from the close of the contract period.	Total .5%

* Administration fee, excluding premium tax and commission.

VENDOR shall not be liable to **CITY** or be deemed to be in breach of these Performance Guarantees for any failure or delay in performance arising out of causes beyond its reasonable control and without its fault or negligence. Such causes are strictly limited to include acts of God or a public enemy, explosion, fires or unusually severe weather. Dates and times of performance shall be extended to the extent of the delays excused by this paragraph, provided **VENDOR** notifies **CITY** promptly of the existence and nature of the delay.

- 3.2 Performance compliance audits may be conducted at the discretion of the **CITY** using an independent auditor of their choice and are limited to one (1) per calendar year. If the **CITY** conducts a performance audit, either party to this **CONTRACT** may conduct a second audit, at its own expense, by the same or another independent auditor using a different claim sample of at least equal size. The definition of an error in these audits is subject to a good faith review by the parties to this **CONTRACT**. The cost of the first independent audit in any year will be paid by the **CITY**. Should the **VENDOR** fail to meet any performance expectations, the **VENDOR** will pay the cost of all subsequent audits until it is meeting expected performance levels.
- 3.3 If the **CITY** waives its rights to an independent audit in any plan year, the **CITY** retains the right to audit in all subsequent years.

IV. RIGHT OF REVIEW AND AUDIT

- 4.1 The **VENDOR** and its subcontractors, if any, shall properly, accurately, and completely maintain all books, documents, papers, accounting records, and other evidence pertaining to this **CONTRACT** and shall make such materials, provided the data is not proprietary and that law, regulations and contracting dentist agreements allow, available at their respective offices at all reasonable times and as often as the **CITY** may deem necessary, during the **CONTRACT** period and any extension or renewal hereof for the purpose of accounting and audit inspections by the **CITY** and any of its authorized representatives to audit, examine and make excerpts and/or copies of same.

V. SUBCONTRACTING AND ASSIGNING INTEREST

- 5.1 Any other clause of this **CONTRACT** to the contrary notwithstanding, none of the work or services covered by this **CONTRACT** shall be subcontracted without the **CITY'S** prior written approval. Any work or services approved for subcontracting herein, however, shall be subcontracted only by written contract or agreement and, unless specific waiver is granted in writing by the **CITY**, shall be subject by its terms to each and every provision of this **CONTRACT**. Compliance by subcontractors with this **CONTRACT** shall be the **VENDOR'S** responsibility.
- 5.2 Any subcontracts or assignments on interests entered into by **VENDOR** concerning work tasks for this **CONTRACT** shall be communicated in writing to **CITY** prior to the effective date of this **CONTRACT** and prior to commencement of any work subsequent to this **CONTRACT's** effective date. **VENDOR** shall not assign, sell, pledge, transfer or convey any interest in this **CONTRACT**, nor delegate the performance of any duties hereunder, by transfer, by subcontracting, or by any other means, to any other party without prior written consent of **CITY**, evidenced by passage of an ordinance to that effect by the San Antonio City Council. Any such attempt at an assignment will be void *ab initio*, and shall confer no rights on the purported assignee. Should **VENDOR** assign, transfer, convey, delegate or otherwise dispose of any part of, or all of, its right,

title or interest in this CONTRACT, the **CITY** may, at its option, cancel this contract and all rights, titles and interest of **VENDOR** shall thereupon cease and terminate, notwithstanding any other remedy available to **CITY** under this CONTRACT. The violation of this provision by **VENDOR** shall in no event release **VENDOR** from any obligation under the terms of this CONTRACT, nor shall it relieve or release **VENDOR** from the payment of any damages to **CITY** which **CITY** sustains as a result of such violation.

- 5.3 **VENDOR's** subcontractors may not voluntarily assign, transfer, subcontract or pledge, in whole or in part, any contract with **VENDOR** arising from or in relation to this CONTRACT, nor shall any involuntary transfer or assignment result in a transfer of any rights conferred by this CONTRACT. **VENDOR** shall indicate this limitation in all contracts with approved subcontractors.
- 5.4 **VENDOR** agrees to notify **CITY** of any changes in ownership interest greater than 10%, or control of its business entity, not less than sixty (60) days in advance of the effective date of such change. Notwithstanding any other remedies that are available to **CITY** under this CONTRACT, any such change of ownership interest or control of its business entity may be grounds for termination of this CONTRACT at the sole discretion of the **CITY**.
- 5.5 In no event shall such written consent, if obtained, relieve **VENDOR** from any and all obligations hereunder or change the terms of this CONTRACT.
- 5.6 **CITY** must approve all substitutions of subcontractors to determine if the disadvantaged business enterprise goal will be decreased by substitution of a disadvantaged subcontractor with a non-disadvantaged subcontractor. In the event that the substitution or deletion of any participating dental services provider materially effects the **VENDOR'S** network, **VENDOR** agrees to promptly notify **CITY** and exercise a good faith effort to comprise a network that satisfies **CITY's** requirements for dental services hereunder.
- 5.7 Despite the **CITY'S** approval of a subcontractor, the **CITY** shall in no event be obligated to any third party, including any subcontractor of the **VENDOR**, for performance of work or services, nor shall **CITY** funds ever be used for payment of work or services performed prior to the date of CONTRACT execution or extending beyond the expiration date of this CONTRACT.

VI. TERM

- 6.1 The term of this CONTRACT shall commence at 12:01 a.m., Central Standard Time, on January 1, 2004, and shall terminate at 11:59 p.m., Central Standard Time, on December 31, 2006. With at least sixty (60) days written notice prior to December 31, 2006, the **CITY** may, at its sole option and through appropriate action of the City Council, have the right to extend the term of this CONTRACT for up to two (2) one (1) year extensions, with each one (1) year extension

subject to the same notice requirement and appropriate action of its City Council. However, the **CITY** may terminate this CONTRACT at any time with thirty (30) days notice, effective on the first of the month following notification if funds are restricted, withdrawn, not approved or service is unsatisfactory; it being understood that funds for each calendar year covered by any resulting contract will be requested and, if approved, will be provided as part of the **CITY'S** budget for each fiscal year.

VII. PAYMENT FOR SERVICES

- 7.1 In consideration of the professional services to be performed by the **VENDOR**, as stated herein, the **CITY** shall pay to the **VENDOR** the monthly premiums for each covered **CITY** plan participant according to the premium fee schedule set out in Section II of this CONTRACT.
- 7.2 Payments to the **VENDOR** shall be in the amount shown by the monthly billings and other documentation submitted and shall be subject to the **CITY'S** approval. All services shall be performed to the **CITY'S** satisfaction, and the **CITY** shall not be liable for any payment under this CONTRACT for services which are unsatisfactory and which have not been approved by the **CITY**. The final payment due herein will not be paid until the reports, data, and documents, provided the data is not proprietary and that law, regulations and contracting dentist agreements allow, required under this CONTRACT have been received and approved by the **CITY**.
- 7.3 The **CITY** shall not be obligated or liable under this CONTRACT to any party, other than the **VENDOR** for payment of any monies or provision for any goods or services.

VIII. CHANGE IN SERVICES

- 8.1 Except when the terms of this CONTRACT expressly provide otherwise, any alterations, additions, or deletions to the terms hereof shall be by amendment in writing and executed by both the **CITY** and the **VENDOR**, dated subsequent to the date hereof.
- 8.2 It is understood and agreed by the parties hereto, that changes in local, state and federal rules, regulations or laws applicable hereto, may occur during the term of this CONTRACT and that any such changes shall be automatically incorporated into this CONTRACT without written amendment hereto and shall become a part hereof as of the effective date of the rule, regulation or law. The **VENDOR** expressly agrees to comply with all applicable federal, state and local laws.

IX. CONFIDENTIAL WORK

- 9.1 No reports, information, project evaluation, project designs, data or any other documentation developed by, given to, prepared by, or assembled by the **VENDOR** under this CONTRACT shall be disclosed or made available to any individual or organization by the **VENDOR** without the express prior written approval of the **CITY**.
- 9.2 The **VENDOR** shall establish a method to secure the confidentiality of records and information that the **VENDOR** may have access to in accordance with the applicable federal, state, and local laws and regulations. This provision shall not be construed as limiting the **CITY'S** or its authorized representatives right of access to records or other information under this CONTRACT.
- 9.3 If the **VENDOR** receives inquiries regarding documents within their possession pursuant to this CONTRACT, the **VENDOR** shall immediately forward such request to the **CITY** for disposition, provided the data is not proprietary and that law, regulations and contracting dentist agreements allow,

X. OWNERSHIP OF DOCUMENTS

- 10.1 All reports, information and other data given to, prepared or assembled by the **VENDOR** under this CONTRACT, and any other related documents or items, provided the data is not proprietary and that law, regulations and contracting dentist agreements allow, shall become the sole property of the **CITY** and shall be delivered at no cost to the **CITY** upon request or termination of this CONTRACT without restriction on future use. The **VENDOR** may make copies of any and all documents for its files, at its sole cost and expense.
- 10.2 The **VENDOR** shall retain all records owned by or to which the **CITY** has access, provided the data is not proprietary and that law, regulations and contracting dentist agreements allow, for the retention periods set forth in the Texas Local Government Records Act.

XI. NON-WAIVER

- 11.1 The granting or acceptance of extensions of time to complete the work or furnish the materials or reports required herein will not operate as a release to the **VENDOR** from any covenants and conditions required in this CONTRACT.

XII. INSURANCE REQUIREMENTS

- 12.1 Prior to commencement of work under this CONTRACT, the **VENDOR** shall furnish a completed Certificate of Insurance to the Human Resources Department, Attention: Human Resources Director, 111 Plaza De Armas, San Antonio, Texas, 78205, which shall be completed by an agent authorized to bind

the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. The **CITY** shall have no duty to pay or perform under this CONTRACT until such certificate has been delivered, and no officer or employee shall have authority to waive this requirement.

- 12.2 The **CITY** reserves the right to review the insurance requirements of this section during the effective period of the CONTRACT, including any extension or renewal hereof, and to modify insurance coverage(s) and their limits when deemed necessary and prudent by the **CITY'S** Risk Manager based upon changes in statutory law, court decisions, the claims history of the industry, as well as the **VENDOR'S**, and/or circumstances surrounding this CONTRACT, but in no instance will the **CITY** allow modification whereupon the **CITY** may incur increased risk.
- 12.3 The **VENDOR'S** financial integrity is of interest to the **CITY**. Therefore, subject to the **VENDOR'S** right to maintain reasonable deductibles in such amounts as are approved by the **CITY**, the **VENDOR** shall procure, pay for and maintain in full force and effect for the term of this CONTRACT, including any extensions or renewals hereof, insurance coverages written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated A or better by A.M. Best Company and/or otherwise acceptable to the **CITY**, in the following types and amounts:

<u>TYPE</u>	<u>AMOUNT</u>
A. Workers' Compensation Employer's Liability	Statutory \$500,000/\$500,000/\$500,000
B. Commercial General (Public) Liability Insurance to include coverage for the following:	
a. Premises operations	\$1,000,000 per occurrence;
b. Independent Contractors	with an aggregate of
c. Products/completed operations	\$2,000,000 or its equivalent in umbrella or excess liability coverage
d. Personal injury	
e. Contractual liability	
C. Professional Liability	\$1,000,000 per occurrence; \$4,000,000 aggregate

- 12.4 The **CITY** shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by the **CITY**, and may make a reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Upon such

request by the **CITY**, the **VENDOR** shall exercise reasonable efforts to accomplish such changes in policy coverage and shall pay the cost thereof.

- 12.5 The **VENDOR** agrees that, with respect to the above-required insurance, all insurance Contracts and Certificate(s) of Insurance will contain the following required provisions.
- Name the **CITY** and its officers, employees, agents and elected representatives as additional insureds (as the interests of each insured may appear), as to all applicable coverage, with the exception of the Workers' Compensation, Employer's Liability and Professional Liability policies;
 - Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the **CITY** is an additional insured shown on the policy;
 - Workers' Compensation and Employer's Liability Policy will provide a waiver of subrogation in favor of the **CITY**.
- 12.6 The **VENDOR** shall notify the **CITY** in the event of any notice of cancellation, non-renewal or material change in coverage and shall give such notice not less than 30 days prior to the change by certified mail, which notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to the **CITY** at the following addresses:
- | | | |
|---|-------------------|--|
| <p>City of San Antonio
 Human Resources Department
 Attention: Human Resources Director
 P.O. Box 839966
 San Antonio, TX 78283-3966</p> | <p>AND</p> | <p>City of San Antonio
 City Clerk's Office
 P.O. Box 839966
 San Antonio, TX 78283-3966</p> |
|---|-------------------|--|
- 12.7 If **VENDOR** fails to maintain the aforementioned insurance or fails to secure and maintain the aforementioned endorsements, the **CITY** may obtain such insurance and deduct and retain the amount of the premium for such insurance from any sums due under the CONTRACT or Agreement; however, procurement of said insurance by the **CITY** is an alternative to the other remedies the **CITY** may have and is not the exclusive remedy for failure by the **VENDOR** to maintain said insurance or secure such endorsement(s). In addition to any other remedies the **CITY** may have upon **VENDOR'S** failure to provide and maintain any insurance or policy endorsement to the extent and within the time herein required, the **CITY** shall have the right to order **VENDOR** to stop work hereunder and/or withhold any payment(s) which become due to **VENDOR** hereunder until **VENDOR** demonstrates compliance with the requirements hereof.
- 12.8 Nothing herein shall be construed as limiting in any way the extent to which **VENDOR** may be held responsible for payments of damages to persons or property resulting from **VENDOR'S** or its subcontractors' performance of the work covered under this CONTRACT.

XIII. INDEMNITY

- 13.1 **VENDOR** covenants and agrees to **FULLY INDEMNIFY** and **HOLD HARMLESS**, the **CITY** and the elected officials, employees, officers, directors, volunteers and representatives of the **CITY**, individually and collectively, while in the exercise of performance of the rights or duties under this **CONTRACT**, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the **CITY** directly or indirectly arising out of, resulting from or related to **VENDOR'S** activities under this **CONTRACT**, including any acts or omissions of **VENDOR**, any agent, officer, director, representative, employee, or consultant of **VENDOR**, and their respective officers, agents employees, directors and representatives while in the exercise of performance of the rights or duties under this **CONTRACT**. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of **CITY** arising out of or related to its activities under this **CONTRACT**, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. **IN THE EVENT VENDOR AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

The provisions of this **INDEMNIFICATION** are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

VENDOR shall advise the **CITY** in writing within 10 days of any claim or demand against the **CITY** or **VENDOR** known to **VENDOR** related to or arising out of **VENDOR'S** activities under this contract.

XIV. INDEPENDENT CONTRACTOR

- 14.1 It is expressly understood and agreed that the **VENDOR** is and shall be deemed to be an independent contractor, responsible for its respective acts or omissions and that the **CITY** shall in no way be responsible therefor, and that neither party hereto has authority to bind the other nor to hold out to third parties that it has the authority to bind the other.
- 14.2 Nothing contained herein shall be deemed or construed by the parties hereto or by any third party as creating the relationship of employer-employee, principal-agent, partners, joint venture, or any other similar such relationship, between the parties hereto.

- 14.3 Any and all of the employees of the **VENDOR**, wherever located, while engaged in the performance of any work required by the **CITY** under this **CONTRACT** shall be considered employees of the **VENDOR** only, and not of the **CITY**, and any and all claims that may arise from the Workers' Compensation Act on behalf of said employees while so engaged shall be the sole obligation and responsibility of the **VENDOR**.
- 14.4 The **VENDOR** indemnifies, saves, and holds harmless the **CITY** against all claims, demands, actions or causes of action of whatsoever nature or character, as permitted by law, arising out of or by reason of the execution or performance of the work provided for herein and further agrees to defend, at its sole cost and expense, any action or proceeding commenced for the purpose of asserting any Workers' Compensation claim of whatsoever character arising herein.

V. TERMINATION

- 15.1 For purposes of this **CONTRACT**, "termination" of this **CONTRACT** shall mean termination by expiration of the **CONTRACT** term or earlier termination pursuant to any of the provisions hereof.
- 15.2 **TERMINATION BY NOTICE:** The **CONTRACT** may be canceled by either party upon written notice, provided such notice specifies an effective date of termination, which shall be not less than thirty (30) calendar days nor more than ninety (90) days from the date such notice is received by the other party. If the notice does not specify a date of termination, the effective date of termination shall be the first of the month following thirty (30) days after receipt of the notice by the other party. All files are the property of the **CITY** and, at the **CITY'S** request, provided the data is not proprietary and that law, regulations and contracting dentist agreements allow, will be delivered at no cost to the **CITY** or its designated recipient at the effective date of termination. Any **CITY** funds held in any escrow account(s) shall be returned to the **CITY** within thirty (30) calendar days after the effective termination date.
- 15.3 **TERMINATION FOR CAUSE:** Should either party default in the performance of any of the terms or conditions of this **CONTRACT**, the other party shall deliver to the defaulting party written notice thereof specifying the matters on default. The defaulting party shall have thirty (30) calendar days after its receipt of the written notice to cure such default. If the defaulting party fails to cure the default within such thirty (30) day period, this **CONTRACT** shall terminate at 11:59 p.m. on the first of the month following the receipt of the notice by the defaulting party.
- 15.4 **TERMINATION BY LAW:** If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein or if any law is interpreted to prohibit such performance, this **CONTRACT** shall automatically terminate as of the effective date of such prohibition.

- 15.5 **EFFECT OF TERMINATION:** The period between notice of termination and the effective date of termination shall be used to effect an orderly transfer of records, provided that law, regulations and contracting dentist agreements allow, and funds, if any, from the **VENDOR** to the **CITY** or to such person(s) or firm(s) as the **CITY** may designate. Any records transfer shall be completed within fifteen (15) calendar days of the termination date. Any such transfer of records or funds shall be completed at the **VENDOR'S** sole cost and expense.
- 15.6 Within thirty (30) days of the effective date of termination (unless an extension is authorized in writing by the **CITY**), the **VENDOR** shall submit to the **CITY**, its claim, in detail, for the monies owed by the **CITY** for services performed under this **CONTRACT** through the effective date of termination.
- 15.7 Upon termination or cancellation of this **CONTRACT**, the **CITY** may immediately commence audit of the **VENDOR'S** books, accounts, and records, provided that law, regulations and contracting dentist agreements allow. Within thirty (30) days after being notified by the **CITY** of the results of said audit, the **VENDOR** shall pay the **CITY** any amount shown by said audit to be owed the **CITY** or its employees. No waiver of existing default shall be deemed to waive any subsequent default.

XVI. CONFLICT OF INTEREST

- 16.1 **VENDOR** acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in the Ethics Code, from having a financial interest in any contract with the **CITY** or any City agency such as City-owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.
- 16.2 **VENDOR** warrants and certifies, and this **CONTRACT** is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the **CITY**. **VENDOR** further warrants and certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.
- 16.3 **VENDOR** warrants that no person or selling agency has been employed or retained to solicit or secure this **CONTRACT** upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by **VENDOR** for the purpose of securing business. For breach or violation of this warranty, **CITY** shall have the right to rescind this

CONTRACT without liability or, at its discretion, to deduct from the CONTRACT price or consideration or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

- 16.4 If at any time it shall be found that the person, firm or corporation to whom a CONTRACT has been awarded has, in presenting any proposal, colluded with any other party or parties, then the contract so awarded shall be voidable at CITY's option, and **VENDOR** shall be liable to **CITY** for all loss or damage that **CITY** may suffer thereby.

XVII. HIPAA PRIVACY RULE COMPLIANCE

- 17.1 The parties will maintain the confidentiality of all medical, dental, and other patient-identifiable health information specifically relating to plan members ("Patient Health Information") in accordance with all applicable federal and state laws and regulations, including the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as may be amended from time to time.

XVIII. NOTICE

- 18.1 Any notice required or permitted to be given under this CONTRACT shall be sufficient if given in writing and sent by Certified Mail, return receipt requested, postage prepaid to the **CITY** or to the **VENDOR** at the addresses set forth below or to any other address of which written notice of change is given:

CITY

**City of San Antonio
Human Resources Department
Administration Division
506 Dolorosa, Room 124
San Antonio, Texas 78204**

AND

**City Clerk
City of San Antonio
P. O. Box 839966
San Antonio, Texas 78283-3966**

VENDOR

**Alpha Dental Programs, Inc.
d/b/a Deltacare
1431 Greenway Drive, Suite 520
Irving, Texas 75038**

XIX. CAPTIONS

- 19.1 The captions to the various clauses of this CONTRACT are for convenience or reference purposes only and shall in no way limit, enlarge or alter the substance of the terms and conditions of this CONTRACT.

XX. SUCCESSORS AND ASSIGNS

- 20.1 This CONTRACT shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and their assigns, except as otherwise expressly provided for herein.

XXI. VENUE AND GOVERNING LAW

- 21.1 Venue of any court action brought directly or indirectly by reason of this CONTRACT shall be in Bexar County, Texas. This CONTRACT is made and is to be performed in Bexar County, Texas, and is governed by the laws of the State of Texas.

XXII. ENTIRE AGREEMENT

- 22.1 This CONTRACT, including the Exhibits, embodies the final and entire agreement of the parties hereto, superseding all verbal or written agreements, previous and/or contemporaneous agreements between the parties and relating to matters in this CONTRACT. No other agreements, verbal or otherwise, regarding the matters of this CONTRACT shall be deemed to exist or to bind the parties hereto unless same be in writing, dated subsequent to the date hereof, and executed by the parties hereto.

XXIII. LEGAL AUTHORITY

- 23.1 The signer of this CONTRACT for the **VENDOR** represents, warrants, assures, and guarantees full legal authority to execute this CONTRACT on behalf of the **VENDOR** and to bind the **VENDOR** to all the terms, conditions, provisions and obligations herein contained.

XXIV. GENDER

- 24.1 Words of any gender used in this CONTRACT shall be held and construed to include any other gender, and words in the singular shall be held and construed to include the plural, unless the context otherwise requires.

XXV. SEVERABILITY

- 25.1 If any clause or provision of this CONTRACT is held invalid, illegal, or unenforceable under present or future federal, state or local laws, including, but not limited to the City Charter, City Code or Ordinances of the City of San Antonio, Texas, then, and in that event, it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this CONTRACT shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein. It is also the intention of the parties hereto that in lieu of each clause or provision of this CONTRACT that is invalid, illegal or unenforceable, there be added as part of the CONTRACT, a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

XXVI. ACKNOWLEDGMENT

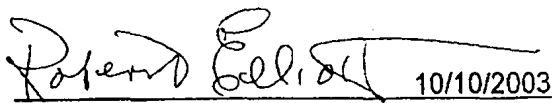
- 26.1 Each of the parties acknowledges that it has read this CONTRACT, understands its contents and executes this CONTRACT voluntarily.

EXECUTED this the _____ day of _____, 2003 by the CITY, signing by and through its City Manager, duly authorized to execute same by Ordinance No. _____, adopted by the City Council on _____, 2003, and by the VENDOR, acting through its duly authorized officials.

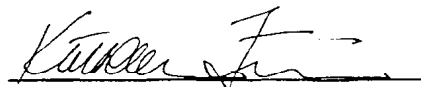
CITY OF SAN ANTONIO, TEXAS

ALPHA DENTAL PROGRAMS, INC.,
D/B/A DELTACARE

Terry M. Brechtel
City Manager

 10/10/2003
Robert Elliott
President and Chief Executive Officer

Approved as to Form:


Kathleen Finck
Assistant City Attorney