

**CITY OF SAN ANTONIO
SAN ANTONIO METROPOLITAN HEALTH DISTRICT
CITY COUNCIL AGENDA MEMORANDUM**

TO: Mayor and City Council

FROM: Fernando A. Guerra, MD, MPH, Director of Health

SUBJECT: ORDINANCE APPROVING TWO (2) AGREEMENTS FOR HEALTH SERVICES WITH THE TEXAS MIGRANT COUNCIL, INC. MIGRANT HEAD START PROGRAM

DATE: April 14, 2005

SUMMARY AND RECOMMENDATIONS

This ordinance authorizes the Interim City Manager to execute an agreement up to \$8,000.00 to provide medical services and an agreement up to \$8,000.00 to provide dental services with the Texas Migrant Council, Inc. (TMC) Migrant Head Start Program which will allow the San Antonio Metropolitan Health District (SAMHD) to provide physical examinations and dental evaluations for approximately forty (40) children enrolled in the TMC Migrant Head Start Program on a reimbursable fee-for-service basis for the period February 1, 2005 through January 31, 2007. This ordinance also authorizes SAMHD, a certified Medicaid/Medicare and third party medical/dental services provider, to submit bills for services rendered and receive payments/reimbursements for said services provided up to approximately \$3,860.00. In addition, this ordinance will adopt the program budget, approve the personnel complement, and authorize payments for contractual services.

Staff recommends approval.

BACKGROUND INFORMATION

Head Start is a Federal-State partnership, centered in communities, begun in 1965 to promote healthy development in young children. In 1990 the Texas Head Start State Collaborative Office was created and funded to improve collaboration among Texas schools, social service agencies and other community programs related to or involved with early childhood education. Within this collaboration, TMC, a non-profit community agency, focuses on seven priorities: education, family literacy, children with disabilities, health, childcare, community service, and welfare.

The City, through the SAMHD, provides health screenings for children enrolled in the various Head Start programs. These screenings are required by Federal Guidelines for child development service programs. The SAMHD has been providing physical examinations and dental evaluations on a fee for service basis for children enrolled in various Head Start programs since 1993.

These agreements with TMC will authorize SAMHD to provide physical examinations and dental evaluations to approximately forty (40) children enrolled in the TCM Migrant Head Start Program on a fee-for- service basis up to an amount not to exceed \$16,000.00 for the period February 1, 2005 to January 31, 2007. Also, SAMHD, a certified Medicaid/Medicare and third party medical/dental services provider, is authorized to submit bills for services rendered and receive payments/reimbursements for said services. This will generate additional estimated revenue of \$3,860.00.

Three current SAMHD employees will work an estimated ten (10) hours each per year in this program and their salary costs will be charged to this activity when they do.

The budget for these agreements also provides funding to cover fees for services of contract physicians, nurse practitioners, and dentists who will augment SAMHD staff.

POLICY ANALYSIS

This ordinance follows the City practice of utilizing Federal, State and other funds to provide public health services for the residents of our community.

FISCAL IMPACT

This ordinance will provide SAMHD up to approximately \$19,860.00 (up to \$16,000.00 from TMC and an estimated \$3,860.00 from Medicaid/Medicare and third party medical/dental services reimbursements) to furnish ongoing health services to TMC for the period February 1, 2005 through January 31, 2007. This project will place no demand on the City General Fund.

COORDINATION

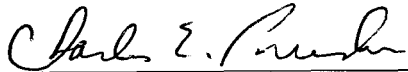
The City Attorney's Office and the Human Resources Department, Risk Management Division have reviewed and approved the agreements with TMC. The Office of Management and Budget and the Finance Department have approved the program budget.

SUPPLEMENTARY COMMENTS

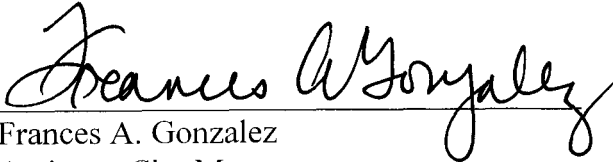
Provisions of the Ethics Ordinance do not apply.

Attachments:

- Attachment I: Texas Migrant Council, Inc. Budget and Personnel Complement
- Attachment II: TMC Contract No, 3074, Agreement for Medical Services
- Attachment III: TMC Contract No, 3075, Agreement for Dental Services



1 Fernando A. Guerra, MD, MPH
Director of Health



Frances A. Gonzalez
Assistant City Manager



2 J. Rolando Bono
Interim City Manager

AN ORDINANCE

AUTHORIZING THE EXECUTION OF AN AGREEMENT UP TO \$8,000.00 TO PROVIDE MEDICAL SERVICES AND AN AGREEMENT UP TO \$8,000.00 TO PROVIDE DENTAL SERVICES WITH THE TEXAS MIGRANT COUNCIL, INC. (TMC) MIRCANT HEAD START PROGRAM WHICH WILL ALLOW THE SAN ANTONIO METROPOLITAN HEALTH DISTRICT (SAMHD) TO PROVIDE PHYSICAL EXAMINATIONS AND DENTAL EVALUATIONS FOR APPROXIMATELY FORTY (40) CHILDREN ENROLLED IN THE TMC MIGRANT HEAD START PROGRAM ON A REIMBURSABLE FEE-FOR-SERVICE BASIS FOR THE PERIOD FEBRUARY 1, 2005 THROUGH JANUARY 31, 2007; AUTHORIZING SAMHD, A CERTIFIED MEDICAID/MEDICARE AND THIRD PARTY MEDICAL/DENTAL SERVICES PROVIDER, TO SUBMIT BILLS FOR SERVICES RENDERED AND RECEIVE PAYMENTS/REIMBURSEMENTS FOR SAID SERVICES PROVIDED UP TO APPROXIMATELY \$3,860.00; ADOPTING THE PROGRAM BUDGET, APPROVING THE PERSONNEL COMPLEMENT, AND AUTHORIZING PAYMENTS FOR CONTRACTUAL SERVICES.

* * * * *

WHEREAS, Texas Migrant Council, Inc. (TMC), Laredo Regional Office, Laredo, Texas wishes to execute an agreement up to \$8,000.00 for medical services and an agreement up to \$8,000.00 for dental services with the City of San Antonio for the San Antonio Metropolitan Health District (SAMHD) to provide physical examinations and dental evaluations for children enrolled in the TMC Migrant Head Start Program; and

WHEREAS, execution of these health services agreements will allow SAMHD staff to provide said health services for TMC eligible children, as well as referrals for other appropriate services offered by the SAMHD; and

WHEREAS, SAMHD, a certified Medicaid/Medicare and third party medical/dental services provider, is authorized to submit bills for services rendered and receive payments/reimbursements for said services provided; and

WHEREAS, it is now necessary to authorize the Interim City Manager to execute these two health services agreements with TMC, authorize Medicaid/Medicare and third party medical/dental services billings in connection with said services, adopt the program budget, approve the personnel complement, and approve payments for contractual services; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The Interim City Manager, or his designee, is hereby authorized to execute an agreement up to \$8,000.00 for medical services with the Texas Migrant Council, Inc. (TMC) Migrant Head Start Program for the San Antonio Metropolitan Health District (SAMHD) to provide physical examinations for approximately forty (40) children enrolled in the TMC Migrant Head Start Program on a reimbursable fee-for-service basis for the period February 1, 2005 through January 31, 2007. The Interim City Manager, or his designee, hereby authorizes the SAMHD, a certified Medicaid/Medicare and third party medical/dental services provider, to submit bills for services rendered and receive payments/reimbursements for said services provided. A copy of the Agreement for Medical Services, TMC Contract No. 3074, in substantially correct form, is attached hereto and incorporated herein as Attachment II.

SECTION 2. The Interim City Manager, or his designee, is hereby authorized to execute an agreement up to \$8,000.00 for dental services with the Texas Migrant Council, Inc. (TMC) Migrant Head Start Program for the San Antonio Metropolitan Health District (SAMHD) to provide dental evaluations for approximately forty (40) children enrolled in the TMC Migrant Head Start Program on a reimbursable fee-for-service basis for the period February 1, 2005 through January 31, 2007. The Interim City Manager, or his designee, hereby authorizes the SAMHD, a certified Medicaid/Medicare and third party medical/dental services provider, to submit bills for services rendered and receive payments/reimbursements for said services provided. A copy of the Agreement for Dental Services, TMC Contract No. 3075, in substantially correct form, is attached hereto and incorporated herein as Attachment III.

SECTION 3. SAP Fund 26022000 has been designated for use in the accounting for the above project agreements and the budget set out in Attachment I is approved and adopted for entry on the City books.

SECTION 4. Any revenues received from billing by the SAMHD to Medicaid/Medicare and third party payors for covered services rendered to TMC enrollees or their parents will be deposited into SAP Fund 26022000, SAP Funds Center 3606220000, SAP GL No. 4402170, Medicaid Reimbursements, and utilized for said project activities.

SECTION 5. Any revenues received from billing by the SAMHD Medicaid/Medicare and third party payors for covered dental services rendered to TMC enrollees or their parents will be deposited into SAP Fund 26022000, SAP Funds Center 3606220000, SAP GL No. 4402162, Medicaid Dental Reimbursements, and utilized for said project activities.

SECTION 6. The three (3) personnel positions set out in Attachment I are hereby authorized for the 2005-2007 Texas Migrant Council, Inc. Migrant Head Start Program.

SECTION 7. Payments in an aggregate amount not to exceed \$2,000.00 are authorized for contract dentists providing services to TMC enrollees from SAP Fund 26022000, Cost Center

3606220001, Internal Order 136000000272, SAP GL No. 5201040, Fees to Professional Contractors-Dentists, on a fee-for-service basis.

SECTION 8. Payments in an aggregate amount not to exceed \$1,000.00 are authorized for contract physicians and nurse practitioners providing services to TMC enrollees from SAP Fund 26022000, Cost Center 3606220001, Internal Order 136000000272, SAP GL No. 5201040, Fees to Professional Contractors, on a fee-for-service basis.

SECTION 9. The Director of Finance may, subject to concurrence by the Interim City Manager or the Interim City Manager's designee, correct allocation to specific fund numbers, account numbers, and internal order numbers as necessary to carry out the purpose of this ordinance.

SECTION 10. Should the agreement be in an amount other than that budgeted for, or should the agreement contain terms and conditions different than those currently existing, acceptance of the agreement, budget and corresponding personnel complement will be subject to subsequent City Council ordinance.

SECTION 11. This ordinance shall be effective on and after the tenth day after passage hereof.

PASSED AND APPROVED this _____ day of April, 2005.

M A Y O R

ATTEST: _____
City Clerk

APPROVED AS TO FORM: _____
City Attorney

ATTACHMENT I

Texas Migrant Council, Inc.
Fund 26022000
Funds Center 3606220000
Functional Area 3600500000010005
Budget for period: 02/01/05 to 01/31/07

ESTIMATED REVENUES	SAP GL No.	CURRENT BUDGET
TMC Contract-Medical	4501160	\$ 8,000
TMC Contract-Dental	4501160	8,000
Medicaid Reimbursements	4402170	3,360
Medicaid Dental Reimbursements	4402162	<u>500</u>
		\$ <u>19,860</u>

TOTAL ESTIMATED REVENUES:

APPROPRIATIONS

Cost Center 3606220001
Internal Order 136000000272

Regular Salaries & Wages	5101010	6,235
Language Skill Pay	5101050	0
Social Security	5103005	477
TMRS	5105010	712
Group Health Insurance	5405040	0
Life Insurance	5103010	0
Workers' Disability Compensation	5405020	0
Mail and Parcel Post Service	5205010	100
Fees to Professional Contractors-Dentist	5201040	2,000
Fees to Professional Contractors	5201040	1,000
Temporary Services	5202010	1,342
ADP	5403520	0
Office Supplies	5302010	5,336
Clothing and Linen Supplies	5304005	0
Chemicals, Medical & Drugs	5304040	2,000
Indirect Cost	5406530	<u>658</u>

TOTAL APPROPRIATIONS: \$ 19,860

PERSONNEL COMPLEMENT

Class No.	Title	PREVIOUS POSITIONS	ADD (DEDUCT)	CURRENT POSITIONS
Cost Center 3606220001				
Internal Order 136000000272				
0040	Administrative Assistant I (.10 FTE)	0	1	1
0239	Public Health Aide (.10 FTE)	0	1	1
0244	Senior Public Health Nurse (.10 FTE)	0	1	1
	Total Personnel:	<u>0</u>	<u>3</u>	<u>3</u>

TEXAS MIGRANT COUNCIL, INC.
MIGRANT HEAD START

TMC CONTRACT NO. 3074
ATTACHMENT II

AGREEMENT FOR MEDICAL SERVICES

This Agreement is made and entered into as of February 1, 2005 by and between Texas Migrant Council, Inc. ("TMC"), and

City of San Antonio

San Antonio Metropolitan Health District Office Contact: Fernando A. Guerra, M.D., M.P.H.
9011 Poteet-Jourdanton Hwy

San Antonio, Texas 78224

Phone Number 1-210-207-8731 Fax 1-210-207-8999

Federal ID Number 1-746002070

Head Start Center to which this contract applies:
Texas Migrant Council, Inc.

San Antonio MSHS Center

406 Moursund

San Antonio, Texas

Please contact Regional Health Specialist for any Problems or concerns 1-800-838-5151

I. GENERAL STATEMENT OF SERVICES:

This is an Agreement to provide medical services to TMC eligible children. For the purpose of this agreement, the term "Eligible Children" shall mean children, age's birth to 6 years, who are enrolled in the Texas Migrant Council, Inc. Head Start program and are classified as children from migrant families.

II. PROVIDER'S DUTIES AND REPRESENTATIONS:

- A. TMC and Provider agree and acknowledge that TMC is entering into this Agreement in reliance on Provider's special and unique abilities with respect to MEDICAL SERVICES. The Provider accepts the relationship of trust and confidence established between it and TMC by this Agreement. Provider covenants with TMC to use its best efforts, skill, judgment, and abilities to perform services in accordance with TMC's requirements and procedures, in accordance with the highest standards of Provider's profession or business and in compliance with all applicable national, federal, state,

municipal, laws, regulations, codes, ordinances, orders and with those of any other body having jurisdiction. Provider warrants, represents, covenants, and agrees that there are no obligations, commitments, or impediments of any kind that will limit or prevent performance of services.

- B. The Provider warrants, represents, covenants, and agrees that all services to be performed by the Provider under or pursuant to this Agreement shall be of the standard and quality which prevail among similar businesses and organizations engaged in providing similar services.
- C. The Provider's duties as set forth herein shall at no time be in any way diminished by reason of any approval by TMC nor shall the Provider be released from any liability by reason of such approval by TMC, it being understood that TMC at all times is ultimately relying upon the Provider's skill and knowledge in performing services.
- D. The Provider warrants, represents, covenants, and agrees that all persons connected with the Provider directly in charge of services are duly registered and/or licensed under the laws, rules and regulations of any authority having jurisdiction, if so required by such laws, rules and regulations.
- E. Provider warrants, represents, and agrees that it has secured all necessary approvals to execute and deliver this Agreement and perform all its obligations hereunder; and the individual executing this Agreement on behalf of Provider has been duly authorized to act for and bind Provider.

III. SCOPE OF SERVICES:

The Provider hereby agrees that for eligible children it will:

- A. Perform an undressed physical examination in accordance with EPSDT guidelines (Vision, Hearing, Lead, Screening) that includes inspection and auscultation of all body systems
- B. Make referrals for further evaluation or treatment, with parent/guardian consent, if abnormalities are detected during the physical examination.
- C. Perform a hemoglobin and/or hematocrit screening.
- D. Provide child with a skin test if no proof of a TB test is available, if there is proof of testing at an earlier date, and then the high-risk questionnaire can be used annually thereafter but should be reflected on the physical exam report.
- E. Review immunization status and bring record up to date as needed.
- F. Discuss medical findings with child's parents and TMC Staff (Health Service

Worker, Family Service Worker, or Center Manager) as appropriate at the end of each physical examination session.

- G. Complete a Texas Migrant Council child's physical examination form as required by Head Start regulations or physicians physical exam form. Copy of either exam form will be returned to the Head Start Center for file and copy to be given to parents.

~~H.-----Prescribe medication when needed.-----~~

- I. Allow TMC staff to be present during the physical exam.

~~J.-----Perform medical treatment for medical problems discovered during the physical examination, which the provider has the resources to provide WITH APPROPRIATE PARENTAL CONSENT.-----~~

- K. Refer back to TMC, any child, which requires medical treatment which the Provider cannot provide.

IV. TMC'S RESPONSIBILITIES:

TMC shall:

- A. Furnish the names and addresses of eligible children scheduled for physical examination.
- B. Assist the Provider as needed during physical examinations and provide care and supervision of the children when physical examinations are performed.
- C. Encourage the child's parents to be present during their child's physical examination.
- D. Provide the Provider a copy of the physical assessment if requested.
- E. Provide health provider with child's Medicaid number and or copy of Medicaid card.
- F. Pay for services rendered when Medicaid is not available.
- G. Provide language translation assistance to Provider to ensure that services are adequately provided to the population being served.
- H. Bring appropriate consent forms signed by parent for treatment.
- I. Provide transportation to & from Medical Clinic, in the event when parent is unable to take the child.
- J. Provide assurances to SAMHD that abnormal findings were resolved.

V. TMC AND PROVIDER AGREE TO:

- A. Jointly develop and revise, as may be necessary, procedures essential to the orderly and effective implementation and administration of this Agreement.
- B. Maintain the confidentiality of the children's medical records in accordance with all federal and state laws and regulations. The release of any medical records to any other agency is to be given only if parents have signed a "Release to Obtain Information" consent form.

VI. LOCATION OF SERVICES: **San Antonio Metropolitan Health District**
Southwest Branch Clinic
9011 Poteet-Jourdanton Hwy
San Antonio, Texas 78224
1-210-924-9031

VII. BILLING AND PAYMENT FOR SERVICES:

- A. Medicaid when available will be billed by the Provider, otherwise TMC agrees to pay \$35.00 per physical examination per child. See attached fee schedule if applicable.
- B. The Provider will bill TMC on a monthly basis for services rendered.
- C. All bills for services rendered must be accompanied by a list of the children's names and birth dates, who received services.
- D. Provider will not bill TMC for cancellations if advance notice is given.
- E. The sum of this Contract shall not exceed a maximum of Eight Thousand Dollars (\$8,000.00)

VIII. NON-FEDERAL MATCH (IN-KIND):

The Provider will provide TMC with the following Non-Federal match. Non-federal match
breakdown:

	Actual fee	Non-Federal match	Actual Agency Cost
Physical:	\$70.00	\$35.00	\$35.00

The Provider will itemize the Non-Federal Match on the billing statement.

IX. INVENTIONS AND MATERIALS:

Rights to inventions and materials generated under this Agreement are the property of TMC Migrant Head Start and are subject to the regulations issued by ACF and HHS, 45 CFR, parts 6 and 8.

X. ASSIGNMENT:

This Agreement for services is not assignable by the Provider either in whole or in part.

XI. AMENDMENTS:

This Agreement may be amended by mutual consent of the parties. No modification or amendment to the Agreement shall become valid unless in writing and signed by both parties.

XII. RECORDS:

In strict accordance with all state and federal laws and regulations governing confidentiality, the Provider shall make available to TMC, the Head Start Bureau, The Department of Health and Human Services, The Comptroller General of the United States or any of their duly authorized representatives, access to books, documents, papers, and records of Provider which are directly pertinent to this contract for the purpose of making audits, examinations, excerpts and transcriptions.

XIII. TERM:

The term of this Agreement shall be from February 1, 2005 or the date executed by TMC, whichever is later, and will expire on January 31, 2007 unless sooner termination in accordance with the terms stated elsewhere in this Agreement.

This agreement may be renewed for one, two-year period, at the discretion of TMC. Provider will be notified in writing when this option is exercised.

XIV. INDEPENDENT CONTRACTOR:

Provider recognizes that it is engaged as an independent contractor and acknowledges that TMC will have no responsibility to provide transportation, insurance or other fringe benefits normally associated with employee status. Provider, in accordance with its status as an independent contractor, covenants and agrees that it shall conduct itself consistent with such

status, that it will neither hold itself out as nor claim to be an officer, partner, employee or agent of TMC by reason hereof, and that it will not by reason hereof make any claim, demand or application to or for any right or privilege applicable to an officer, partner, employee or agent of TMC, including, but not limited to, unemployment insurance benefits, social security coverage or retirement benefits.

XV. INDEMNIFICATION:

- ~~— To the fullest extent permitted by applicable law, the Provider agrees to indemnify, protect, defend with counsel approved by TMC, and hold harmless TMC and its officers, directors, and employees from and against all claims, damages, losses, liens, causes of action, suits, judgments and expenses, including attorney fees, of any nature, kind, or description of any person or entity whomsoever arising out of, caused by, or resulting from the performance of services or any part thereof which are caused in whole or in part by any negligent act or omission of the Provider. —~~

TMC agrees and understands that the Texas Constitution (Article II, Section 5) prohibits the creation of an unfunded debt by any local government. The prohibition includes indemnity clauses in various types of contracts, thus making any indemnity clause enforceable on its face against the Provider in this Agreement *void ab initio*.

XVI. INSURANCE:

Provider, consistent with its status as an independent contractor, shall carry at least the following insurance coverage in the stated amounts:

- ~~— A. Commercial General Liability insurance, including Blanket Contractual Liability, Broad Form Property Damage, Personal Injury, Premises Medical Payments, Interest of Employees as additional insureds, and Broad Form General Liability Endorsements, for at least Five Hundred Thousand Dollars (\$500,000) Combined Single Limit Bodily Injury and Property Damage on an occurrence basis; —~~
- B. Professional Malpractice Insurance for at least One Million Dollars (\$1,000,000)

XVII. DEFAULT AND TERMINATION:

- A. In the event of substantial failure by a party hereunder to perform in accordance with the terms hereof, the other party may terminate this Agreement upon fifteen (15) days' written notice of termination setting forth the nature of the failure (the termination shall not be effective if the failure is fully cured prior to the end of the fifteen-day period), provided that said failure is through no fault of the terminating party.
- B. TMC may terminate due to lack of funding. If funds are not appropriated, then TMC shall issue a written notice to the Provider and may terminate without further duty or obligation here under.

Upon termination pursuant to this paragraph, the provider shall be entitled to payment in such amount as shall compensate the provider for services satisfactorily performed from time of last payment date to termination date.

XVIII. AUTHORITY TO BIND

This Contract is not binding upon TMC unless and until it has been executed by the following person:

A. If executed on behalf of the Agency, by the Chief Executive Officer:

XIX. Governing Law

This agreement and all of the rights and obligations of the parties and all terms and conditions shall be construed, interpreted, and applied in accordance with and governed by the Laws of Texas.

In witness where of, Texas Migrant Council, Inc. and the Provider have executed and delivered this agreement as f the date first above written.

TEXAS MIGRANT COUNCIL, INC.:

PROVIDER:

By: MCapello

City Of San Antonio

Name: Mary G. Capello

Frances A. Gonzalez
Assistant City Manager

Title: Chief Executive Director

Date: 1/25/05

Attest:

Leticia M. Vacek
City Clerk

Approved As To Form:

Andrew Martin
City Attorney

Date: _____

TEXAS MIGRANT COUNCIL, INC.
MIGRANT HEAD START

TMC CONTRACT NO. 3075

ATTACHMENT III

AGREEMENT FOR DENTAL SERVICES

This Agreement is made and entered into as of February 1, 2005 by and between Texas Migrant Council, Inc. ("TMC"), and

City of San Antonio

San Antonio Metropolitan Health District Office Contact: Fernando A. Guerra, M.D., M.P.H.

9011 Poteet-Jourdanton Hwy

San Antonio, Texas 78224

Phone Number 1-210-207-8731 Fax 1-210-207-8999

Federal ID Number 1-746002070

Head Start Center to which this contract applies:
Texas Migrant Council, Inc.

San Antonio MSHS Center

406 Moursund

San Antonio, Texas

Please contact Regional Health Specialist for any Problems or concerns 1-800-838-5151

TMC and Provider agree as follows:

I. GENERAL STATEMENT OF SERVICES:

This is an Agreement to provide dental services to TMC eligible children. For the purpose of this agreement, the term "Eligible Children" shall mean children, age's birth to 6 years, who are enrolled in the Texas Migrant Council, Inc. Head Start program and are classified as children from migrant families.

II. PROVIDER'S DUTIES AND REPRESENTATIONS:

- A. TMC and Provider agree and acknowledge that TMC is entering into this Agreement in reliance on Provider's special and unique abilities with respect to DENTAL SERVICES. The Provider accepts the relationship of trust and confidence established between it and TMC by this Agreement. Provider covenants with TMC to use its best efforts, skill, judgment, and abilities to perform services in accordance with TMC's

requirements and procedures, in accordance with the highest standards of Provider's profession or business and in compliance with all applicable national, federal, state, municipal, laws, regulations, codes, ordinances, orders and with those of any other body having jurisdiction. Provider warrants, represents, covenants, and agrees that there are no obligations, commitments, or impediments of any kind that will limit or prevent performance of services.

- B. The Provider warrants, represents, covenants, and agrees that all services to be performed by the Provider under or pursuant to this Agreement shall be of the standard and quality which prevail among similar businesses and organizations engaged in providing similar services.
- C. The Provider's duties as set forth herein shall at no time be in any way diminished by reason of any approval by TMC nor shall the Provider be released from any liability by reason of such approval by TMC, it being understood that TMC at all times is ultimately relying upon the Provider's skill and knowledge in performing services.
- D. The Provider warrants, represents, covenants, and agrees that all persons connected with the Provider directly in charge of services are duly registered and/or licensed under the laws, rules and regulations of any authority having jurisdiction, if so required by such laws, rules and regulations.
- E. Provider warrants, represents, and agrees that it has secured all necessary approvals to execute and deliver this Agreement and perform all its obligations hereunder; and the individual executing this Agreement on behalf of Provider has been duly authorized to act for and bind Provider.

III. SCOPE OF SERVICES:

The Provider hereby agrees that for eligible children it will:

- A. Perform a dental examination in accordance with the EPSDT standards.
- B. Take appropriate radiographs, if required.
- C. Perform a dental prophylaxis, if required.
- D. Perform services required for the relief of pain or infection.
- E. Perform pulp therapy and restoration of decayed teeth for primary and permanent teeth, as necessary.
- F. Perform extractions of non-restorables.

- G. Give instructions in self-care oral hygiene procedures.
- H. Provide dental sealant application, if required.
- I. Use **TMC** dental form, if not available, dentist may use his own dental exam form. A copy of either will be returned to Migrant Head Start center, where one copy will be in child's file and an additional copy will be sent to parent. Completion of treatment plan for follow up dental treatment must be done prior to any follow up dental work.

IV. TMC'S RESPONSIBILITIES:

TMC shall:

- A. Furnish the names and addresses of eligible children scheduled for dental examination.
- B. Provide **TMC** dental forms with child's name.
- C. Encourage parents to be present while dental services are being provided.
- D. Obtain parental signatures on **TMC** consent form.
- E. Provide health provider with child's Medicaid number and or copy of Medicaid card.
- F. Pay for services rendered when Medicaid is not available.
- G. Provide language translation assistance to Provider to ensure that services are adequately provided to the population being served.
- H. Provide transportation to & from Dental Clinic, in the event when parent is unable to take the child.

V. TMC AND PROVIDER AGREE TO:

- A. Jointly develop and revise, as may be necessary, procedures essential to the orderly and effective implementation and administration of this Agreement.
- B. Maintain the confidentiality of the children's medical records in accordance with all federal and state laws and regulations. The release of any medical records to any other agency is to be given only if parents have signed a "Release to Obtain Information" consent form.

VI LOCATION OF SERVICES:

- A. Visits will be at doctor's office.

VII. BILLING AND PAYMENT FOR SERVICES:

- A. Medicaid when available will be billed by the Provider, otherwise TMC agrees to pay \$5.00 ~~\$2.00~~ per EPSDT standard dental examination and/or ~~\$20.00~~ ^{\$30.00} per dental follow-up per child. See attached fee schedule if applicable:
- B. The Provider will bill TMC on a monthly basis for services rendered that are not covered by Medicaid.
- C. All bills for services rendered must be accompanied by a list of the children's names and birth dates, who received services.
- D. Provider will not bill TMC for cancellations if advance notice is given within 24 hours or greater.
- E. The total sum for the entire term of this Contract shall not exceed a maximum of Eight Thousand Dollars (\$8,000.00).

VIII. NON-FEDERAL MATCH (IN-KIND):

The Provider will provide TMC with the following Non-Federal match. Non-federal match breakdown:

	Actual fee	Difference Non-Federal match	Actual Agency Cost
Dental: Exams:	<u>\$14.00</u>	<u>\$12.00</u>	-\$2.00 \$5.00
Follow-Up:	<u>\$80.00</u>	<u>\$60.00</u>	-\$20.00 \$30.00

The Provider will itemize the Non-Federal Match on the billing statement.

IX. INVENTIONS AND MATERIALS:

Rights to inventions and materials generated under this Agreement are the property of TMC Migrant Head Start and are subject to the regulations issued by ACF and HHS, 45 CFR, parts 6 and 8.

X. ASSIGNMENT:

This Agreement for services is not assignable by the Provider either in whole or in part.

XI. AMENDMENTS:

This Agreement may be amended by mutual consent of the parties. No modification or amendment to the Agreement shall become valid unless in writing and signed by both parties.

XII. RECORDS:

In strict accordance with all state and federal laws and regulations governing confidentiality, the Provider shall make available to TMC, the Head Start Bureau, The Department of Health and Human Services, The Comptroller General of the United States or any of their duly authorized representatives, access to books, documents, papers, and records of Provider which are directly pertinent to this contract for the purpose of making audits, examinations, excerpts and transcriptions.

XIII. TERM:

The term of this Agreement shall be from February 1, 2005 or the date executed by TMC, which ever comes later, and will expire on January 31, 2007 unless sooner terminated as provided elsewhere in this Agreement.

This agreement may be renewed for one, two-year period, at the discretion of TMC. Provider will be notified in writing when this option is exercised.

XIV. INDEPENDENT CONTRACTOR:

Provider recognizes that it is engaged as an independent contractor and acknowledges that TMC will have no responsibility to provide transportation, insurance or other fringe benefits normally associated with employee status. Provider, in accordance with its status as an independent contractor, covenants and agrees that it shall conduct itself consistent with such status, that it will neither hold itself out as nor claim to be an officer, partner, employee or agent of TMC by reason hereof, and that it will not by reason hereof make any claim, demand or application to or for any right or privilege applicable to an officer, partner, employee or agent of TMC, including, but not limited to, unemployment insurance benefits, social security coverage or retirement benefits.

XV. INDEMNIFICATION:

~~To the fullest extent permitted by applicable law, the Provider agrees to indemnify, protect, defend with counsel approved by TMC, and hold harmless TMC and its officers, directors, and~~

~~employees from and against all claims, damages, losses, liens, causes of action, suits, judgments and expenses, including attorney fees, of any nature, kind, or description of any person or entity whomsoever arising out of, caused by, or resulting from the performance of services or any part thereof which are caused in whole or in part by any negligent act or omission of the Provider.~~

TMC agrees and understands that the Texas Constitution (Article II, Section 5) prohibits the creation of an unfunded debt by any local government. The prohibition includes indemnity clauses in various types of contracts, thus making any indemnity clause enforceable on its face against the Provider in this Agreement *void ab initio*.

XVI. INSURANCE:

Provider, consistent with its status as an independent contractor, shall carry at least the following insurance coverage in the stated amounts:

~~A. Commercial General Liability insurance, including Blanket Contractual Liability, Broad Form Property Damage, Personal Injury, Premises Medical Payments, Interest of Employees as additional insureds, and Broad Form General Liability Endorsements, for at least Five Hundred Thousand Dollars (\$500,000) Combined Single Limit Bodily Injury and Property Damage on an occurrence basis;~~

B. Professional Malpractice Insurance for at least One Million Dollars (\$1,000,000)

XVII. DEFAULT AND TERMINATION:

- A. In the event of substantial failure by a party hereunder to perform in accordance with the terms hereof, the other party may terminate this Agreement upon fifteen (15) days' written notice of termination setting forth the nature of the failure (the termination shall not be effective if the failure is fully cured prior to the end of the fifteen-day period), provided that said failure is through no fault of the terminating party.
- B. TMC may terminate due to lack of funding. If funds are not appropriated, then TMC shall issue a written notice to the Provider and may terminate without further duty or obligation her under.

Upon termination pursuant to this paragraph, the provider shall be entitled to payment in such amount as shall compensate the provider for services satisfactorily performed from time of last payment date to termination date.

XVIII. AUTHORITY TO BIND

This Contract is not binding upon TMC unless and until it has been executed by the following person:

- A. If executed on behalf of the Agency, by the Chief Executive Officer:

XIX. GOVERNING LAW

This agreement and all of the rights and obligations of the parties and all terms and conditions shall be construed, interpreted, and applied in accordance with and governed by the Laws of Texas.

In witness where of, Texas Migrant Council, Inc. and the Provider have executed and delivered this agreement as of the date first above written.

TEXAS MIGRANT COUNCIL, INC.:

PROVIDER:

By: *M Capello*

City Of San Antonio

Name: Mary G. Capello

Frances A. Gonzalez
Assistant City Manager

Title: Chief Executive Director

Date: 1/25/05

Attest:

Leticia M. Vacek
City Clerk

Approved As To Form:

Andrew Martin
City Attorney

Date: _____