

AN ORDINANCE **2008-06-19-0610**

AUTHORIZING THE EXECUTION OF A CONTRACT WITH CANDICE H. OWENS, D.D.S., FOR UP TO \$101,000.00 FOR THE PERIOD MAY 1, 2008 THROUGH MARCH 31, 2009 FOR THE PROVISION OF DENTAL SERVICES FOR THE SAN ANTONIO METROPOLITAN HEALTH DISTRICT.

* * * * *

WHEREAS, the San Antonio Metropolitan Health District (SAMHD) operates three public health dental clinics which provide dental examinations and treatments for low-income children and adults; and

WHEREAS, on an annual basis, the SAMHD's Dental Division provides more than 6,700 clinical visits, on-site preventive services for more than 6,000 Head Start enrollees, and over 10,000 oral health screenings/oral health education sessions through other community outreach programs; and

WHEREAS, since there is only one full time dentist on staff, contract dentists are utilized to keep the clinics functioning and meet the demand for services; and

WHEREAS, this method of staffing allows the SAMHD to provide outstanding clinical care for the underserved in the community; and

WHEREAS, this prospective contract dentist is part of the team of local oral health professionals recruited through a "Request for Qualifications" that was coordinated with the Purchasing and Contract Services Department; **NOW THEREFORE:**

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

SECTION 1. The City Manager or her designee, or the Director of the San Antonio Metropolitan Health District or his designee, is authorized to execute a contract with Candice H. Owens, D.D.S., for up to \$101,000.00 for the period May 1, 2008 through March 31, 2009 for the provision of dental services for the San Antonio Metropolitan Health District. A copy of the contract is attached hereto and incorporated herein for all purposes as Attachment I.

SECTION 2. Funding of \$44,000.00 for operating expense associated with this ordinance is available in Fund 11001000 General Fund, Cost Center 3608010001 Administration, General Ledger 5201040 Fees to Professional Contractors as part of the FY08 Budget. Additional operating funding of \$11,000.00 is contingent upon approval of the FY 09 operating budget. Grant Funding of \$46,000.00 is contingent upon the FY09 budget for the PCI DENTAL 08-09.

SECTION 3. Fees generated by this ordinance should be deposited into Fund 11001000 General Fund, Internal Order 236000000165 HEALTH CLINICS - 11001000, General Ledger 4402190 Health Service - Dental Clinic Fees or 4402162 Health Service Medicaid Dental Reimbursements.

MH/mgc
06/19/08
Item #69

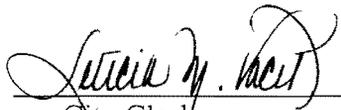
SECTION 4. Payment not to exceed the budgeted amount is authorized to Candice H. Owens, D.D.S., and should be encumbered with a purchase order.

SECTION 5. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

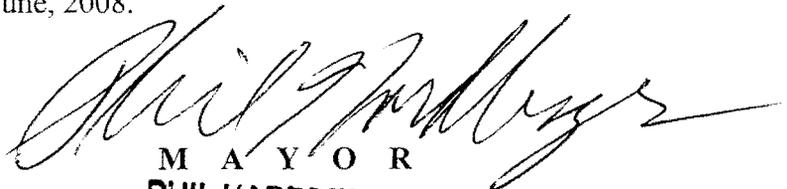
SECTION 6. This ordinance shall be effective on and after June 29, 2008.

PASSED AND APPROVED this 19th day of June, 2008.

ATTEST:



City Clerk


M A Y O R
PHIL HARDBERGER

APPROVED AS TO FORM:



for City Attorney



Request for
**COUNCIL
ACTION**



Agenda Voting Results - 69

Name:	9, 16, 17, 18, 19, 21, 24, 25, 26, 27, 31, 32, 33, 34, 41, 42, 43, 44, 45, 46, 48, 49, 50, 52, 55, 56A, 56B, 57, 58, 59, 61, 62, 66, 68, 69, 70, 72, 73, 75, 76, 78, 80, 81A, 81B, 81C, 81D, 81E, 81F, 81G, 81H, 81I, 81J
Date:	06/19/2008
Time:	02:48:38 PM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing the execution of a contract with Candice H. Owens, D.D.S., for up to \$101,000.00 for the period May 1, 2008 through March 31, 2009 for the provision of dental services for the San Antonio Metropolitan Health District. [Frances A. Gonzalez, Assistant City Manager; Dr. Fernando A. Guerra, Director, Health]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Phil Hardberger	Mayor		x				
Mary Alice P. Cisneros	District 1		x				
Sheila D. McNeil	District 2		x				
Jennifer V. Ramos	District 3		x				x
Philip A. Cortez	District 4		x				
Lourdes Galvan	District 5		x				
Delicia Herrera	District 6		x			x	
Justin Rodriguez	District 7		x				
Diane G. Cibrian	District 8		x				
Louis E. Rowe	District 9		x				
John G. Clamp	District 10	x					



CMS or Ordinance Number: CN4600007354

TSLGRS File Code:1000-25

Document Title:
CONT - 4600007354

Commencement Date:
5/1/2008

Expiration Date:
3/31/2009

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

**CITY OF SAN ANTONIO
PROFESSIONAL HEALTH CARE
SERVICES AGREEMENT
Public Health Dentist**

This Agreement is entered into by and between the City of San Antonio, a Texas Municipal Corporation (hereinafter referred to as City), acting by and through its City Manager, pursuant to Ordinance No. 2008-06-19-0610 passed and approved on the 19th day of June, 2008, and Candice H. Owens, DDS. (hereinafter referred to as "Contractor"), both of which may be referred to herein collectively as the "Parties".

The Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

I. DEFINITIONS

As used in this Agreement, the following terms shall have meanings as set out below:

City is defined in the preamble of this Agreement and includes its successors and assigns.

"Contractor" is defined in the preamble of this Agreement and includes its successors.

"Director" shall mean the director of City's San Antonio Metropolitan Health District (SAMHD).

II. TERM

2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence on May 1, 2008 and terminate on March 31, 2009.

2.2 The City shall have the option to renew and extend the term of this Agreement for two periods, with each period being one year in length.

2.3 Contractor agrees and understands that City has projected costs for this Agreement and that City expects to pay all obligations of this Agreement from projected revenue sources, but that all obligations of City are subject to annual appropriation by City Council in future years, after September 30, 2008. Accordingly, if City shall fail to appropriate sums to pay any of City's obligations under the terms of this Agreement, and due to the unavailability and/or failure to appropriate funds City shall not have the funds to pay such obligations, following City's failure to pay such obligations due to lack of funding shall terminate this Agreement and neither Contractor nor City shall have any further obligations hereunder. Lack of funding is not and shall not be considered a breach of this

Agreement. Payment for services performed by Contractor through the effective date of termination shall be made pursuant to Article 7.6 herein.

2.4 It is expressly understood and agreed by the City and Contractor that City's obligations under this Agreement are contingent upon the actual receipt of adequate funds to meet the City's liability hereunder. Lack of funding is not and shall not be considered a breach of this Agreement. If City does not receive adequate funds to pay obligations under this Agreement, then this Agreement shall terminate and neither Contractor nor City shall have any further obligations hereunder.

III. SCOPE OF SERVICES

3.1 Contractor shall perform preventative dental care, as would fall within the scope of practice for dentists, under general direction of a SAMHD assigned medical director within the SAMHD network of public health clinics, to diverse populations, with a primary focus on, but not limited to, women and children.

3.2 Specific duties and responsibilities under the contract shall include:

- 3.2.1 Examining patients for oral health status and conditions
- 3.2.2 Providing for the safety and welfare of patients during the delivery of dental services
- 3.2.3 Providing diagnosis and treatment for patients in accordance with SAMHD protocols and standards and conferring with the Dental Health Coordinator or Assistant Director of Health as needed
- 3.2.4 Counseling patients, families, and other health care providers in regard to assessment findings and providing appropriate health information and promotion
- 3.2.5 Providing referrals for patients requiring dental treatment or services not offered by SAMHD
- 3.2.6 Maintaining updated and accurate patient records including information regarding patient medical and dental history, treatment plan and treatment provided
- 3.2.7 Maintaining high standards of care and quality control provided in a productive and courteous manner
- 3.2.8 Providing same standard of care in outpatient clinical setting regardless of funding source
- 3.2.9 Providing assistance and consultation to SAMHD staff during clinical service hours
- 3.2.10 Providing consultation services related to the SAMHD Dental Division clinical operations and community outreach activities
- 3.2.11 Providing health education to groups, both internal and external
- 3.2.12 Writing reports and grants as assigned, including community needs assessment, service delivery plans, performance measures, and evaluation activities
- 3.2.13 Formulating policies and procedures and other written documents used for both internal and external communication

- 3.2.14 Abiding by SAMHD requirements for licensing, credentialing, and quality improvement process including outside audits
- 3.2.15 Committing to pre-designated and approved clinical coverage by 15th day of preceding month
- 3.2.16 Arriving at the beginning of the each clinic session and departing at the end of each clinic session
- 3.2.17 Becoming a Medicaid and CHIP provider through SAMHD
- 3.2.18 Invoicing the City for work performed

3.3 All work performed by Contractor hereunder shall be performed to the satisfaction of Director. The determination made by Director shall be final, binding, and conclusive on all Parties hereto. City shall be under no obligation to pay for any work performed by Contractor, which is not satisfactory to Director. City shall have the right to terminate this Agreement, in accordance with Article VII. Termination, in whole or in part, should Contractor's work not be satisfactory to Director; however, City shall have no obligation to terminate and may withhold payment for any unsatisfactory work, as stated herein, even should City elect not to terminate.

3.4 Contractor and Director of Health or his designee shall engage in an annual quality assurance evaluation for the purpose of: 1) maintaining the highest standards of clinical care, appropriate for the public health program; 2) ensuring compliance with clinical licensure regulations and Medicaid guidelines and recommendations; and 3) other matters of interest raised by Contractor or Director of Health.

IV. COMPENSATION TO CONTRACTOR

4.1 In consideration of Contractor's performance in a satisfactory and efficient manner, as determined solely by Director, of all services, activities, duties and responsibilities set forth in this Agreement, City agrees to pay Contractor a fee of \$55.00 per hour up to an amount not to exceed One-Hundred, One-Thousand Dollars (\$101,000.00) for the term of this Agreement.

4.2 City and Contractor agree that reimbursement for eligible services shall be made within thirty (30) days after the date on which City receives an invoice, with appropriate documentation as required by City, from Contractor for said services.

4.3 City and Contractor agree that the City will provide the clinical staff support and supplies necessary for contractor to manage patient care.

4.4 City and Contractor understand and agree that all Medicaid and third party insurances will be billed by the SAMHD for clinical services at SAMHD facilities and that all revenues received by the SAMHD for said billing shall be the property of City.

4.5 City shall not be obligated or liable under this Agreement to any party, other than Contractor, for the payment of any monies or the provision of any goods or services.

4.6 The Contractor further agrees to accept reimbursement from the City as set forth in Article 4.1 above as payment in full for the services provided and shall seek no additional reimbursement for the services from the patient.

4.7 City agrees to pay Contractor for hours that Contractor is scheduled to work if said scheduled hours are cancelled with less than twenty-four (24) hours notice.

4.8 No additional fees or expenses of Contractor shall be charged by Contractor nor be payable by City other than as specified in Article 4.1 or 4.7 above.

V. OWNERSHIP OF DOCUMENTS

5.1 Any and all writings, documents, dental records, or information in whatsoever form and character produced by Contractor pursuant to the provisions of this Agreement shall be the exclusive property of City; and no such writing, document or information shall be the subject of any copyright or proprietary claim by Contractor.

5.2 Contractor understands and acknowledges that as the exclusive owner of any and all such writings, documents, dental records, and information, City has the right to use all such writings, documents, dental records, and information as City desires. Contractor agrees to comply with the Health Insurance Portability and Accountability Act (HIPAA). Contractor has entered into a Business Associate Agreement with the City that is attached hereto as Attachment I and incorporated herein as a part of this Agreement for all purposes.

VI. RECORD REQUESTS

6.1 Contractor shall notify City, immediately, in the event Contractor receives any requests for information from a third party, which pertain to the documentation and records referenced in Article V. Ownership of Records herein. Contractor understands and agrees that City will process and handle all such requests, regarding records that are owned or possessed by the City.

VII. TERMINATION

7.1 For purposes of this Agreement, "termination" of this Agreement shall mean termination by expiration of the Contract term as stated in Article II. Term, or earlier termination pursuant to any of the provisions hereof.

7.2 Termination Without Cause. This Agreement may be terminated by City or by Contractor upon thirty (30) calendar days written notice to the other party, which notice shall be provided in accordance with Article VIII. Notice.

7.3 Termination For Cause. Upon written notice, which notice shall be provided in accordance with Article VIII. Notice, City may terminate this Agreement as of the date provided in the notice, in whole or in part, upon the occurrence of one (1) or more

of the following events, each of which shall constitute an Event for Cause under this Agreement:

7.3.1 The sale, transfer, pledge, conveyance, or assignment of this Agreement without prior approval, as provided in Article XI. Assignment and Subcontracting.

7.4 Defaults With Opportunity for Cure. Should Contractor default in the performance of this Agreement in a manner stated in this Article 7.4 below, same shall be considered an event of default. City shall deliver written notice of said default specifying such matter(s) in default. Contractor shall have fifteen (15) calendar days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If Contractor fails to cure the default within such fifteen-day cure period, City shall have the right, without further notice, to terminate this Agreement in whole or in part as City deems appropriate, and to contract with another contractor to complete the work required in this Agreement.

7.4.1 Failing to perform or failing to comply with any covenant herein required

7.4.2 Performing unsatisfactorily

7.5 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 Agreement shall automatically terminate as of the effective date of such prohibition.

7.6 Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this Agreement, Contractor shall submit to City its claims, in detail, for the monies owed by City for services performed under this Agreement through the effective date of termination. Failure by Contractor to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of City and constitute a **Waiver** by Contractor of any and all right or claims to collect moneys that Contractor may rightfully be otherwise entitled to for services performed pursuant to this Agreement.

7.7 Upon the effective date of expiration or termination of this Agreement, Contractor shall cease all operations of work being performed by Contractor or any of its subcontractors pursuant to this Agreement.

7.8 Termination not sole remedy. In no event shall City's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of City's remedies, nor shall such termination limit, in any way, at law or at equity, City's right to seek damages from or otherwise pursue Contractor for any default hereunder or other action.

VIII. NOTICE

8.1 Except where the terms of this Agreement expressly provide otherwise, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either party may from time to time designate in writing.

If intended for City, to:

City Clerk
City of San Antonio

P.O. Box 839966
San Antonio, Texas 78283-
3966

AND City of San Antonio
San Antonio Metropolitan Health District,
Director
332 W. Commerce, Suite 307
San Antonio, Texas 78205

If intended for Contractor, to:

Dr. Candice H. Owens
24434 Flint Creek
San Antonio, Texas 78255

IX. INSURANCE REQUIREMENTS

9.1 Prior to the commencement of any work under this Agreement, Contractor shall furnish an original completed Certificate(s) of Insurance to the City's San Antonio Metropolitan Health District, Attn: Director, and shall be clearly labeled "Public Health Dentist", 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, containing all required information referenced or indicated thereon. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title, and phone number, and be mailed directly from the agent to the City. The City shall have no duty to pay or perform under this Agreement until such certificate shall have been delivered to City's San Antonio Metropolitan Health District, Attn: Director, and no officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

9.2 The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or

circumstances surrounding this Agreement. but in no instance will City allow modification whereupon City may incur increased risk.

9.3 Contractor's financial integrity is of interest to the City; therefore, subject to Contractor's right to maintain reasonable deductibles in such amounts as are approved by the City, Contractor shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Contractor's sole expense, insurance coverage 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 an amount not less than the amount listed below:

Dental Malpractice Liability	\$200,000 per claim/\$600,000 aggregate; to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error or omission in professional services.
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9.4 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 require the 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). Contractor shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided in Article 9.6 herein within 10 days of the requested change. Contractor shall pay any costs incurred resulting from said changes.

9.5 Contractor agrees that with respect to the above required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions:

9.5.1 Name the City and its officers, employees, volunteers, and elected representatives as additional insureds as respects operations and activities of, or on behalf of, the named insured performed under Contract with the City, with the exception of the workers' compensation and professional liability policies;

9.5.2 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;

9.5.3 Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City.

9.6 When there is a cancellation, non-renewal or material change in coverage which is not made pursuant to a request by City, Contractor shall notify the City of such and shall give such notices not less than thirty (30) days prior to the change, if Contractor knows of said change in advance, or ten (10) days notice after the change, if the Contractor

did not know of the change in advance. Such notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to the City at the following address:

City of San Antonio
San Antonio Metropolitan Health District, Attn: Director
P.O. Box 839966
San Antonio, Texas 78283-3966

9.7 In addition to any other remedies the City may have upon Contractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Contractor to stop work hereunder, and/or withhold any payment(s) which become due to Contractor hereunder until Contractor demonstrates compliance with the requirements hereof.

9.8 Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor's or its subcontractor's performance of the work covered under this Agreement.

9.9 It is agreed that Contractor's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.

X. INDEMNIFICATION

10.1 Contractor 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 or collectively, 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 Contractor's activities under this Agreement, including any acts or omissions of Contractor, any agent, officer, director, representative, employee, consultant or subcontractor of Contractor, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of City, its officers, or employees, in instances where such negligence causes personal injury, death, or property damage. **IN THE EVENT Contractor AND City ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF 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.**

10.2 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.

10.3 Contractor shall promptly advise the City in writing of any claim or demand against the City or Contractor known to Contractor related to or arising out of Contractor's activities under this Agreement.

XI. ASSIGNMENT AND SUBCONTRACTING

11.1 Except as otherwise stated herein, Contractor may not sell, assign, pledge, transfer or convey any interest in this Agreement, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of the City Council, as evidenced by passage of an ordinance. As a condition of such consent, if such consent is granted, Contractor shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor Contractor, assignee, transferee, or subcontractor.

11.2 Any attempt to transfer, pledge, or otherwise assign this Agreement without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should Contractor assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this Agreement, City may, at its option, cancel this Agreement and all rights, titles and interest of Contractor shall thereupon cease and terminate, in accordance with Article VII. Termination, notwithstanding any other remedy available to City under this Agreement. The violation of this provision by Contractor shall in no event release Contractor from any obligation under the terms of this Agreement, nor shall it relieve or release Contractor from the payment of any damages to City, which City sustains as a result of such violation.

XII. INDEPENDENT CONTRACTOR

12.1 Contractor covenants and agrees that he or she is an independent Contractor and not an officer, agent, servant or employee of City; that Contractor shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, Contractors, subcontractors and Contractors; that the doctrine of respondent superior shall not apply as between City and Contractor, its officers, agents, employees, Contractors, subcontractors and Contractors, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between City and Contractor. The parties hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the Contractor under this Agreement and that the Contractor has no authority to bind the City.

XIII. CONFLICT OF INTEREST

13.1 Contractor 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 Part B, Section 10 of 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.

13.2 Pursuant to the subsection above, Contractor warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees, and agents are neither officers nor employees of the City. Contractor further warrants and certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

XIV. AMENDMENTS

14.1 Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and Contractor, and subject to approval by the City Council, as evidenced by passage of an ordinance.

XV. SEVERABILITY

15.1 If any clause or provision of this Agreement 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 Agreement 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 Agreement that is invalid, illegal, or unenforceable, there be added as a 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.

XVI. LICENSES/CERTIFICATIONS

16.1 Contractor warrants and certifies that Contractor and any other person designated to provide services hereunder has the requisite training, license and/or

certification to provide said services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

XVII. COMPLIANCE

17.1 Contractor shall provide and perform all services required under this Agreement in compliance with all applicable federal, state, and local laws, rules, and regulations.

XVIII. NONWAIVER OF PERFORMANCE

18.1 Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. In case of City, such changes must be approved by the City Council, as described in Article XIV. Amendments. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

XIX. LAW APPLICABLE

19.1 THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.

19.2 Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.

XX. LEGAL AUTHORITY

20.1 The signer of this Agreement for Contractor represents, warrants, assures and guarantees that he has full legal authority to execute this Agreement on behalf of Contractor and to bind Contractor to all of the terms, conditions, provisions and obligations herein contained.

XXI. PARTIES BOUND

21.1 This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, and successors and assigns, except as otherwise expressly provided for herein.

XXII. CAPTIONS

22.1 The captions contained in this Agreement are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this Agreement.

XXIII. ENTIRE CONTRACT

23.1 This Agreement, together with its authorizing ordinance and its exhibits, if any, constitute the final and entire Contract between the parties hereto and contain all of the terms and conditions agreed upon. No other Contracts, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto, unless same be in writing, dated subsequent to the date hereto, and duly executed by the parties, in accordance with Article XIV. Amendments. This Agreement shall supercede any and all prior written and oral agreements between the City and Contractor.

EXECUTED and AGREED to this the 1st day of July, 2008.

CITY OF SAN ANTONIO:

CONTRACTOR:

Fernando A. Guerra Candice H. Owens
Fernando A. Guerra, M.D., M.P.H. Dr. Candice H. Owens
Director of Health

ATTEST:

Leticia M. Vacek
Leticia M. Vacek
City Clerk



7-1-08
Date

Approved as to Form:

Michael D. Bernard
Michael D. Bernard
City Attorney

Attachment I - Business Associate Agreement

This Business Associate Agreement ("Agreement") dated May 1, 2008 (the "Effective Date"), is entered into by and between the City of San Antonio ("Health Care Provider") and Dr. Candice H. Owens ("Business Associate").

WHEREAS, Health Care Provider is receiving and Business Associate is providing services ("Business Arrangement") that may require Business Associate to access health information that is protected by state and/or federal law;

WHEREAS, Business Associate and Health Care Provider desire that Business Associate obtain access to such information in accordance with the terms specified herein;

NOW THEREFORE, in consideration of the mutual promises set forth in this Agreement and other good and valuable consideration, the sufficiency and receipt of which are hereby severally acknowledged, the parties agree as follows:

1. **Definitions.** Unless otherwise specified in this Business Associate Agreement, all capitalized terms not otherwise defined shall have the meanings established for purposes of Title 45, Parts 160 and 164, of the United States Code of Federal Regulations, as amended from time to time. For purposes of clarification, the following terms shall have the definitions as set forth herein below:

"Privacy Standards" shall mean the Standards for Privacy of Individually Identifiable Health Information as codified in 45 CFR Parts 160 and 164.

"Security Standards" shall mean the Security Standards for the Protection of Electronic Protected Health Information as codified in 45 CFR Parts 160 and 164.

"Protected Health Information" or "PHI" shall mean any information, whether oral or recorded in any form or medium: (i) that relates to the past, present, or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and (ii) that identifies the individual, or with respect to which there is reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term in the Privacy Standards and in the Security Standards.

2. **Business Associate Obligations.** Business Associate may receive from Health Care Provider health information that is protected under applicable state and/or federal law, including without limitation, Protected Health Information. Business Associate agrees not to use or disclose (or permit the use or disclosure of) PHI in a manner that would violate the requirements of the Privacy Standards or the Security Standards if the PHI were used or disclosed by Health Care Provider in the same manner. Business Associate shall use appropriate safeguards to prevent the use or disclosure of PHI other than as expressly permitted under this Agreement.

3. **Use of PHI.** Business Associate may use PHI only (i) for the purpose of performing services for Health Care Provider as such services are defined in Business Arrangement, and (ii) as necessary for the proper management and administration of the Business Associate or to carry out its legal responsibilities, provided that such uses are permitted under federal and state law. Health Care Provider shall retain all rights in the PHI not granted herein.

4. **Disclosure of PHI.** Business Associate may disclose PHI as necessary to perform its obligations under the Business Arrangement and as permitted by law, provided that Business

Associate shall in such case: (a) obtain reasonable assurances from any person to whom the information is disclosed that it will be held confidential and further used and disclosed only as required by law or for the purpose for which it was disclosed to the person or entity; (b) agree to immediately notify Health Care Provider of any instances of which it is aware that PHI is being used or disclosed for a purpose that is not otherwise provided for in this Agreement or for a purpose not expressly permitted by the Privacy Standards or the Security Standards; and (c) obtain reasonable assurances that all disclosures of PHI are subject to the principle of "minimum necessary use and disclosure," i.e., only the minimum PHI that is necessary to accomplish the intended purpose may be disclosed. In addition, Business Associate may disclose PHI as required by law. If Business Associate discloses PHI received from Health Care Provider, or created or received by Business Associate on behalf of Health Care Provider, to agents, including a subcontractor (collectively, "Recipients"), Business Associate shall require Recipients to agree in writing to the same restrictions and conditions that apply to the Business Associate under this Agreement. Business Associate shall report to Health Care Provider any use or disclosure of PHI not permitted by this Agreement, of which it becomes aware, such report to be made within five (5) days of the Business Associate becoming aware of such use or disclosure. Business Associate agrees to mitigate, to the extent practical and unless otherwise requested by Health Care Provider in writing, any harmful effect that is known to Business Associate and is the result of a use or disclosure of PHI in violation of this Agreement.

5. **Individual Rights.** If Business Associate maintains a Designated Record Set on behalf of Health Care Provider, Business Associate shall (a) permit an individual to inspect or copy PHI contained in that set about the individual under conditions and limitations required under 45 CFR § 164.524, as it may be amended from time to time, and (b) amend PHI maintained by Business Associate as requested by Health Care Provider. Business Associate shall respond to any request from Health Care Provider for access by an individual within five (5) days of such request and shall make any amendment requested by Health Care Provider within ten (10) days of such request. The information shall be provided in the form or format requested, if it is readily producible in such form or format, or in summary, if the individual has agreed in advance to accept the information in summary form. A reasonable, cost-based fee for copying PHI may be charged. Business Associate shall accommodate an individual's right to have access to PHI about the individual in a Designated Record Set in accordance with the Privacy Standards set forth at 45 CFR § 164.526, as it may be amended from time to time, unless the regulation provides for a denial or an exception expressly applies. Health Care Provider shall determine whether a denial is appropriate or an exception applies. Business Associate shall notify Health Care Provider within five (5) days of receipt of any request for access or amendment by an individual. Business Associate shall have a process in place for requests for amendments and for appending such requests to the Designated Record Set.

6. **Accounting of Disclosures.** Business Associate shall make available to Health Care Provider in response to a request from an individual, information required for an accounting of disclosures of PHI with respect to the individual, in accordance with 45 CFR § 164.528, as it may be amended from time to time, incorporating exceptions to such accounting designated under the regulation. Such accounting is limited to disclosures that were made in the six (6) years prior to the request and shall not include any disclosures that were made prior to the compliance date of the Privacy Standards. Business Associate shall provide such information necessary to provide an accounting within thirty (30) days of Health Care Provider's request. Such accounting must be provided without cost to the individual or to Health Care Provider if it is the first accounting requested by an individual within any twelve (12) month period; however, a reasonable, cost-based fee may be charged for subsequent accountings if Business Associate informs the Health Care Provider and the Health Care Provider informs the individual in advance of the fee, and the

individual is afforded an opportunity to withdraw or modify the request. Such accounting shall be provided as long as Business Associate maintains PHI.

7. **Withdrawal of Consent or Authorization.** If the use or disclosure of PHI in this Agreement is based upon an individual's specific consent or authorization for the use of his or her PHI, and (i) the individual revokes such consent or authorization in writing, (ii) the effective date of such authorization has expired, or (iii) the consent or authorization is found to be defective in any manner that renders it invalid, Business Associate agrees, if it has notice of such revocation or invalidity, to cease the use and disclosure of any such individual's PHI except to the extent it has relied on such use or disclosure, or where an exception under the Privacy Standards expressly applies.

8. **Records and Audit.** Business Associate shall make available to Health Care Provider and to the United States Department of Health and Human Services or its agents, its internal practices, books, and records relating to the use and disclosure of PHI received from, created, or received by Business Associate on behalf of Health Care Provider for the purpose of determining Health Care Provider's compliance with the Privacy Standards and the Security Standards or any other health oversight agency, in a timely a manner designated by Health Care Provider or the Secretary. Except to the extent prohibited by law, Business Associate agrees to notify Health Care Provider immediately upon receipt by Business Associate of any and all requests served upon Business Associate for information or documents by or on behalf of any and all government authorities.

9. **Notice of Privacy Practices.** Health Care Provider shall provide to Business Associate its Notice of Privacy Practices ("Notice") when adopted and any amendments thereafter. Business Associate agrees that it will abide by the limitations of any Notice published by Health Care Provider of which it has knowledge. An amended Notice shall not affect permitted uses and disclosures on which Business Associate has relied prior to the receipt of such Notice.

10. **Confidentiality.** Business Associate shall take any steps required to (i) protect PHI from unauthorized uses or disclosures and (ii) maintain the confidentiality and integrity of PHI. Prior to any permitted disclosure of PHI, Business Associate shall require the person or entity to which it intends to disclose PHI to assume all of the same duties with respect to PHI that Business Associate has under this Agreement.

11. **Security.** Business Associate will: implement administrative, physical, and technical safeguards that reasonably and appropriate protect the confidentiality, integrity and availability of the electronic protected health information that it creates, receives, maintains, or transmits on behalf of the Health Care Provider; ensure that any agent, including a subcontractor, to whom it provides such information agrees to implement reasonable and appropriate safeguards to protect the information; and report any security incidents to the Health Care Provider, in accordance with the Security Standards.

12. **Term and Termination.**

12.1 This Agreement shall commence on the Effective Date and shall remain in effect until terminated in accordance with the terms of this Section 12, provided, however, that any termination shall not affect the respective obligations or rights of the parties arising under this Agreement prior to the effective date of termination, all of which shall continue in accordance with their terms.

12.2 Health Care Provider shall have the right to terminate this Agreement for any reason upon thirty (30) days written notice to Business Associate.

12.3 Health Care Provider, at its sole discretion, may immediately terminate this Agreement and shall have no further obligations to Business Associate hereunder if any of the following events shall have occurred and be continuing:

- (a) Business Associate shall fail to observe or perform any material covenant or agreement contained in this Agreement for ten (10) days after written notice thereof has been given to Business Associate by Health Care Provider; or
- (b) A violation by Business Associate of any provision of the Privacy Standards, Security Standards, or other applicable federal or state privacy law.

12.4 Upon the termination of the Business Arrangement, either party may terminate this Agreement by providing written notice to the other party.

12.5 Upon termination of this Agreement for any reason, Business Associate agrees either to return to Health Care Provider or to destroy all PHI received from Health Care Provider or otherwise through the performance of services for Health Care Provider, that is in the possession or control of Business Associate or its agents. In the case of information for which it is not feasible to "return or destroy," Business Associate shall continue to comply with the covenants in this Agreement with respect to such PHI and shall comply with other applicable state or federal law, which may require a specific period of retention, redaction, or other treatment. Termination of this Agreement shall be cause for Health Care Provider to terminate the Business Arrangement.

13. **Notice.** All notices, requests, demands and other communications required or permitted to be given or made under this Agreement shall be in writing, shall be effective upon receipt or attempted delivery, and shall be sent by (a) personal delivery; (b) certified or registered United States mail, return receipt requested; or (c) overnight delivery service with proof of delivery. Notices shall be sent to the addresses below:

Health Care Provider:	Business Associate
City Clerk	Dr. Candice H. Owens
City of San Antonio	24434 Flint Creek
P.O. Box 839966	San Antonio, Texas 78255
San Antonio, Texas 78283-3966	
AND	
City of San Antonio	
San Antonio Metropolitan Health District, Director	
332 W. Commerce, Suite 307	
San Antonio, Texas 78205	

14. **Waiver.** No provision of this Agreement or any breach thereof shall be deemed waived unless such waiver is in writing and signed by the party claimed to have waived such provision or breach. No waiver of a breach shall constitute a waiver of or excuse any different or subsequent breach.

15. **Assignment.** Neither party may assign (whether by operation or law or otherwise) any of its rights or delegate or subcontract any of its obligations under this Agreement without the prior written consent of the other party. Notwithstanding the foregoing, Health Care Provider shall have the right to assign its rights and obligations hereunder to any entity that is an affiliate or successor of Health Care Provider, without the prior approval of Business Associate.

16. **Entire Agreement.** This Agreement constitutes the complete agreement between Business Associate and Health Care Provider relating to the matters specified in this Agreement, and supersedes all prior representations or agreements, whether oral or written, with respect to such matters. In the event of any conflict between the terms of this Agreement and the terms of the Business Arrangement or any such later agreement(s), the terms of this Agreement shall control unless the terms of such Business Arrangement comply with the Privacy Standards and the Security Standards. No oral modification or waiver of any of the provisions of this Agreement shall be binding on either party. This Agreement is for the benefit of, and shall be binding upon the parties, their affiliates and respective successors and assigns. No third party shall be considered a third-party beneficiary under this Agreement, nor shall any third party have any rights as a result of this Agreement.

17. **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Texas.

18. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document. In making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart executed by the party against whom enforcement of this Agreement is sought.

19. **Indemnification.** BUSINESS ASSOCIATE WILL INDEMNIFY, DEFEND AND HOLD HEALTH CARE PROVIDER AND ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS HARMLESS, FROM AND AGAINST ANY AND ALL LOSSES, LIABILITIES, DAMAGES, COSTS AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES) ARISING OUT OF OR RELATED TO ANY THIRD-PARTY CLAIM BASED UPON ANY BREACH OF THIS AGREEMENT BY BUSINESS ASSOCIATE OR SIMILAR BREACH BY RECIPIENTS ("CLAIM"). IF BUSINESS ASSOCIATE ASSUMES THE DEFENSE OF A CLAIM, HEALTH CARE PROVIDER SHALL HAVE THE RIGHT, AT ITS EXPENSE, TO PARTICIPATE IN THE DEFENSE OF SUCH CLAIM, AND BUSINESS ASSOCIATE SHALL NOT TAKE ANY FINAL ACTION WITH RESPECT TO SUCH CLAIM WITHOUT THE PRIOR WRITTEN CONSENT OF HEALTH CARE PROVIDER.

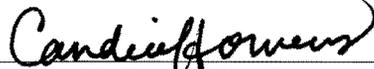
IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

Health Care Provider:
CITY OF SAN ANTONIO
San Antonio Metropolitan Health District

Business Associate:
Dr. Candice H. Owens

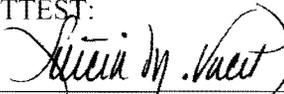


Fernando A. Guerra, MD, MPH
Director of Health

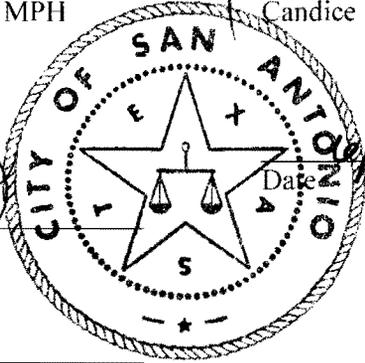


Candice H. Owens, D.D.S.

ATTEST:



Leticia M. Vacek
City Clerk

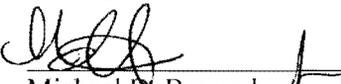


Date 6/2/08

7-1-08

Date

APPROVED AS TO FORM:



Michael D. Bernard
City Attorney



CMS or Ordinance Number: OR00000200806190610

TSLGRS File Code: 1000-05

Document Title:
ORD - 00000200806190610

Ordinance Date:
6/19/2008



CITY OF SAN ANTONIO
Request for Council Action

Agenda Item # 69
Council Meeting Date: 6/19/2008
RFCA Tracking No: R-3481

DEPARTMENT: Health Department

DEPARTMENT HEAD: Fernando Guerra MD

COUNCIL DISTRICT(S) IMPACTED:
City Wide

SUBJECT:
Professional Dental Services Contract with Candice H. Owens

SUMMARY:

This ordinance authorizes the City Manager to accept and execute a dental services contract with local dentist Candice H. Owens, D.D.S., for the period May 1, 2008 through March 31, 2009. Dr. Owens will provide dental services in San Antonio Metropolitan Health District's clinics, schools, WIC clinics, and local Head Start Centers.

BACKGROUND INFORMATION:

The San Antonio Metropolitan Health District (Metro Health) operates three public health dental clinics which provide dental examinations and treatments for low-income children and adults. On an annual basis, Metro Health's Dental Division provides more than 6,700 clinical visits, on-site preventive services for more than 6,000 Head Start enrollees, and over 10,000 oral health screenings/oral health education sessions through other community outreach programs. Currently, there is one full time dentist on staff; contract dentists are utilized to keep the clinics functioning and meet the demand for services. This method of staffing allows Metro Health to provide outstanding clinical care for the underserved in the community. This prospective contract dentist is part of the team of local oral health professionals recruited through a "Request for Qualifications" that was coordinated with the Purchasing and Contract Services Department.

ISSUE:

Metro Health is requesting that City Council authorize the execution of a professional services contract with local dentist Dr. Candice H. Owens for the term May 1, 2008 through March 31, 2009. Dr. Owens will be compensated at a rate of \$55.00 per hour and the total amount of funding required to support this contract will be \$101,000.00.

Acceptance and execution of this professional services contract will provide more than 1,800 manpower hours for the San Antonio Metropolitan Health District's Dental Program. This method

of staffing is in keeping with the long-standing practice of utilizing local expertise and outsourcing to support public health programs of the City.

ALTERNATIVES:

Rejection of this contract renewal would result in more than 1,400 patients needing to find an alternate source of dental care. Moreover, many adult and pediatric patients in need of urgent treatment, who are typically accommodated at Metro Health Dental Clinics, will likely seek emergency dental treatment in a hospital setting.

FISCAL IMPACT:

Over the term of the agreement, a total of \$101,000.00 will be required to fund these services. Two funding sources will be utilized to support this contract: The General Fund will be charged \$44,000.00 in FY 2008 and \$11,000.00 in FY 2009. The Head Start Fee-for-Service Contract will be charged \$46,000.00 in FY 2009. In addition, revenue will be generated through this service contract. Reimbursement for services is anticipated through Medicaid, CHIP, Title V and the Head Start Outreach Program; co-payments are also assessed based on family income. Approximately \$89,000.00 in General Fund revenue will be attributable to this contract.

RECOMMENDATION:

Staff recommends approval of this contract in order to enable Metro Health to continue providing quality dental care services to low-income members of the community.

ATTACHMENT(S):

File Description	File Name
Attachment 1 - Owens Contract	Owens Contract (PE).pdf
Voting Results	
Ordinance/Supplemental Documents	200806190610.pdf

DEPARTMENT HEAD AUTHORIZATIONS:

Charles Pruski Assistant Director Health Department

APPROVED FOR COUNCIL CONSIDERATION:

Frances A. Gonzalez Assistant City Manager