

AN ORDINANCE 2012-09-06-0681

AUTHORIZING THE EXECUTION OF PROFESSIONAL SERVICES AGREEMENTS WITH DELTA DENTAL INSURANCE COMPANY/ALPHA DENTAL PROGRAMS INC. FOR A COMBINED COST NOT TO EXCEED \$662,294.00 FOR THE FIRST YEAR, TO PROVIDE THIRD PARTY ADMINISTRATION OF THE CITY'S SELF-FUNDED DENTAL PREFERRED PROVIDER ORGANIZATION (PPO) PLAN, AND TO PROVIDE A FULLY INSURED DENTAL HEALTH MAINTENANCE ORGANIZATION (DHMO) PLAN UNDER THE CITY'S SELF-FUNDED HEALTH BENEFITS PROGRAM, EACH FOR A TERM OF THREE YEARS, WITH OPTIONS TO EXTEND.

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WHEREAS, the City's Employee Benefits program offers active non-uniformed employees and their eligible dependents a dental health maintenance organization (DHMO) plan option and self-funded dental preferred provider organization (PPO); and

WHEREAS, the Human Resources Department issued a Request for Proposal (RFP) for DHMO and Dental PPO services, to which the City received six (6) responses; and three (3) finalists were chosen and interviewed by a Selection Committee, represented by various City departments; and

WHEREAS, the criteria used during the review process included experience, background and qualifications, proposed plans, proposed price, financial stability, finalist interview/presentations; and

WHEREAS, as a result of the RFP process, the Selection Committee recommends that Delta Dental Insurance Company be awarded the contracts to provide DHMO services and Dental PPO services; **NOW THEREFORE:**

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

SECTION 1. Delta Dental Insurance Company/Alpha dental Programs, Inc. is hereby selected to provide Third Party Administration of the City's self-funded Dental Preferred Provider Organization (PPO) plan and a fully insured Dental Health Maintenance Organization (DHMO) plan for civilian employees and retirees for a period commencing on January 1, 2013 and ending on December 31, 2015, for a combined cost not to exceed \$662,294.00 for the first year of the agreements, and costs for subsequent years, including renewals, if authorized, are as provided for in the agreements. The City Manager, the City Manager's designee, or the Director of the Human Resources Department, is authorized to execute professional service agreements with Delta Dental Insurance Company/Alpha Dental Programs, Inc. in the forms attached hereto and incorporated herein for all purposes as **Exhibit I and Exhibit II**, respectively. The terms of said agreements are hereby approved. These agreements may be extended for two successive one-year periods. Extensions shall not require additional action by the San Antonio City Council so long as funds are appropriated for the expenditures required thereby.

SECTION 2. Funding for this ordinance in the estimated amount of \$496,720.17 is contingent upon approval of the Fiscal Year 2013 Budget for Fund 75002000, Cost Centers 1002010012 and 1002010015 and General Ledger 5201040.

SECTION 3. If approved by council, payment not to exceed the budgeted amount is authorized to Delta Dental Insurance Company/Alpha Dental Programs, Inc. and should be encumbered with a purchase order.

SECTION 4. Funding for this ordinance in the estimated amount of \$165,573.39 is contingent upon approval of the Fiscal Year 2014 Budget for Fund 75002000, Cost Centers 1002010012 and 1002010015 and General Ledger 5201040.

SECTION 5. If approved by council, payment not to exceed the budgeted amount is authorized to Delta Dental Insurance Company/Alpha Dental Programs, Inc. and should be encumbered with a purchase order.

SECTION 6. 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 Cost Centers, WBS Elements, Internal Orders, General Ledger Accounts, and Fund Numbers as necessary to carry out the purpose of this Ordinance.

SECTION 7. This ordinance is effective immediately upon passage by eight affirmative votes; otherwise it is effective on the tenth day after passage hereof.

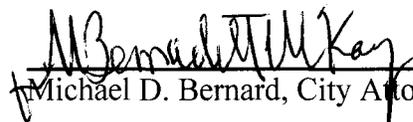
PASSED and APPROVED this 6th day of September, 2012.


M A Y O R
Julián Castro


ATTEST:


Leticia M. Vacek, City Clerk

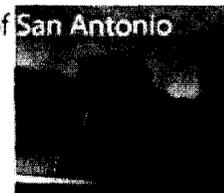
APPROVED AS TO FORM:


Michael D. Bernard, City Attorney



Request for
COUNCIL
ACTION

City of San Antonio



Agenda Voting Results - 21

Name:	4, 5, 6, 7, 8, 9, 10, 12, 13, 14, 15A, 15B, 15C, 17, 19, 20, 21, 22						
Date:	09/06/2012						
Time:	09:35:08 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing professional services agreements with Delta Dental Insurance Company/Alpha Dental Programs, Inc., for the administration and management of the City's voluntary dental program for civilian employees and eligible dependents in an estimated annual amount of \$662,294 funded by the Employee Benefits Fund . [Ed Belmares, Assistant City Manager; Joe Angelo, Chief Human Resources Officer]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor	x					
Diego Bernal	District 1		x				x
Ivy R. Taylor	District 2	x					
Leticia Ozuna	District 3		x				
Rey Saldaña	District 4	x					
David Medina Jr.	District 5		x				
Ray Lopez	District 6		x				
Cris Medina	District 7		x				
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				
Carlton Soules	District 10		x			x	

PROFESSIONAL SERVICES CONTRACT

This CONTRACT is entered into by and between the **CITY OF SAN ANTONIO** (hereinafter referred to as "**CITY**"), a Texas municipal corporation, acting by and through its **CITY** Manager pursuant to Ordinance No. _____ passed and approved on August 30, 2012, and Alpha Dental Programs, Inc., A Texas Corporation (hereinafter referred to as "**VENDOR**").

I. PURPOSE

The purpose of this CONTRACT is to state the terms and conditions under which the **VENDOR** will provide a Dental Health Maintenance Organization (DHMO) plan administration and/or coverage for **CITY'S** employee plan participants, retirees and their dependents.

II. DEFINITIONS

- 2.1 "**ADJUDICATION**" is defined as when the (1) claim is completely processed and awaiting the next check cycle; (2) the claim is denied; or (3) the claim is pending in the system.
- 2.2 "**AGGREGATE SERVICE FEE**" means the total annual fee paid to **VENDOR** for services under this contract for any one Plan Year.
- 2.3 "**CITY PLANS**" means any and/or all of the following plans:
 - a. the **CITY** of San Antonio Dental Insurance Program;
 - b. the **CITY** of San Antonio Non-Uniformed Plan Document;
 - c. the **CITY** of San Antonio Flexible Benefits Plan.
- 2.4 "**ELIGIBLE DEPENDENT**" is defined under the applicable **CITY** Plans.
- 2.5 "**ELIGIBLE EMPLOYEE**" means a full time **CITY** employee (authorized full time equivalent) eligible to participate in one or more of the **CITY** Plans on the date his/her employment begins.
- 2.6 "**EMPLOYEE**" means a person who is directly employed by the **CITY** of San Antonio and is regularly scheduled for a full shift or scheduled in like manner as other similarly situated workers in the department or division on a permanent basis. "Employee" shall also include employees on Worker's Compensation, Disability, or Non-Paid status, Police Cadets, Firefighter trainees, the Mayor and **CITY** Council members, and such other officials or provisional employees as the **CITY** Council shall determine and specify.
- 2.7. "**EXPERIENCE PERIOD**" is the Plan Year unless otherwise defined in this agreement.
- 2.8 "**FISCAL YEAR**" means the **CITY** of San Antonio accounting year, October 1 through September 30.

- 2.9 "PLAN DOCUMENTS" means the documents setting forth the CITY Plans and any addendum which collectively provide and define coverage for plan participants.
- 2.10 "PLAN PARTICIPANT" means the Mayor and CITY Council Members, an eligible employee, an eligible dependent, and/or an eligible retiree who is participating in one or more of the CITY Plans.
- 2.11 "PLAN SPONSOR" means the CITY of San Antonio.
- 2.12 "PLAN YEAR" means the CITY of San Antonio benefit coverage period, January 1 through December 31.
- 2.13 "TOTAL ANNUAL FEE" means the Aggregate Service Fee as defined in this agreement

III. SCOPE OF SERVICES

The CITY shall require that the **VENDOR** provide all necessary services including but not limited to the following:

- 3.1. COMPARABLE BENEFITS – The **VENDOR** shall provide a plan design that retains the same level of benefits as the current summary plan. Benefits that exceed the current level will be acceptable as long as there is a no loss provision.
- 3.2. NO LOSS - No covered employee, covered dependent or covered retiree shall lose benefits as a result of a carrier change. All pre-existing condition limitations, actively-at work and non-confinement provisions must be expressly waived for the initial enrollment for covered employees, covered retirees and covered dependents that have already satisfied the limitations under the current plan.
- 3.3. ACTIVELY AT WORK WAIVER - The "actively at work" requirement shall be waived for employees (and dependents) not performing normal work activities on the effective date.
- 3.4. ANNUAL OPEN ENROLLMENT – All employees and retirees are to have the opportunity to enroll in the CITY sponsored group dental benefit plan during an open enrollment period on a guarantee issue basis.
- 3.5. Maintain a fully automated claims adjudication system in compliance with electronic transmission standards and security requirements and all other regulations as required by HIPAA.
- 3.6. Maintain both a customer call center and web-based customer portal offered in both English and Spanish to include bi-lingual customer service staff and voice command prompts. Additionally, all printed plan material (standard benefit summaries and open enrollment materials) must be provided in both English and Spanish.

- 3.7 Ability to download eligibility information from the **CITY** via electronic transfer using secure FTP data transmission via HIPAA compliant transfer method.
- 3.8. Log and maintain all **CITY** employee complaints and provide a quarterly report documenting receipt, response and resolution of each complaint.
- 3.9 Provide the **CITY**'s Employee Benefits staff with the following:
Advanced copies of all general employee correspondence to include changes in services, benefits and providers, subject to applicable HIPAA regulations and other regulatory provisions;

Sixty (60) day minimum notice of provider changes;

On a monthly basis, provide a minimum of twenty-five (25) updated provider lists for general dentists and on a quarterly basis, provide a minimum of twenty-five (25) updated provider lists for specialists.
- 3.10 The **VENDOR** must provide a single point-of-contact senior account manager with a direct telephone number.
- 3.11 Provide timely response to inquiries from Plan participants and providers regarding eligibility and status of claim, correspondence, payment and any other information requested by such parties in a manner that will limit the **CITY**'s involvement in day-today inquiries.
- 3.12 Conduct review of disputed claims in accordance with the requirements of the Plan Document.
- 3.13 Prepare and review with Employee Benefits Division staff and print Summary Plan Documents, claim forms; and any other communication material as required by Contract.
- 3.14 Print and mail identification cards to the participant's home address as required by Contract.
- 3.15. Attend monthly meetings when deemed necessary by the **CITY** and make presentations as requested by the **CITY**.
- 3.16 Agree that 9 out of 10 employees and families will have the ability to retain their existing providers. This applies to all providers who were listed on or before the vendor's submission of RFP proposal. **VENDOR** places 2.5% of Total Annual Fee at risk if contracting is not completed within ninety (90) days of disruption report delivery.
- 3.17 The **VENDOR** shall provide and maintain networks of qualified providers that provide quality services on a cost-effective basis during the term of the contract. **VENDOR** shall

ensure that the providers continue to meet licensing, selection, and screening criteria and that required liability insurance is maintained.

ELIGIBILITY, BILLING, PAYMENT AND RECONCILIATION

3.18. The minimum participation in the plan is two (2).

3.19 Rates should be quoted based on employee/retiree only, employee/retiree and child(ren), employee/retiree and spouse/domestic partner, and employee/retiree and family. The **CITY** shall remit payment for active employees and dependents based on the monthly enrollment in accordance with the four tiered rate structure. The **CITY** will not handle billing or premium collection for retirees. **VENDOR** shall handle billing and premium collection for retirees. The **VENDOR** will be responsible for retiree billing and collection if quoting on retiree coverage. The **CITY** does not make any employer contributions for dental coverage.

3.20 The **CITY** considers premiums are due as follows:

Premium is paid on an employee for that month only if the employee is enrolled on the first of that month.

For new hires and life events, effective dates of coverage are based on the dates of the event, while premium will be paid based on the first of the following month (if the event did not fall on the first of the month.)

Coverage terminates on the last day of the month the employee works for the **CITY**.

In all cases, the carrier is expected to extend coverage through the period for which premium is paid based on the above termination rules even though the employee and/or dependent may not otherwise be eligible for coverage.

3.21 The **CITY** will remit electronic payment for active employee and dependent premium payments within 45 days from the end of each month. A corresponding self-bill will be sent via email to **VENDOR** showing the total premium and eligibility counts for coverage tier. The **CITY** shall be deemed to have paid **VENDOR** in full for any given calendar quarter if the paid premium equals that due for the employee enrollee count calculated by the **CITY** for such plan for such quarter, provided such count is within three percent variance (higher or lower) of the employee enrollee count the **VENDOR**'s records reflect for such plan for such quarter. In any month **VENDOR** believes the variance exceeds the 3% threshold, a discrepancy report should be provided to the **CITY** within 15 days of receipt of the **CITY**'s payment that month. The **CITY** shall have 15 days from the date of receipt to evaluate and respond to the discrepancy report.

3.22. To allow for potential computer, mail, or other system malfunctions, **VENDOR** shall grant the **CITY** a ten (10) day grace period beyond the fifteen (15) working days to submit payment.

3.23. Within 45 days after the end of each calendar quarter, **VENDOR** shall provide the **CITY** with a Consolidated Account Summary Statement showing the status of the **CITY** account as Paid in Full, Overpaid or Underpaid. Statements, which are not deemed Paid in Full, should be accompanied by a detailed discrepancy report.

PLAN PERFORMANCE, MONITORING AND RENEWAL

3.24. All reports, information and other data given to, prepared or assembled by **VENDOR** under this **CONTRACT** is the property of the **CITY** and not the **VENDOR**'s property or any of the **VENDOR**'s employees or subcontractors. The **VENDOR** shall ensure the confidentiality of all information contained in their files, including but not limited to, medical information.

3.25. **VENDOR** agrees to attend monthly update and quarterly review meetings as well as new employee orientation meetings, health and wellness meetings, and all open enrollment meetings at the **CITY**'s desired location in San Antonio, Texas. **VENDOR**, upon request, agrees to attend periodic meetings with employee benefit sub-committees.

3.26. The **VENDOR** shall provide the **CITY** with specific comprehensive experience reports quarterly and summary reports annually. In addition to standard reports, **VENDOR** will provide additional reports for data analysis purposes.

3.27. All management reports shall track claims data by employee sub-totals, COBRA sub-totals, Retiree subtotals, and grand totals for each plan/product offered. There shall also be no charge to the **CITY** for any standard management report or performance guarantee report.

3.28. **VENDOR** shall conduct an annual member satisfaction survey.

3.29. The **CITY**, at their option, will have the right to have a claims audit performed annually or on an "as needed" basis if circumstances warrant, including but not limited to:

Compliance with contractual obligations;
Compliance with the **CITY**'s summary plan document; or
Accuracy of computer reports, claims payments and records.

CITY shall give **VENDOR** written notice within a reasonable time before the audit date. The audit will be performed during regular business hours.

3.30. Following is a list of reports required as part of the **VENDOR**'s responsibility. Aggregate and individual plan reports sorted by Active Retiree and COBRA participant classifications should be provided on a monthly and quarterly basis for the following:

Dollar amount of claims paid by group and summary of all groups will be required for each type of plan administered.

Claims vs. premium by group and summary of all groups will be required for each type of plan administered.

Separate monthly COBRA participants listing with effective date, level of coverage (employee only, employee + spouse/domestic partner, children, or family coverage), by employee group, premium amount billed and paid, coverage type, termination date, and paid through date for each type of plan administered.

Separate monthly Retiree participants listing with effective date, level of coverage (employee only, employee + spouse/domestic partner, children, or family coverage), by employee group, premium amount billed and paid, coverage type, termination date, and paid through date for each type of plan administered.

SUBCONTRACTORS AND PROVIDERS

- 3.31. No subcontractors or other service providers will be hired by the **VENDOR** in relation to its contract with the **CITY**, without specific written approval of the **CITY**.
- 3.32. The **VENDOR** shall not add additional fees, charges or premiums in any amount to the actual cost for any subcontractors' services.
- 3.33. Despite **CITY** approval of a subcontract, the **CITY** shall in no event be obligated to any third party, including any subcontractor of the selected Respondent for performance of work or service.

IV. SERVICE/PERFORMANCE STANDARDS – GUARANTEES

- 4.1. The **VENDOR** agrees to performance guarantees in connection with the implementation of services and for those services that are to be provided on an ongoing basis. The details of these guarantees will be negotiated during the finalist selection process. The **VENDOR** shall conduct regular internal audits and report the results to the **CITY** for use in enforcing performance guarantees.
- 4.2. The following requirements are areas where the **VENDOR** guarantees performance. Failure to meet the required standards will result in the penalties. Prompt resolution of problems or issues is expected but will not reduce or eliminate any penalties imposed due to failure to meet the performance standards outlined below. Performance Reports will be no later than forty-five days after the end of the quarter.

VENDOR agrees to provide the following levels of service in the performance of its obligations under this Service Contract. Performance is monitored quarterly, and penalties, if any, will be based on quarterly performance results and paid quarterly in the form of a check.

Performance Standard	Guarantees	Penalty
Implementation	<p>Comply with mutually agreed upon deadlines, benchmarks and timelines dealing with implementation of this contract.</p> <p>VENDOR's performance will meet the timeframes outlined in the "Implementation Timeline" with the effective date being the date contract is executed. Implementation Timeline, agreed by the parties, attached hereto as Exhibit F and incorporated herein by reference.</p>	5% (\$6,843.46 one time first year)
Account Management	<p>Provide for a clear and concise method of communication between the CITY and the designated Account Representative for such circumstances as soliciting CITY input, providing answers to questions, ad-hoc reporting and various day-to-day needs.</p> <p>VENDOR will assign an Account Manager to partner with CITY to meet the dental benefit objectives, advise CITY and work on the CITY'S behalf to optimize service. Standards of service include:</p> <ul style="list-style-type: none"> a) Account Manager will provide comprehensive service to CITY in support of the Plan's objective of top- tier customer service (Client Satisfaction Survey item #7). b) Account Manager will provide timely response and follow-up on phone calls and emails from CITY (Client Satisfaction Survey item #8). c) Account Manager will meet with CITY'S benefit staff as needed to meet their objectives and oversee the annual open enrollment process and participation in employee informational meetings (Client Satisfaction Survey item #10). 	<p>0.25% (\$81.04 per quarter)</p> <p>0.25% (\$81.04 per quarter)</p> <p>0.25% (\$81.04 per quarter)</p>

	<p>d) Account Manager will provide ongoing assistance with any issues escalated by designated benefits contacts (Client Satisfaction Survey item #11).</p> <p>CITY will monitor the Account Management performance and provide annual feedback via our Client Satisfaction Survey. CITY overall rating of “good”, “very Good”, or excellent” shows positive VENDOR performance. Pertinent questions for this guarantee are in the Account Management section of the survey. Client satisfaction for each of the criteria above will be deemed as being met if given a rating of either “good”, “very good”, or “excellent”.</p>	0.25% (\$81.04 per quarter)
Communication	All enrollment communication materials must be reviewed and approved by the CITY prior to distribution to employees.	1.00% (\$324.17 per quarter)
Customer Service	<p>Provide prompt, knowledgeable, consistent and courteous customer service with not less than 90% of all CITY enrollees’ calls answered by a live voice within 30 seconds.</p> <p>90% of all customer calls to the Contact Center will be answered within 30 seconds.</p> <p>Call abandonment rate will be 5% or less.</p> <p>85% of all facilities open to new enrollees shall have appointment access for non-specific time requests not to exceed four (4) weeks for routine/initial visits.</p> <p>85% of participants that respond to the Enrollee Satisfaction Survey will rate the VENDOR overall as either “good”, “very good”, or excellent”. Overall enrollee satisfaction is measured by a survey distributed to a random sampling of enrollees.</p> <p>85% of provider satisfaction survey respondents will rate the provider overall as either “good”, “very good”, or excellent”. Overall provider</p>	<p>0.50% (\$162.09 per quarter)</p>

	satisfaction is measured by a survey distributed to a random sampling of providers.	
Claims Administration	85% of specialty claims will be processed within 15 calendar days. Claims turnaround is measured from the date of the initial receipt of the claim with complete information to the date the claim is processed.	3.00% (\$972.52 per quarter)
Eligibility Administration	An eligibility discrepancy report must be provided to the CITY within seven (7) days following receipt of enrollment data. Eligibility updates will be completed on average within five (5) business days from receipt of data. Eligibility updates will be guaranteed with 98% accuracy. 95% of electronic eligibility will be loaded within three (3) business days from receipt of data.	0.75% (\$243.13 per quarter) 0.75% (\$243.13 per quarter) 0.75% (\$243.13 per quarter) 0.75% (\$243.13 per quarter)
Administration	95% of all enrollees/providers' appeals shall be resolved within 30 days of receipt. A written response will be provided acknowledging receipt of a grievance within five (5) calendar days for 95% of enrollees filing a grievance. 95% of all quality of care grievances will be resolved within thirty (30) calendar days after opening of grievance. Annual turnover of contracted providers will be less than 10%. All new contract dentists will be credentialed upon application and will be re-credentialed, at a minimum, once every three (3) years.	0.60% (\$194.50 per quarter) 0.60% (\$194.50 per quarter) 0.60% (\$194.50 per quarter) 0.60% (\$194.50 per quarter) 0.60% (\$194.50 per quarter)
Reporting	Accurate management reports and all other	1.00% (\$324.17)

	<p>requested reports will be delivered no later than the agreed upon due date.</p> <p>Client-specific financial and utilization reports will be provided within forty-five (45) calendar days from the close of the established reporting period.</p>	<p>per quarter)</p>
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CONTRACT TERMINATION AND TRANSITION PLAN

- 4.3. Upon termination or cancellation of the contract, the **CITY** may commence audit in accordance with Section 22. 6, below.
- 4.4. Within thirty (30) days after being notified by the **CITY** of the results of said audit, **VENDOR** shall pay the **CITY** any amount shown by said audit to be owed the **CITY** or its employees. No waiver of existing default shall be deemed to waive any subsequent default.
- 4.5. In coordination with **CITY** staff, **VENDOR** shall develop and oversee a detailed transition plan to be used at commencement of the contract. Said plan shall be provided at no additional cost to the **CITY**.

4.6 ACCESS TO DENTISTS

The **VENDOR** agrees that the average waiting period for a routine appointment will not exceed four (4) weeks of calling provided the **CITY** plan participant does not restrict such appointment to a specific date and time. The **VENDOR** also agrees that emergency or urgent care will be provided to the **CITY'S** participants within twenty-four (24) hours, seven (7) days a week. Examples of emergency care include, but are not limited to, broken teeth, displaced fillings with crowns and abnormal pain and infections resulting from oral surgery.

SPECIALIST REFERRALS

The **VENDOR** agrees that, in the event that specialty care is deemed necessary, the average waiting period for routine specialty care will not exceed four (4) weeks, once the referral has been approved. The determination to approve such specialty care shall be given within ten (10) business days. The **VENDOR** also agrees that emergency specialty care will be made available at the first available appointment through the **VENDOR'S** specialist.

GRIEVANCE RESOLUTION

The **VENDOR** agrees that all grievances will be acknowledged in writing within five (5) business days from receipt and resolved within 30 calendar days. The **VENDOR** agrees to fully investigate and to facilitate resolution of any and all complaints received from **CITY**

plan participants with regard to services resulting from this CONTRACT, subject to applicable HIPAA regulations and other regulatory provisions. CITY plan participants have the right to appeal any such resolution.

The **VENDOR** agrees to maintain a written log and to maintain all CITY plan participant's complaints. The **VENDOR** further agrees to make available to the CITY the **VENDOR'S** Grievance Report, inclusive of the resolution to each complaint.

CUSTOMER SATISFACTION SURVEY

The **VENDOR** will fulfill its obligations under this CONTRACT in such a manner as to obtain a minimum eighty-five percent (85%) favorable rating from DeltaCare USA enrollees whose dental benefits are administered by the **VENDOR**. For purposes of this CONTRACT, a favorable rating means a rating of "good," "very good" or "excellent".

A determination as to whether the **VENDOR** has obtained a eighty-five percent (85%) favorable rating from DeltaCare USA enrollees will be made each year through the use of **VENDOR'S** Standard Enrollee Satisfaction Survey distributed to a random sampling of DeltaCare USA enrollees.

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

V. GENERAL ASSURANCES

- 5.1 **VENDOR** covenants and agrees to perform all services described in this CONTRACT in a workmanlike manner with a high degree of care to ensure accuracy and timeliness. **VENDOR** shall perform its services in accordance with the ordinary, reasonable standard of care and diligence normally practiced by recognized professional firms in performing services of a similar nature, in the San Antonio, Texas area, under similar circumstances. This includes the knowledge and experience ordinarily required of a member of that profession, and includes performing the skills necessary to adequately cope with problems that arise in performing its services, which skills are not possessed by ordinary laymen.

- 5.2 **VENDOR** agrees to assign a dedicated senior account manager who shall be responsible for the task administration and work performance for this **CONTRACT**.
- 5.3 **VENDOR** agrees to employ, at its own expense, all personnel required to perform the services described in this **CONTRACT**. Personnel employed by **VENDOR** shall neither be employees of nor have any contractual relationship with **CITY**. All **VENDOR** personnel engaged in providing services under this **CONTRACT** shall be fully qualified and shall be authorized or licensed to perform such work as required.

VI. CONSIDERATION & BILLING

- 6.1 In consideration of **VENDOR'S** performance hereunder, **CITY** shall pay to **VENDOR** a flat fee of the contract as follows:

	Base Period Jan 2013 - Dec 2015
Employee Only	\$ <u> 13.66 </u> /monthly
Employee + Spouse/Domestic Partner	\$ <u> 25.45 </u> /monthly
Employee + Child(ren)	\$ <u> 25.45 </u> /monthly
Employee + Family	\$ <u> 38.19 </u> /monthly

These rates will also apply to retirees.

Rates for sold plans will be guaranteed for a period of three (3) years with a year four (4) and year five (5) at a rate cap of 7%:

- 6.2 Payments to **VENDOR** shall be in the amount shown by the monthly self-billings and other documentation submitted and shall be subject to **CITY'S** approval. All services shall be performed to **CITY'S** satisfaction, and **CITY** shall not be liable for any payment under this **CONTRACT** for services which are unsatisfactory, as may be reasonably determined, and which have not been approved by **CITY**. No additional fee or charge will be assessed against the **CITY** for late payment of any amount due to the **VENDOR**.
- 6.3. **CITY** shall not be liable to **VENDOR** for costs incurred or performances rendered by **VENDOR** prior to the commencement of this **CONTRACT** or after its termination.
- 6.4. The **CITY** requires the **VENDOR** to adhere to the following billing practices and cycles:

- a) Retroactive self-credit for termination due to non-payment, member withdrawal, death, etc., with said Retroactive period being limited to three (3) months prior to the date of each invoice.
 - b) Quarterly statements which reflect balances due.
- 6.5. **CITY** shall not be obligated or liable under this **CONTRACT** to any party, other than **VENDOR**, for payment of any monies or provision for any goods or services.

VII. TERM

- 7.1 This **CONTRACT** shall commence on January 1, 2013, and shall terminate on December 31, 2015. With at least sixty (60) days written notice prior to December 31, 2015, **CITY** may, at its sole option and through appropriate action of **CITY** Human Resources Director, have the right to extend the term of this **CONTRACT**, under the same terms and conditions, for up to two (2) one (1) year extensions, with each one (1) year extension subject to the same notice requirement and appropriate action of its **CITY** Human Resources Director. However, **CITY** may terminate this **CONTRACT** at any time if funds are restricted, withdrawn, not approved or service is unsatisfactory; it being understood that funds for each calendar year covered by any resulting contract will be requested and, if approved, will be provided as part of **CITY'S** budget for each fiscal year.

VIII. OWNERSHIP OF PRODUCT

- 8.1 **VENDOR** recognizes that **CITY** shall own exclusively any and all information in whatsoever form and character produced and/or maintained in accordance with this **CONTRACT** and shall be used as **CITY** desires without restriction. **VENDOR** may utilize the information produced as a result of this **CONTRACT** for statistical purposes only as allowed by federal or state law.

IX. RETENTION AND ACCESSIBILITY OF RECORDS

- 9.1 **VENDOR** shall maintain at its principal administrative office adequate books and records of all transactions in which **VENDOR** engages with **CITY**.
- 9.2 The books and records must be maintained for the term of this **CONTRACT** to which they relate and for the five (5) year period following the end of this **CONTRACT'S** term.
- 9.3 **VENDOR** shall maintain the books and records in accordance with prudent standards of insurance recordkeeping and all requirements of federal or state law.
- 9.4 **CITY**, the Texas Department of Insurance (TDI) Commissioner, the United States Department of Health and Human Services, and their designated agents shall be given prompt access to those books and records for the purpose of either examination, audit, or inspection as permitted by federal or state law.

- 9.5 Trade secrets, including the identity and address of policyholders and certificate holders, are confidential, except that the TDI Commissioner may use such information in proceedings instituted against the **VENDOR**.
- 9.6 **CITY** is entitled to continuing access to these books and records.
- 9.7 **VENDOR** may, at **CITY'S** option, fulfill the requirements of this Section of this **CONTRACT** by delivering to **CITY**, the books and records and by giving written notice to the TDI Commissioner of the location of the books and records.

X. HIPAA COMPLIANCE

- 10.1 **VENDOR** will maintain the confidentiality of all dental, prescription and other patient-identifiable health information specifically relating to Plan Participants ("Patient Health Information") in accordance with all applicable federal and state laws and regulations, including the Privacy Rule and the Security Rule of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as may be amended from time to time.
- 10.2 **VENDOR** shall comply with the electronic transmission standards, and with all other regulations as might be adopted by HIPAA.
- 10.3 The parties acknowledge that they are "Business Associates" as defined in Title 45, Section 160.103, of the Code of Federal Regulations. **VENDOR** shall abide by the terms of the Business Associate Agreement executed by the parties, attached hereto as Exhibit E and incorporated herein by reference.

XI. PUBLICATION

- 11.1 In order to use any advertising relating to business underwritten and/or developed for **CITY**, **VENDOR** must obtain approval by **CITY** at least ten (10) business days prior to such use.

XII. NOTICE OF VENDOR'S CAPACITY

- 12.1 **VENDOR** shall give notice to Plan Participants of the identity of **VENDOR** and the relationship between **VENDOR** and **CITY** and the plan participant. The notice must be approved by **CITY** at least ten (10) business days prior to such distribution.

XIII. AMENDMENT

- 13.1 This **CONTRACT**, together with its authorizing ordinance and its exhibits, constitutes the entire agreement between the parties. No amendment, modification or alteration of the

terms of this CONTRACT shall be binding unless the same is in writing, dated subsequent to the date hereof and duly executed by the parties hereto.

XIV. ASSIGNING INTEREST

- 14.1 **VENDOR** shall not assign, sell, pledge, transfer or convey any interest in this CONTRACT, nor delegate the performance of any duties hereunder, by transfer, by subcontracting, or by any other means, to any other party without prior written consent of **CITY**, evidenced by passage of an ordinance to that effect by the San Antonio **CITY** Council. Any such attempt at an assignment will be void ab initio, and shall confer no rights on the purported assignee. Should **VENDOR** assign, transfer, convey, delegate or otherwise dispose of any part of, or all of, its right, title or interest in this CONTRACT, the **CITY** may, at its option, cancel this CONTRACT and all rights, titles and interest of **VENDOR** shall thereupon cease and terminate, notwithstanding any other remedy available to **CITY** under this CONTRACT. The violation of this provision by **VENDOR** shall in no event release **VENDOR** from any obligation under the terms of this CONTRACT, nor shall it relieve or release **VENDOR** from the payment of any damages to **CITY** which **CITY** sustains as a result of such violation.
- 14.2 If approved, **VENDOR'S** subcontractors may not voluntarily assign, transfer, subcontract or pledge, in whole or in part, any contract with **VENDOR** arising from or in relation to this CONTRACT, nor shall any involuntary transfer or assignment result in a transfer of any rights conferred by this CONTRACT. **VENDOR** shall indicate this limitation in all contracts with approved subcontractors.
- 14.3 **VENDOR** agrees to notify **CITY** of any changes in **VENDOR'S** ownership interest greater than ten percent (10%), or control of its business entity, not less than sixty (60) days in advance of the effective date of such change. Notwithstanding any other remedies that are available to **CITY** under this CONTRACT, any such change of ownership interest or control of its business entity may be grounds for termination of this CONTRACT at the sole discretion of the **CITY**.
- 14.4 In no event shall such written consent for a change of subcontractor if obtained, relieve **VENDOR** from any and all obligations hereunder or change the terms of this CONTRACT.
- 14.5 **CITY** must approve all substitutions of subcontractors to determine if the disadvantaged business enterprise goal will be decreased by substitution of a disadvantaged subcontractor with a non-disadvantaged subcontractor.

XV. INSURANCE AND BONDING

- 15.1 Prior to the commencement of any work under this CONTRACT, **VENDOR** shall furnish a completed Certificate(s), including endorsements, of Insurance or **CITY'S** Standard

Certificate of Insurance form to **CITY'S** Human Resources Department, which shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The **CITY** will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s), and endorsements must have the agent's signature, and telephone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to **CITY**. **CITY** shall have no duty to pay or to perform under this **CONTRACT** until such certificate has been delivered to **CITY'S** Human Resources Department and no officer or employee, other than the **CITY's** Risk Manager, shall have authority to waive this requirement.

15.2 **CITY** reserves the right to review the insurance requirements of this section during the effective period of this **CONTRACT** and any extension or renewal hereof and to modify insurance coverages and its limits when deemed necessary and prudent by the **CITY's** Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this **CONTRACT**, but in no instance will **CITY** allow modification whereupon **CITY** may incur increased risk. However, **VENDOR** reserves the right to accommodate or deny such modifications to its insurance policies given its own business requirements.

15.3 **VENDOR'S** financial integrity is of interest to **CITY**. Therefore, subject to **VENDOR'S** right to maintain reasonable deductibles in such amounts as are approved by **CITY**, **VENDOR** shall obtain and maintain in full force and effect for the duration of this **CONTRACT**, and any extension hereof, at **VENDOR's** sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and rated A- (VII) or better by A.M. Best Company and/or otherwise acceptable to **CITY**, in the following types and amounts:

TYPE: AMOUNT:

<u>TYPE</u>	<u>AMOUNTS</u>
1. Commercial Crime/Fidelity Bond	\$2,000,000 per occurrence
2. Workers' Compensation	Statutory Limits
3. Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000
4. Broad Form Commercial General Liability Insurance to include coverage for the following: a. Premises operations b. Independent Contractors c. Products/completed operations d. Personal Injury e. Contractual Liability	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage

5. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	<u>Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence</u>
6. Professional Liability – Claims made polices are to be maintained and in effect for no less than two (2) years subsequent to the completions of the professional services	<u>\$5,000,000 per claim 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</u>
7. Technology Errors and Omissions/Cyberrisk Policy – Claims made polices are to be maintained and in effect for no less than two (2) years subsequent to the completion of the services	<u>\$1,000,000 per claim 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 covered services.</u>

15.4. As they apply to the limits required by the CITY, CITY shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto and may make a reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Upon such request by CITY, **VENDOR** shall exercise reasonable efforts to accomplish such changes in policy coverage and shall pay the cost thereof. The CITY may make a reasonable request for deletion, revision or modification of particular policy terms, conditions, limitations or exclusions; however, **VENDOR** reserves the right to accommodate or deny such modifications to its insurance policies given its own business requirements.

15.5 **VENDOR** agrees that, with respect to the above-required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name the **CITY** and its officers, employees, and elected representatives as additional insureds, by endorsement, as respects operations and activities of, or on behalf of, the named insured and performed under this CONTRACT with the CITY, with the exception of the workers' compensation and professional liability policies;
- **VENDOR'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 its operations under this CONTRACT with CITY; and
- Workers' compensation, employers' liability, general liability and auto liability policy will provide a waiver of subrogation in favor of CITY.

15.6 **VENDOR** shall notify **CITY** in the event of any notice of cancellation, nonrenewal or material change in coverage and shall give such notice prior to the change or ten (10) days notice for cancellation due to non-payment of premiums, which notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to **CITY** at the following addresses:

**CITY of San Antonio
Human Resources Department
Employee Benefits Division
P.O. Box 839966
San Antonio, Texas 78283-3966**

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

15.8 Nothing herein contained shall be construed as limiting in any way the extent to which **VENDOR** may be held responsible for payments of damages to persons or property resulting from **VENDOR'S** or its subcontractors' performance of the work covered under this **CONTRACT**.

15.9 It is understood and agreed that the insurance requirements are in addition to and separate from any other obligation contained in this Contract and that no claim or action by on behalf of the City shall be limited to insurance coverage provided.

15.10 **VENDOR** and any subcontractors are responsible for all damage to their own equipment and/or property.

XVI. INDEMNITY

16.1 **VENDOR** covenants and agrees to **FULLY INDEMNIFY, DEFEND and HOLD HARMLESS**, the **CITY** and the elected officials, employees, officers, directors, volunteers and representatives of the **CITY**, individually and 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 **VENDOR's** activities under this Agreement, including any acts or omissions of **VENDOR**, any agent, officer, director, representative, employee, vendor or subvendor of **VENDOR**, and their respective officers, agents

employees, directors and representatives while in the exercise of the rights or performance of the 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 VENDOR AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

- 16.2 The provisions of this **INDEMNITY** are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. **VENDOR** shall advise the **CITY** in writing within 24 hours of any claim or demand against the **CITY** or **VENDOR** known to **VENDOR** related to or arising out of **VENDOR**' activities under this **AGREEMENT** and shall see to the investigation and defense of such claim or demand at **VENDOR**'s cost. The **CITY** shall have the right, at its option and at its own expense, to participate in such defense without relieving **VENDOR** of any of its obligations under this paragraph.

XVII. INDEPENDENT CONTRACTOR

- 17.1 **VENDOR** covenants and agrees that it is an independent contractor and not an officer, agent, servant or employee of **CITY**; that **VENDOR** shall have exclusive right to control the details of the work performed hereunder and all person performing the same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors; that the doctrine of respondeat superior shall not apply as between **CITY** and **VENDOR**, its officers, agents, employees, contractors and subcontractors, and nothing herein shall be construed as creating a partnership or joint enterprise between **CITY** and **VENDOR**.
- 17.2 Any and all of the employees of the **VENDOR**, wherever located, while engaged in the performance of any work under this **CONTRACT** shall be considered employees of the **VENDOR** only, and not of the **CITY**, and any and all claims that may arise from the Workers' Compensation Act on behalf of said employees while so engaged shall be the sole obligation and responsibility of the **VENDOR**.
- 17.3 No Third Party Beneficiaries: For purposes of this **CONTRACT**, including its intended operation and effect, the Parties specifically agree and contract that (1) this **CONTRACT** only affects matters/disputes between the Parties to this **CONTRACT** and is in no way intended by the Parties to benefit or otherwise affect any third person or entity, notwithstanding the fact that such third person or entity may benefit incidentally by this

CONTRACT; and (2) the terms of this CONTRACT are not intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either CITY or VENDOR.

XVIII. COMPLIANCE WITH SMALL, MINORITY AND WOMAN-OWNED BUSINESS ENTERPRISES POLICY, NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY POLICY

18.1 **VENDOR** is hereby advised that it is the policy of the **CITY** of San Antonio that Small, Minority or Woman-owned Business Enterprises (SMWBE) shall have the maximum practical opportunity to participate in the performance of public contracts (per Ordinance #96754). Per Ordinance #69403, **VENDOR** agrees that **VENDOR** will not discriminate against any individual or group on account of race, color, sex, age, religion, national origin or disability and will not engage in employment practices which have the effect of discriminating against employees or prospective employees because of race, color, religion, national origin, sex, age or disability. **VENDOR** further agrees that **VENDOR** will abide by all applicable terms and provisions of **CITY'S** Non-Discrimination Policy, **CITY'S** Small, Business Economic Development Advocacy (SBEDA) Policy and **CITY'S** Equal Opportunity Affirmative Action policy, these policies being available in **CITY'S** Department of Economic Development, Division of Internal Review and the **CITY** Clerk's Office.

XIX. NON-WAIVER

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

XX. FRAUD AND ABUSE PREVENTION

20.1 **VENDOR** shall establish, maintain and utilize internal management procedures sufficient to protect against fraud, abuse or misappropriation of funds while in performance of obligations and duties under this CONTRACT. Any suspected fraud, abuse or misappropriation of funds shall be investigated promptly at the sole expense of **VENDOR**. Any funds that are found to be misappropriated shall be repaid to **CITY** by **VENDOR** within thirty (30) days of such finding.

XXI. CONFLICT OF INTEREST

21.1 **VENDOR** acknowledges that it is informed that the Charter of the **CITY** of San Antonio and its Ethics Code prohibit a **CITY** officer or employee, as those terms are defined in the Ethics Code, from having a financial interest in any contract with the **CITY** or any **CITY** agency such as **CITY**-owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the **CITY** or in the sale to the **CITY** of land, materials, supplies

or service, if any of the following individual(s) or entities is a party to the contract or sale: a **CITY** officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten percent (10%) or more of the voting stock or shares of the business entity, or ten percent (10%) 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.

- 21.2 **VENDOR** warrants and certifies, and this **CONTRACT** is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the **CITY**. **VENDOR** further warrants and certifies that it has tendered to the **CITY** a Discretionary Contracts Disclosure Statement in compliance with the **CITY**'s Ethics Code.
- 21.3 **VENDOR** warrants that no person or selling agency has been employed or retained to solicit or secure this **CONTRACT** upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by **VENDOR** for the purpose of securing business. For breach or violation of this warranty, **CITY** shall have the right to rescind this **CONTRACT** without liability or, at its discretion, to deduct from the **CONTRACT** price or consideration or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.
- 21.4 If at any time it shall be found that the person, firm or corporation to whom a **CONTRACT** has been awarded has, in presenting any proposal, colluded with any other party or parties, then the contract so awarded shall be voidable at **CITY'S** option, and **VENDOR** shall be liable to **CITY** for all loss or damage that **CITY** may suffer thereby.

XXII. TERMINATION

- 22.1 For purposes of this **CONTRACT**, "termination" of this **CONTRACT** shall mean termination by expiration of the **CONTRACT** term or earlier termination pursuant to any of the provisions hereof.
- 22.2 Termination by Notice. This **CONTRACT** may be canceled by either party upon written notice, provided such notice specifies an effective date of termination, which shall be not less than sixty (60) calendar days nor more than ninety (90) calendar days after the date of receipt of the notice by the other party. If the notice does not specify a date of termination, the effective date of termination shall be sixty (60) calendar days after receipt of the notice by the other party.
- 22.3 Termination for Cause. Should either party default in the performance of any of the terms or conditions of this **CONTRACT**, the other party shall deliver to the defaulting party written notice thereof specifying the matters in default. The defaulting party shall have ten (10) calendar days after its receipt of the written notice to cure such default. If the defaulting party fails to cure the default within such ten (10) day period, this **CONTRACT** shall terminate at 11:59:59 p.m., Central Standard Time, on the tenth (10th) day after the receipt of the notice by the defaulting party.

- 22.4 Termination by Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein or, if any law is interpreted to prohibit such performance, this CONTRACT shall automatically terminate as of the effective date of such prohibition.
- 22.5 Effect of Termination. The period between notice of termination and the effective date of termination shall be used to affect an orderly transfer of records and funds, if any, from **VENDOR** to **CITY** or to such person(s) or firm(s) as the **CITY** may designate. Any records transfer shall be completed within fifteen (15) calendar days of the termination date. Any such transfer of records or funds shall be completed at **VENDOR'S** sole cost and expense. All files are the property of the **CITY** and, at the **CITY'S** request, will be delivered at no cost to the **CITY** or its designated recipient on the effective date of termination. Any **CITY** funds held in any escrow account(s) shall be returned to the **CITY** within thirty (30) calendar days after the effective termination date.
- 22.6 Upon termination or cancellation of this CONTRACT, **CITY** may immediately commence audit of **VENDOR'S** books, accounts, and records. Within 30 calendar days after being notified by **CITY** of the results of said audit, **VENDOR** shall pay **CITY** any amount shown by said audit to be owed **CITY** or its employees. No waiver of existing default shall be deemed to waive any subsequent default. When the contract terminates, the final payment due herein will not be paid until the reports, data, and documents required under this CONTRACT have been received and approved by the **CITY**. No additional fee or charge will be assessed against the **CITY** for late payment of the premiums due to the **VENDOR** under this CONTRACT.
- 22.7 If **CITY** conducts an audit, either party to this CONTRACT may conduct a second audit, at their own expense, by the same or another independent auditor. If the results from the second audit are different, a third audit may be conducted with the costs of said audit to be shared equally between **VENDOR** and **CITY**. The results from said third audit shall be final.
- 22.8 Upon termination of this CONTRACT, in whole or in part, and/or its nonrenewal, in entirety or of any major operating subsidiary, entity or portion thereof, **CITY** shall have the option to:
- 22.8.1 Assume all open claims pending for the terminated or non-renewed portion of the CONTRACT, as of the effective date of termination or non-renewal, provided however, that **VENDOR** shall be entitled to receive its full fee for all claims processed to completion into its data files prior to the effective date of termination or non-renewal; or,
- 22.8.2 Upon agreement of a rate of compensation by both parties, **CITY** requires **VENDOR** to continue administration, to conclusion, all incurred claims associated with that portion of the services terminated or non-renewed.

22.8.3 In the event **CITY** requests **VENDOR** to provide post-termination or non-renewal claims administration, upon agreement of a rate of compensation by both parties, **CITY** may continue to purchase on-line data services. Such rate of compensation shall thereafter be reviewed by the parties on an annual basis and continued on-line data services shall be the subject of a written agreement between the parties, subject to funding and approval of the **CITY** Council.

22.9 Within thirty (30) calendar days of the effective date of termination or cancellation, **VENDOR** shall submit to **CITY** its claims, in detail, for the monies owed by **CITY** for services performed under this **CONTRACT** through the effective date of termination, except for monies owed for processing of claims incurred prior to the termination date and submitted for processing after the termination date.

XXIII. COMPLIANCE WITH LAWS

23.1 **VENDOR** hereby agrees to provide services hereunder in compliance with all applicable Federal, State and local laws, regulations, policies and procedures.

XXIV. SUCCESSORS AND ASSIGNS

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

XXV. NOTICES

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

CITY

CITY of San Antonio
Human Resources Department
Employee Benefits Division
111 Soledad, Suite 200
San Antonio, TX 78205

VENDOR

Alpha Dental Programs, Inc.
1701 Shoal Creek, Suite 240
Highland Village, TX 75077
ATTN: Melissa Fullerton

XXVI. EXHIBITS

26.1 **VENDOR** understands and agrees that all exhibits referred to in this CONTRACT are intended to be and hereby are, specifically made a part of this CONTRACT. Said exhibits are as follows:

Standard Group Contract for Dental Services	Exhibit A
CITY'S Request for Proposal	Exhibit B
VENDOR'S Proposal	Exhibit C
Plan Documents	Exhibit D
HIPAA Business Associate Agreement	Exhibit E
VENDOR'S Implementation Timeline	Exhibit F

26.2 **VENDOR** understands and agrees that Exhibits A, B, C, D, E, and F are a part of this CONTRACT, as though fully set out herein, and that all obligations, conditions, tasks, products, and representations set forth in said documents are required to be fulfilled by **VENDOR** as completely and fully as are the obligations, conditions, tasks, products and representations imposed by this CONTRACT.

26.3 The terms of this CONTRACT shall be final and binding where there is any conflict between the terms of **VENDOR'S** Standard Group Contract For Dental Services, **CITY'S** Request for Proposal, **VENDOR'S** Proposal and the terms of this CONTRACT; subject to compliance with Federal and State law, **CITY'S** Request for Proposal shall control where it conflicts with **VENDOR'S** Proposal.

XXVII. LEGAL AUTHORITY

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

XXVIII. VENUE AND GOVERNING LAW

28.1 Venue of any court action brought directly or indirectly by reason of this CONTRACT shall be in Bexar County, Texas. This CONTRACT shall be construed under and in accordance with the laws of the State of Texas and all obligations of the parties created hereunder are to be performed in Bexar County, Texas.

XXIX. GENDER

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

XXX. CAPTIONS

30.1 The captions contained in this CONTRACT are for convenience or reference purposes only and shall in no way limit, enlarge or alter the terms and/or conditions of this CONTRACT.

XXXI. ENTIRE AGREEMENT

31.1 This CONTRACT, its exhibits and the authorizing ordinance constitute the final and entire agreement between the parties hereto, superseding all verbal or written agreements, previous and/or contemporaneous agreements between the parties and relating to matters in this CONTRACT. No other agreements, oral or otherwise, regarding the matters of this CONTRACT shall be deemed to exist or to bind the parties hereto unless same is in writing, dated subsequent to the date hereto, and duly executed by the parties hereto.

XXXII. SEVERABILITY

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

XXXIII. ACKNOWLEDGMENT

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

EXECUTED this the 21 day of August, 2012.

CITY OF SAN ANTONIO

Sheryl Sculley
CITY Manager

Alpha Dental Programs, Inc.
Melissa Fullerton

Melissa Fullerton
Vice President, Sales

APPROVED AS TO FORM:

Assistant City Attorney

PROFESSIONAL SERVICES CONTRACT

This CONTRACT is entered into by and between the **CITY OF SAN ANTONIO** (hereinafter referred to as "**CITY**"), a Texas municipal corporation, acting by and through its **CITY** Manager pursuant to Ordinance No. _____ passed and approved on August 30, 2012, and Delta Dental Insurance Company, A Georgia Corporation domiciled in the state of Delaware (hereinafter referred to as "**VENDOR**").

I. PURPOSE

The purpose of this CONTRACT is to state the terms and conditions under which the **VENDOR** will provide administration of the **CITY'S** dental Benefit Plan for its employee plan participants and their dependents.

II. DEFINITIONS

- 2.1 "**ADJUDICATION**" is defined as when the (1) claim is completely processed and awaiting the next check cycle; (2) the claim is denied; or (3) the claim is pending in the system.
- 2.2 "**AGGREGATE SERVICE FEE**" means the total annual fee paid to **VENDOR** for services under this contract for any one Plan Year.
- 2.3 "**CITY PLANS**" means any and/or all of the following plans:
 - a. the **CITY** of San Antonio Dental Insurance Program;
 - b. the **CITY** of San Antonio Non-Uniformed Plan Document;
 - c. the **CITY** of San Antonio Flexible Benefits Plan.
- 2.4 "**ELIGIBLE DEPENDENT**" is defined under the applicable **CITY** Plans.
- 2.5 "**ELIGIBLE EMPLOYEE**" means a full time **CITY** employee (authorized full time equivalent) eligible to participate in one or more of the **CITY** Plans on the date his/her employment begins.
- 2.6 "**EMPLOYEE**" means a person who is directly employed by the **CITY** of San Antonio and is regularly scheduled for a full shift or scheduled in like manner as other similarly situated workers in the department or division on a permanent basis. "Employee" shall also include employees on Worker's Compensation, Disability, or Non-Paid status, Police Cadets, Firefighter trainees, the Mayor and **CITY** Council members, and such other officials or provisional employees as the **CITY** Council shall determine and specify.
- 2.7 "**EXPERIENCE PERIOD**" is the Plan Year unless otherwise defined in this agreement.
- 2.8 "**FISCAL YEAR**" means the **CITY** of San Antonio accounting year, October 1 through September 30.

- 2.9 "PLAN DOCUMENTS" means the documents setting forth the CITY Plans and any addendum which collectively provide and define coverage for plan participants, attached hereto and incorporated herein as Exhibit "C".
- 2.10 "PLAN PARTICIPANT" means the Mayor and CITY Council Members, an eligible employee, an eligible dependent, and/or an eligible retiree who is participating in one or more of the CITY Plans.
- 2.11 "PLAN SPONSOR" means the CITY of San Antonio.
- 2.12 "PLAN YEAR" means the CITY of San Antonio benefit coverage period, January 1 through December 31.
- 2.13 "TOTAL ANNUAL FEE" means the Aggregate Service Fee as defined in this agreement.

III. SCOPE OF SERVICES

The CITY shall require that the VENDOR provide all necessary services, including but not limited to the following:

PLAN DESIGN

- 3.1 COMPARABLE BENEFITS – VENDOR shall provide a plan design that retains the same level of benefits as the current summary plan. Benefits that exceed the current level will be acceptable as long as there is a no loss provision.
- 3.2 NO LOSS - No covered employee, covered dependent or covered retiree shall lose benefits as a result of a carrier change. All pre-existing condition limitations, actively-at-work and non-confinement provisions must be expressly waived for the initial enrollment for covered employees and covered dependents that have already satisfied the limitations under the current plan.
- 3.3 ACTIVELY AT WORK WAIVER - The "actively at work" requirement shall be waived for employees (and dependents) not performing normal work activities on the effective date.
- 3.4 ANNUAL OPEN ENROLLMENT – All employees are to have the opportunity to enroll in the CITY sponsored group dental benefit plan during an open enrollment period on a guarantee issue basis.

PLAN ADMINISTRATION, CLAIMS PAYMENT AND CUSTOMER SERVICE

- 3.5 Maintain a fully automated claims adjudication system in compliance with electronic transmission standards and security requirements and all other regulations as required by HIPAA.

- 3.6 Maintain both a customer call center and web-based customer portal offered in both English and Spanish to include bi-lingual customer service staff and voice command prompts. Additionally, all printed plan material (standard benefit summaries and open enrollment materials) must be provided in both English and Spanish.
- 3.7 Ability to download eligibility information from the **CITY** via electronic transfer using secure FTP data transmission via HIPAA compliant transfer method.
- 3.8 Log and maintain all **CITY** employee complaints and provide a monthly report documenting receipt, response and resolution of each complaint, subject to applicable HIPAA regulations and other regulatory provisions.
- 3.9 Provide the **CITY**'s Employee Benefits staff with advanced copies of all general employee correspondence to include changes in services, benefits and providers, subject to applicable HIPAA regulations and other regulatory provisions;

VENDOR will provide **CITY** quarterly reports of Provider changes. Provider changes are updated weekly on **VENDORS** website.

- 3.10 The **VENDOR** must provide a single point-of-contact senior account manager with a direct telephone number.
- 3.11 Provide timely response to inquiries from Plan participants and providers regarding eligibility and status of claim, correspondence, payment and any other information requested by such parties in a manner that will limit the **CITY**'s involvement in day-to-day inquiries.
- 3.12 Conduct review of disputed claims in accordance with the requirements of the Plan Document.
- 3.13 Prepare and review with Employee Benefits Division staff and print Summary Plan Documents, claim forms; and any other communication material as required by Contract.
- 3.14 Print and mail identification cards to the participant's home address as required by Contract.
- 3.15 Attend monthly meetings when deemed necessary by the **CITY** and make presentations as requested by the **CITY**.
- 3.16 Agree that 9 out of 10 employees and families will have the ability to retain their existing providers.
- 3.17 **VENDOR** shall provide and maintain networks of qualified providers that provide quality services on a cost-effective basis during the term of the contract. **VENDOR** shall ensure that the providers continue to meet licensing, selection, and screening criteria and that required liability insurance is maintained.

ELIGIBILITY, BILLING, PAYMENT AND RECONCILIATION

- 3.18 The minimum participation in the plan is 10.
- 3.19 Rates should be quoted based on employee only, employee and child(ren), employee and spouse/domestic partner, and employee and family. The **CITY** shall remit payment for active employees based on the monthly enrollment in accordance with the four tiered rate structure. The **CITY** does not make any employer contributions for dental coverage.
- 3.20 The **CITY** considers administrative fees due as follows:
Administrative fee is paid on an employee for that month only if the employee is enrolled on the first of that month.

For new hires and life events, effective dates of coverage are based on the dates of the event, while administrative fees will be paid based on the first of the following month (if the event did not fall on the first of the month.)

Coverage terminates on the last day the employee works for the **CITY**.

In all cases, the carrier is expected to extend coverage through the period for which premium is paid based on the above termination rules even though the employee and/or dependent may not otherwise be eligible for coverage.

- 3.21 The **CITY** shall remit electronic payment for active employee administrative fee payments within 45 days from the end of each month. A corresponding self-bill will be sent via email to the carrier showing the total administrative fee and eligibility counts for coverage tier. The **CITY** shall be deemed to have paid the carrier in full for any given calendar quarter if the paid fee equals that due for the employee enrollee count calculated by the **CITY** for such plan for such quarter, provided such count is within three percent variance (higher or lower) of the employee enrollee count the carrier's records reflect for such plan for such quarter. In any month **VENDOR** believes the variance exceeds the 3% threshold, a discrepancy report should be provided to the **CITY** within 15 days of receipt of the **CITY**'s payment that month. The **CITY** shall have 15 days from the date of receipt to evaluate and respond to the discrepancy report.
- 3.22 To allow for potential computer, mail, or other system malfunctions, **VENDOR** must grant the **CITY** a ten (10) day grace period beyond the fifteen (15) working days to submit payment.
- 3.23 Within 45 days after the end of each calendar quarter, **VENDOR** must provide the **CITY** with a Consolidated Account Summary Statement showing the status of the **CITY** account as Paid in Full, Overpaid or Underpaid. Statements, which are not deemed Paid in Full, should be accompanied by a detailed discrepancy report.

IV. PLAN PERFORMANCE, MONITORING AND RENEWAL

- 4.1 All reports, information and other data given to, prepared or assembled by the **VENDOR** under this contract is the property of the **CITY** and not the **VENDOR**'s property or any of the selected **VENDOR**'s employees or subcontractors. **VENDOR** shall ensure the confidentiality of all information contained in their files, including but not limited to, medical information.
- 4.2 **VENDOR** agrees to attend monthly update and quarterly review meetings as well as new employee orientation meetings, health and wellness meetings, and all open enrollment meetings at the **CITY**'s desired location in San Antonio, Texas. **VENDOR** may also be required to attend periodic meetings with employee benefit sub-committees.
- 4.3 **VENDOR** shall provide the **CITY** with specific comprehensive experience reports quarterly and summary reports annually. In addition to standard reports, carriers will provide additional reports for data analysis purposes.
- 4.4 All management reports shall track claims data by employee sub-totals, COBRA sub-totals, Retiree subtotals, and grand totals for each plan/product offered. There shall also be no charge to the **CITY** for any standard management report or performance guarantee report.
- 4.5 **VENDOR** shall conduct an annual member satisfaction survey.
- 4.6 The **CITY**, at their option, will have the right to have a claims audit performed annually or on an "as needed" basis if circumstances warrant, including but not limited to:

Compliance with contractual obligations;
Compliance with the **CITY**'s summary plan document; or
Accuracy of computer reports, claims payments and records.

CITY shall give **VENDOR** written notice within a reasonable time before the audit date. The audit will be performed during regular business hours.

- 4.7 Following is a list of reports required as part of the **VENDOR**'s responsibility. Aggregate and individual plan reports sorted by Active and COBRA participant classifications should be provided on a monthly and quarterly basis for the following:

Dollar amount of claims paid by group and summary of all groups will be required for each type of plan administered.

Claims vs. premium by group and summary of all groups will be required for each type of plan administered.

V. SUBCONTRACTORS AND PROVIDERS

- 5.1 No subcontractors or other service providers will be hired by **VENDOR** in relation to its contract with the **CITY**, without specific written approval of the **CITY**.
- 5.2 **VENDOR** shall not add additional fees, charges or premiums in any amount to the actual cost for any subcontractors' services.
- 5.3 Despite **CITY** approval of a subcontract, the **CITY** shall in no event be obligated to any third party, including any subcontractor of the selected **VENDOR** for performance of work or service.

VI. SERVICE/PERFORMANCE STANDARDS – GUARANTEES

6.1 **VENDOR** agrees to performance guarantees in connection with the implementation of services and for those services that are to be provided on an ongoing basis. The details of these guarantees will be negotiated during the finalist selection process. **VENDOR** shall be expected to conduct regular internal audits and report the results to the **CITY** for use in enforcing performance guarantees.

6.2 The following requirements are areas where the **VENDOR** guarantees performance. Failure to meet the required standards will result in the penalties listed. Prompt resolution of problems or issues is expected but will not reduce or eliminate any penalties imposed due to failure to meet the performance standards outlined below. Performance Reports will be no later than forty-five days after the end of the quarter. **VENDOR** agrees to provide the following levels of service in the performance of its obligations under this Service Contract. Performance is monitored quarterly, and penalties, if any, will be based on quarterly performance results and paid quarterly in the form of a check.

Performance Standard	Guarantees	Penalty
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<p>Implementation</p>	<p>Comply with mutually agreed upon deadlines, benchmarks and timelines dealing with implementation of this contract.</p> <p>VENDOR's performance will meet the timeframes outlined in the "Implementation Timeline" with the effective date being the date contract is executed. Implementation Timeline, agreed by the parties, attached hereto as Exhibit E and incorporated herein by reference.</p>	<p>5% (\$4,314 one time first year)</p>
<p>Account Management</p>	<p>Provide for a clear and concise method of communication between the CITY and the designated Account Representative for such circumstances as soliciting CITY input, providing answers to questions, ad-hoc reporting and various day-to-day needs.</p> <p>VENDOR will assign an Account Manager to partner with CITY to meet the dental benefit objectives, advise CITY and work on the CITY'S behalf to optimize service. Standards of service include:</p> <ul style="list-style-type: none"> a) Account Manager will provide comprehensive service to CITY in support of the Plan's objective of top- tier customer service (Client Satisfaction Survey item #7). b) Account Manager will provide timely response and follow-up on phone calls and emails from CITY (Client Satisfaction Survey item #8). c) Account Manager will meet with CITY'S benefit staff as needed to meet their objectives and oversee the annual open enrollment process and participation in employee informational meetings (Client Satisfaction Survey item #10). d) Account Manager will provide ongoing assistance with any issues escalated by designated benefits contacts (Client Satisfaction Survey item #11). <p>CITY will monitor the Account Management performance and provide annual feedback via our</p>	<p>0.50% (\$107.84 per quarter)</p> <p>0.50% (\$107.84 per quarter)</p> <p>0.50% (\$107.84 per quarter)</p> <p>0.50% (\$107.84 per quarter)</p>

	Client Satisfaction Survey. CITY overall rating of “good”, “very good”, or excellent” shows positive VENDOR performance. Pertinent questions for this guarantee are in the Account Management section of the survey. Client satisfaction for each of the criteria above will be deemed as being met if given a rating of either “good”, “very good”, or “excellent”.	
Communication	All enrollment communication materials must be reviewed and approved by the CITY prior to distribution to employees.	1.00% (\$215.69 per quarter)
Customer Service	Provide prompt, knowledgeable, consistent and courteous customer service with not less than 90% of all CITY enrollees’ calls answered by a live voice within 30 seconds.	0.75% (\$161.77 per quarter)
	90% of all customer calls to the Contact Center will be answered within 30 seconds.	0.75% (\$161.77 per quarter)
	Call abandonment rate will be 5% or less.	0.75% (\$161.77 per quarter)
	90% of Customer Service phone inquiries will be resolved within one (1) business day.	0.75% (\$161.77 per quarter)
	85% of all facilities open to new enrollees shall have appointment access for non-specific time requests not to exceed four (4) weeks for routine/initial visits.	0.75% (\$161.77 per quarter)
	85% of participants that respond to the Enrollee Satisfaction Survey will rate the VENDOR overall as either “good”, “very good”, or excellent”. Overall enrollee satisfaction is measured by a survey distributed to a random sampling of enrollees.	0.75% (\$161.77 per quarter)
	85% of provider satisfaction survey respondents will rate the provider overall as either “good”, “very good”, or excellent”. Overall provider satisfaction is measured by a survey distributed to a random sampling of providers.	

<p>Claims Administration</p>	<p>All clean claims will be paid a maximum of 10 calendar days from receipt date.</p> <p>Claims turnaround is measured from the date of the initial receipt of the claim with complete information to the date the claim is processed.</p> <p>99% financial (dollar) accuracy. Financial (dollar) accuracy is calculated from a random sample and defined as the total dollar amount paid correctly in the sample divided by the total dollar amount that should have been paid in the sample.</p> <p>97% payment accuracy. Payment accuracy is calculated from a random sample and defined as the number of claims in the sample without payment errors divided by the total number of claims in the sample.</p> <p>95% processing accuracy. 85% of claims received will be processed within 15 calendar days. Processing accuracy is calculated from a random sample and defined as the number of claims in the sample without payment or nonpayment errors divided by the total number of claims in the sample.</p>	<p>0.90% (\$194.12 per quarter)</p>
<p>Eligibility Administration</p>	<p>An eligibility discrepancy report must be provided to the CITY within seven (7) days following receipt of enrollment data.</p> <p>Eligibility updates will be completed on average within five (5) business days from receipt of data.</p> <p>95% of electronic eligibility will be loaded within three (3) business days from receipt of data.</p> <p>Eligibility updates will be guaranteed with 98% accuracy.</p>	<p>0.75% (\$161.77 per quarter)</p> <p>0.75% (\$161.77 per quarter)</p> <p>0.75%(\$161.77 per quarter)</p> <p>0.75% (\$161.77 per quarter)</p>
<p>Administration</p>	<p>95% of all enrollees/providers' appeals shall be</p>	<p>0.60% (\$129.41)</p>

	<p>resolved within 30 days of receipt.</p> <p>A written response will be provided acknowledging receipt of a grievance within five (5) calendar days for 95% of enrollees filing a grievance.</p> <p>95% of all quality of care grievances will be resolved within thirty (30) calendar days after opening of grievance.</p> <p>Annual turnover of contracted providers will be less than 10%.</p> <p>All new contract dentists will be credentialed upon application and will be re-credentialed, at a minimum, once every three (3) years.</p>	<p>per quarter)</p> <p>0.60% (\$129.41 per quarter)</p> <p>0.60% (\$129.41 per quarter)</p> <p>0.60% (\$129.41 per quarter)</p> <p>0.60% (\$129.41 per quarter)</p>
Reporting	<p>Accurate management reports and all other requested reports will be delivered no later than the agreed upon due date.</p> <p>Client-specific financial and utilization reports will be provided within forty-five (45) calendar days from the close of the established reporting period.</p>	<p>2.00% (\$431.38 per quarter)</p>

CONTRACT TERMINATION AND TRANSITION PLAN

- 6.3 Upon termination or cancellation of the contract, the **CITY** may immediately commence an audit in accordance with Section 24.6 below.
- 6.4 Within thirty (30) days after being notified by the **CITY** of the results of said audit, the selected **VENDOR(s)** shall pay the **CITY** any amount shown by said audit to be owed the **CITY** or its employees. No waiver of existing default shall be deemed to waive any subsequent default.
- 6.5 In coordination with **CITY** staff, the selected **VENDOR** shall develop and oversee a detailed transition plan to be used at commencement of the contract. Said plan shall be provided at no additional cost to the **CITY**.
- 6.6 The **VENDOR** acknowledges and agrees that the **VENDOR** shall provide services under this **CONTRACT** with a certain degree of accuracy and timeliness. Therefore, as part of this **CONTRACT** with the **CITY**, the **VENDOR** agrees to the following performance standards:

GRIEVANCE RESOLUTION

The **VENDOR** agrees that all grievances will be acknowledged in writing within five (5) calendar days from receipt and resolved within thirty (30) calendar days from receipt. The **VENDOR** agrees to fully investigate and to facilitate resolution of any and all complaints received from **CITY** plan participants with regard to services resulting from this **CONTRACT**, subject to applicable HIPAA regulations and other regulatory provisions. **CITY** plan participants have the right to appeal any such resolution.

The **VENDOR** agrees to maintain a written log and to maintain all **CITY** plan participant's complaints. The **VENDOR** further agrees to make available to the **CITY** the **VENDOR'S** Grievance Report, inclusive of the resolution to each complaint.

CUSTOMER SATISFACTION SURVEY

The **VENDOR** will fulfill its obligations under this **CONTRACT** in such a manner as to obtain a minimum eighty-five percent (85%) favorable rating from Delta Dental PPO enrollees whose dental benefits are administered by the **VENDOR**. For purposes of this **CONTRACT**, a favorable rating means a rating of "good," "very good" or "excellent".

A determination as to whether the **VENDOR** has obtained a eighty-five percent (85%) favorable rating from Delta Dental PPO enrollees will be made each year through the use of **VENDOR'S** Standard Enrollee Satisfaction Survey distributed to a random sampling of Delta Dental PPO enrollees.

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

If the **CITY** waives its rights to an independent audit in any plan year, the **CITY** retains the right to audit in all subsequent years.

VII. GENERAL ASSURANCES

- 7.1 **VENDOR** covenants and agrees to perform all services described in this **CONTRACT** in a workmanlike manner with a high degree of care to ensure accuracy and timeliness. **VENDOR** shall perform its services in accordance with the ordinary, reasonable standard of care and diligence normally practiced by recognized professional firms in performing services of a similar nature, in the San Antonio, Texas area, under similar circumstances. This includes the knowledge and experience ordinarily required of a member of that

profession, and includes performing the skills necessary to adequately cope with problems that arise in performing its services, which skills are not possessed by ordinary laymen.

- 7.2 **VENDOR** agrees to assign a senior account manager who shall be responsible for the task administration and work performance for this **CONTRACT**.
- 7.3 **VENDOR** agrees to employ, at its own expense, all personnel required to perform the services described in this **CONTRACT**. Personnel employed by **VENDOR** shall neither be employees of nor have any contractual relationship with **CITY**. All **VENDOR** personnel engaged in providing services under this **CONTRACT** shall be fully qualified and shall be authorized or licensed to perform such work as required.

VIII. CONSIDERATION & BILLING

- 8.1 In consideration of **VENDOR'S** performance hereunder, **CITY** shall pay to **VENDOR** a flat fee of the contract as follows:

<u>PPO Plan</u>	Employee	EE + Spouse	EE + Child(ren)	EE + Family
Dental PPO	\$2.71	\$2.71	\$2.71	\$2.71

Rates for sold plan will be guaranteed for a period of three (3) years with a year four (4) and year five (5) rate cap of 7%:

- 8.2 The fee above includes the following features and services:
 - 8.2.1 No per-check charge
 - 8.2.2 ID cards
 - 8.2.3 Expeditious claim adjudication
 - 8.2.4 Periodic reporting to include itemized check register listing, benefits paid listing (claims summary); billing /eligibility statement
 - 8.2.5 Cumulative reports of statistical data pertinent to plan utilization
 - 8.2.6 Annual provider payment reports (IRS Form 1099-MED)
 - 8.2.7 Assigned Client Service Representative
 - 8.2.8 Access to Delta Dental's Preferred Provider Organizations (where available) offering discounted fees. This includes the Delta Dental PPO and Delta Dental Premier Network.
 - 8.2.9 **VENDOR** shall provide a termination list for PPO providers on a quarterly basis and access to Delta Dental's website for provider lists.

- 8.2.10 Preparation of enrollment package
- 8.2.11 Drafting of plan documents
- 8.2.12 On-site service support throughout all initial and subsequent annual open enrollment fairs with dedicated on-site service representative during fairs
- 8.2.13 Printing enrollment materials
- 8.2.14 Printing VENDOR'S standard communication materials
- 8.2.15 Interactive website
- 8.2.16 Dedicated customer service line
- 8.3 Payments to **VENDOR** shall be in the amount shown by the monthly billings and other documentation submitted and shall be subject to **CITY'S** approval. Administrative Fees will be paid as described in Section 8.1. All services shall be performed to **CITY'S** satisfaction, and **CITY** shall not be liable for any payment under this **CONTRACT** for services which are unsatisfactory, as may be reasonably determined, and which have not been approved by **CITY**. No additional fee or charge will be assessed against the **CITY** for late payment of administrative fees due to the **VENDOR** under this **CONTRACT**.
- 8.4 **CITY** shall not be liable to **VENDOR** for costs incurred or performances rendered by **VENDOR** prior to the commencement of this **CONTRACT** or after its termination, except for claims incurred prior to the termination date.
- 8.5 The **CITY** requires the **VENDOR** to adhere to the following billing practices and cycles:
 - a) Retroactive self-credit for termination due to non-payment, member withdrawal, death, etc.
 - b) Quarterly statements which reflect balances due.
- 8.6 **Providing Funds for Benefits.** The **CITY** is solely responsible for providing funds for payment for all Plan benefits payable to Participants, Network Providers, or non-Network Providers.
- 8.7 **Bank Account.**
 - a) **VENDOR** shall have the capability of transmitting files and issuing payments electronically via wire, Automated Clearing House (ACH) and paper checks. **VENDOR** will produce a weekly summary of claims paid.
 - b) Direct banking costs associated with funds transfers from the **CITY'S** designated bank account to the **VENDOR'S** Bank Account will be at the **CITY'S** expense. The **CITY** will be credited with voids and stop pays on their weekly invoice. **VENDOR**

will prepare a monthly statement of account detailing monthly claims paid and administration fees, as well as, fund transfers received during the applicable period

- 8.8 **Outstanding Checks.** **VENDOR** will perform state required procedures on outstanding (unclaimed) checks included in the Texas Property Code.
- 8.9 **Termination of Agreement.** When this Agreement terminates, the funding method for Plan benefits will remain in place for twelve (12) months. After this period, that funding method will cease. **CITY** will then deposit and maintain in the Bank Account enough funds to cover all checks for Plan benefits that have been issued but not cashed. This balance will remain in the Bank Account for a limited period of time to fund the outstanding checks. This period will be reasonable, as determined by **VENDOR**, and applied on a consistent basis to **VENDOR**'s self-funded customers. At **CITY'S** expense, **VENDOR** will stop payment, on all checks that remain uncashed at the end of this period. **CITY** will request in writing to close the Bank Account and recover any funds remaining in it. **VENDOR** will provide monthly bank account statements and bank reconciliation reports, including reports **CITY** need for the purposes of escheatment. When the contract terminates, the final payment due herein will not be paid until the reports, data, and documents required under this CONTRACT have been received and approved by the **CITY**. No additional fee or charge will be assessed against the **CITY** for late payment of the administration fee due to the **VENDOR** under this CONTRACT.
- 8.10 **Runout.** Administration of claims beyond the termination of the contract will be done if **CITY** requests for an additional fee as negotiated between the parties, but in no event will be more than ten percent (10%) of the dental claims processed for the ensuing months.
- 8.11 **CITY** shall not be obligated or liable under this CONTRACT to any party, other than **VENDOR**, for payment of any monies or provision for any goods or services.

IX. TERM

This CONTRACT shall commence on January 1, 2013, and shall terminate on December 31, 2015. With at least sixty (60) days written notice prior to December 31, 2015 **CITY** may, at its sole option and through appropriate action of **CITY** Human Resources Director, have the right to extend the term of this CONTRACT, under the same terms and conditions, for up to two (2) one (1) year extensions, with each one (1) year extension subject to the same notice requirement and appropriate action of its **CITY** Human Resources Director. However, **CITY** may terminate this CONTRACT at any time if funds are restricted, withdrawn, not approved or service is unsatisfactory; it being understood that funds for each calendar year covered by any resulting contract will be requested and, if approved, will be provided as part of **CITY'S** budget for each fiscal year.

X. OWNERSHIP OF PRODUCT

- 10.1 **VENDOR** recognizes that **CITY** shall own exclusively any and all information in whatsoever form and character produced and/or maintained in accordance with this

CONTRACT and shall be used as CITY desires without restriction. **VENDOR** may utilize the information produced as a result of this CONTRACT for statistical purposes only as allowed by federal or state law.

XI. RETENTION AND ACCESSIBILITY OF RECORDS

- 11.1 **VENDOR** shall maintain at its principal administrative office adequate books and records of all transactions in which **VENDOR** engages with **CITY**.
- 11.2 The books and records must be maintained for the term of this CONTRACT to which they relate and for the five (5) year period following the end of this CONTRACT'S term.
- 11.3 **VENDOR** shall maintain the books and records in accordance with prudent standards of insurance recordkeeping and all requirements of federal or state law.
- 11.4 **CITY**, the Texas Department of Insurance (TDI) Commissioner, the United States Department of Health and Human Services, and their designated agents shall be given prompt access to those books and records for the purpose of either examination, audit, or inspection as permitted by federal or state law.
- 11.5 Trade secrets, including the identity and address of policyholders and certificate holders, are confidential, except that the TDI Commissioner may use such information in proceedings instituted against the **VENDOR**.
- 11.6 **CITY** is entitled to continuing access to these books and records.

VENDOR may, at **CITY'S** option, fulfill the requirements of this Section of this CONTRACT by delivering to **CITY**, the books and records and by giving written notice to the TDI Commissioner of the location of the books and records.

XII. HIPAA COMPLIANCE

- 12.1 **VENDOR** will maintain the confidentiality of all dental, prescription and other patient-identifiable health information specifically relating to Plan Participants ("Patient Health Information") in accordance with all applicable federal and state laws and regulations, including the Privacy Rule and the Security Rule of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as may be amended from time to time.
- 12.2 **VENDOR** shall comply with the electronic transmission standards, and with all other regulations as might be adopted by HIPAA.
- 12.3 The parties acknowledge that they are "Business Associates" as defined in Title 45, Section 160.103, of the Code of Federal Regulations. **VENDOR** shall abide by the terms of the Business Associate Agreement executed by the parties, attached hereto as Exhibit D and incorporated herein by reference.

XIII. PUBLICATION

- 13.1 In order to use any advertising relating to business underwritten and/or developed for **CITY**, **VENDOR** must obtain approval by **CITY** at least ten (10) business days prior to such use.

XIV. NOTICE OF VENDOR'S CAPACITY

- 14.1 **VENDOR** shall give notice to Plan Participants of the identity of **VENDOR** and the relationship between **VENDOR** and **CITY** and the plan participant. The notice must be approved by **CITY** at least ten (10) business days prior to such distribution.

XV. AMENDMENT

- 15.1 This **CONTRACT**, together with its authorizing ordinance and its exhibits, constitutes the entire agreement between the parties. No amendment, modification or alteration of the terms of this **CONTRACT** shall be binding unless the same is in writing, dated subsequent to the date hereof and duly executed by the parties hereto.

XVI. ASSIGNING INTEREST

- 16.1 **VENDOR** shall not assign, sell, pledge, transfer or convey any interest in this **CONTRACT**, nor delegate the performance of any duties hereunder, by transfer, by subcontracting, or by any other means, to any other party without prior written consent of **CITY**, evidenced by passage of an ordinance to that effect by the San Antonio **CITY** Council. Any such attempt at an assignment will be void *ab initio*, and shall confer no rights on the purported assignee. Should **VENDOR** assign, transfer, convey, delegate or otherwise dispose of any part of, or all of, its right, title or interest in this **CONTRACT**, the **CITY** may, at its option, cancel this **CONTRACT** and all rights, titles and interest of **VENDOR** shall thereupon cease and terminate, notwithstanding any other remedy available to **CITY** under this **CONTRACT**. The violation of this provision by **VENDOR** shall in no event release **VENDOR** from any obligation under the terms of this **CONTRACT**, nor shall it relieve or release **VENDOR** from the payment of any damages to **CITY** which **CITY** sustains as a result of such violation.
- 16.2 If approved, **VENDOR'S** subcontractors may not voluntarily assign, transfer, subcontract or pledge, in whole or in part, any contract with **VENDOR** arising from or in relation to this **CONTRACT**, nor shall any involuntary transfer or assignment result in a transfer of any rights conferred by this **CONTRACT**. **VENDOR** shall indicate this limitation in all contracts with approved subcontractors.
- 16.3 **VENDOR** agrees to notify **CITY** of any changes in **VENDOR'S** ownership interest greater than ten percent (10%), or control of its business entity, not less than sixty (60) days in advance of the effective date of such change. Notwithstanding any other remedies that are available to **CITY** under this **CONTRACT**, any such change of ownership interest or

control of its business entity may be grounds for termination of this CONTRACT at the sole discretion of the CITY.

- 16.4 In no event shall such written consent for a change of subcontractor if obtained, relieve **VENDOR** from any and all obligations hereunder or change the terms of this CONTRACT.
- 16.5 **CITY** must approve all substitutions of subcontractors to determine if the disadvantaged business enterprise goal will be decreased by substitution of a disadvantaged subcontractor with a non-disadvantaged subcontractor.

XVII. INSURANCE AND BONDING

- 17.1 Prior to the commencement of any work under this CONTRACT, **VENDOR** shall furnish a completed Certificate(s), including endorsements, of Insurance or **CITY's** Standard Certificate of Insurance form to **CITY'S** Human Resources Department, which shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The CITY will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s), and endorsements must have the agent's signature, and telephone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to **CITY**. **CITY** shall have no duty to pay or to perform under this CONTRACT until such certificate has been delivered to **CITY'S** Human Resources Department and no officer or employee, other than the **CITY's** Risk Manager, shall have authority to waive this requirement.
- 17.2 **CITY** reserves the right to review the insurance requirements of this section during the effective period of this CONTRACT and any extension or renewal hereof and to modify insurance coverages and its limits when deemed necessary and prudent by the **CITY's** Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this CONTRACT, but in no instance will **CITY** allow modification whereupon **CITY** may incur increased risk. However, **VENDOR** reserves the right to accommodate or deny such modifications to its insurance policies given its own business requirements.
- 17.3 **VENDOR'S** financial integrity is of interest to **CITY**. Therefore, subject to **VENDOR'S** right to maintain reasonable deductibles in such amounts as are approved by **CITY**, **VENDOR** shall obtain and maintain in full force and effect for the duration of this CONTRACT, and any extension hereof, at **VENDOR's** sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and rated A- (VII) or better by A.M. Best Company and/or otherwise acceptable to **CITY**, in the following types and amounts:

TYPE: AMOUNT:

<u>TYPE</u>	<u>AMOUNTS</u>
-------------	----------------

1. Commercial Crime/Fidelity Bond	\$2,000,000 per occurrence
2. Workers' Compensation	Statutory Limits
3. Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000
4. Broad Form Commercial General Liability Insurance to include coverage for the following: a. Premises operations b. Independent Contractors c. Products/completed operations d. Personal Injury e. Contractual Liability	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
5. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence
6. Professional Liability -- Claims made polices are to be maintained and in effect for no less than two (2) years subsequent to the completions of the professional services	<u>\$5,000,000 per claim 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</u>
7. Technology Errors and Omissions/Cyberrisk Policy – Claims made polices are to be maintained and in effect for no less than two (2) years subsequent to the completion of the services	<u>\$1,000,000 per claim 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 covered services.</u>

17.4. As they apply to the limits required by the CITY, CITY shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto and may make a reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Upon such request by CITY, VENDOR shall exercise reasonable efforts to accomplish such changes in policy coverage and shall pay the cost thereof. The CITY may make a reasonable request for deletion, revision or modification of particular policy terms, conditions, limitations or exclusions; however, VENDOR reserves the right to accommodate or deny such modifications to its insurance policies given its own business requirements

17.5 **VENDOR** agrees that, with respect to the above-required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name the **CITY** and its officers, employees, and elected representatives as additional insureds, by endorsement, as respects operations and activities of, or on behalf of, the named insured and performed under this **CONTRACT** with the **CITY** on the automobile and general liability policies;
- **VENDOR'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 its operations under this **CONTRACT** with **CITY**; and
- Workers' compensation, employers' liability, general liability and auto liability policy will provide a waiver of subrogation in favor of **CITY**.

17.6 **VENDOR** shall notify **CITY** in the event of any notice of cancellation, nonrenewal or material change in coverage and shall give such notice prior to the change or ten (10) days notice for cancellation due to non-payment of premiums, which notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to **CITY** at the following addresses:

CITY of San Antonio
Human Resources Department
Employee Benefits Division
P.O. Box 839966
San Antonio, Texas 78283-3966

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

17.8 Nothing herein contained shall be construed as limiting in any way the extent to which **VENDOR** may be held responsible for payments of damages to persons or property resulting from **VENDOR'S** or its subcontractors' performance of the work covered under this **CONTRACT**.

17.9 It is understood and agreed that the insurance requirements are in addition to and separate from any other obligation contained in this Contract and that no claim or action by on behalf of the City shall be limited to insurance coverage provided.

17.10 **VENDOR** and any subcontractors are responsible for all damage to their own equipment and/or property.

XVIII. INDEMNITY

18.1 **VENDOR** covenants and agrees to **FULLY INDEMNIFY, DEFEND and HOLD HARMLESS**, the **CITY** and the elected officials, employees, officers, directors, volunteers and representatives of the **CITY**, individually and 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 **VENDOR's** activities under this Agreement, including any acts or omissions of **VENDOR**, any agent, officer, director, representative, employee, vendor or subvendor of **VENDOR**, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the 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 VENDOR AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

18.2 The provisions of this **INDEMNITY** are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. **VENDOR** shall advise the **CITY** in writing within 24 hours of any claim or demand against the **CITY** or **VENDOR** known to **VENDOR** related to or arising out of **VENDOR's** activities under this **AGREEMENT** and shall see to the investigation and defense of such claim or demand at **VENDOR's** cost. The **CITY** shall have the right, at its option and at its own expense, to participate in such defense without relieving **VENDOR** of any of its obligations under this paragraph.

XIX. INDEPENDENT CONTRACTOR

19.1 **VENDOR** covenants and agrees that it is an independent contractor and not an officer, agent, servant or employee of **CITY**; that **VENDOR** shall have exclusive right to control the details of the work performed hereunder and all person performing the same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors; that the doctrine of *respondeat superior* shall not apply as between **CITY** and **VENDOR**, its officers, agents, employees, contractors and subcontractors, and nothing herein shall be construed as creating a partnership or joint enterprise between **CITY** and **VENDOR**.

- 19.2 Any and all of the employees of the **VENDOR**, wherever located, while engaged in the performance of any work under this **CONTRACT** shall be considered employees of the **VENDOR** only, and not of the **CITY**, and any and all claims that may arise from the Workers' Compensation Act on behalf of said employees while so engaged shall be the sole obligation and responsibility of the **VENDOR**.
- 19.3 No Third Party Beneficiaries: For purposes of this **CONTRACT**, including its intended operation and effect, the Parties specifically agree and contract that (1) this **CONTRACT** only affects matters/disputes between the Parties to this **CONTRACT** and is in no way intended by the Parties to benefit or otherwise affect any third person or entity, notwithstanding the fact that such third person or entity may benefit incidentally by this **CONTRACT**; and (2) the terms of this **CONTRACT** are not intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either **CITY** or **VENDOR**.

**XX. COMPLIANCE WITH SMALL, MINORITY AND WOMAN-OWNED
BUSINESS ENTERPRISES POLICY, NON-DISCRIMINATION AND EQUAL
EMPLOYMENT OPPORTUNITY POLICY**

- 20.1 **VENDOR** is hereby advised that it is the policy of the **CITY** of San Antonio that Small, Minority or Woman-owned Business Enterprises (SMWBE) shall have the maximum practical opportunity to participate in the performance of public contracts (per Ordinance #96754). Per Ordinance #69403, **VENDOR** agrees that **VENDOR** will not discriminate against any individual or group on account of race, color, sex, age, religion, national origin or disability and will not engage in employment practices which have the effect of discriminating against employees or prospective employees because of race, color, religion, national origin, sex, age or disability. **VENDOR** further agrees that **VENDOR** will abide by all applicable terms and provisions of **CITY'S** Non-Discrimination Policy, **CITY'S** Small, Business Economic Development Advocacy (SBEDA) Policy and **CITY'S** Equal Opportunity Affirmative Action policy, these policies being available in **CITY'S** Department of Economic Development, Division of Internal Review and the **CITY** Clerk's Office.
- 20.2 The **VENDOR** agrees that if material deficiencies in any aspect of its SMWBE utilization plan as set out in its proposal are found or if **VENDOR** does not meet the SMWBE goals as specified by the **CITY'S** Department of Economic Development, whichever is less, as a result of a review or investigation conducted by **CITY'S** Department of Economic Development, **VENDOR** will be required to submit a written report to **CITY'S** Department of Economic Development. The **VENDOR** will also be required to submit a supplemental Good Faith Effort Plan (GFEP) indicating efforts to resolve any deficiencies. If the **CITY'S** Department of Economic Development and **CITY** Attorney's Office find that material deficiencies exist then the supplemental GFEP shall be denied and will constitute **VENDOR'S** failure to resolve any deficiencies. Failure to obtain an approved GFEP within ninety (90) days of initial denial shall constitute a default and result in

payment by **VENDOR** of \$1,000 per day as liquidated damages for the default until all deficiencies are resolved. Failure to cure all deficiencies within another ninety (90) days of the date of notice shall constitute a further (additional) condition of default by the **VENDOR** and which can, at the option of the Director, result of forfeiture of the entirety of this Contract.

XXI. NON-WAIVER

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

XXII. FRAUD AND ABUSE PREVENTION

- 22.1 **VENDOR** shall establish, maintain and utilize internal management procedures sufficient to protect against fraud, abuse or misappropriation of funds while in performance of obligations and duties under this CONTRACT. Any suspected fraud, abuse or misappropriation of funds shall be investigated promptly at the sole expense of **VENDOR**. Any funds that are found to be misappropriated shall be repaid to **CITY** by **VENDOR** within thirty (30) days of such finding.
- 22.2 **VENDOR** agrees to repay **CITY** for overpayments to service providers resulting from **VENDOR'S** claims system's or processors' errors within thirty (30) days of verification of overpayments.

XXIII. CONFLICT OF INTEREST

- 23.1 **VENDOR** acknowledges that it is informed that the Charter of the **CITY** of San Antonio and its Ethics Code prohibit a **CITY** officer or employee, as those terms are defined in the Ethics Code, from having a financial interest in any contract with the **CITY** or any **CITY** agency such as **CITY**-owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the **CITY** or in the sale to the **CITY** of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a **CITY** officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten percent (10%) or more of the voting stock or shares of the business entity, or ten percent (10%) 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.
- 23.2 **VENDOR** warrants and certifies, and this CONTRACT is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the **CITY**. **VENDOR** further warrants and certifies that it has tendered to the **CITY** a Discretionary Contracts Disclosure Statement in compliance with the **CITY'S** Ethics Code.
- 23.3 **VENDOR** warrants that no person or selling agency has been employed or retained to solicit or secure this CONTRACT upon an agreement or understanding for a commission,

percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by **VENDOR** for the purpose of securing business. For breach or violation of this warranty, **CITY** shall have the right to rescind this **CONTRACT** without liability or, at its discretion, to deduct from the **CONTRACT** price or consideration or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

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

XXIV. TERMINATION

- 24.1 For purposes of this **CONTRACT**, "termination" of this **CONTRACT** shall mean termination by expiration of the **CONTRACT** term or earlier termination pursuant to any of the provisions hereof.
- 24.2 Termination by Notice. This **CONTRACT** may be canceled by either party upon written notice, provided such notice specifies an effective date of termination, which shall be not less than thirty (30) calendar days nor more than ninety (90) calendar days after the date of receipt of the notice by the other party. If the notice does not specify a date of termination, the effective date of termination shall be thirty (30) calendar days after receipt of the notice by the other party.
- 24.3 Termination for Cause. Should either party default in the performance of any of the terms or conditions of this **CONTRACT**, the other party shall deliver to the defaulting party written notice thereof specifying the matters in default. The defaulting party shall have ten (10) calendar days after its receipt of the written notice to cure such default. If the defaulting party fails to cure the default within such ten (10) day period, this **CONTRACT** shall terminate at 11:59:59 p.m., Central Standard Time, on the tenth (10th) day after the receipt of the notice by the defaulting party.
- 24.4 Termination by Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein or, if any law is interpreted to prohibit such performance, this **CONTRACT** shall automatically terminate as of the effective date of such prohibition.
- 24.5 Effect of Termination. The period between notice of termination and the effective date of termination shall be used to affect an orderly transfer of records and funds, if any, from **VENDOR** to **CITY** or to such person(s) or firm(s) as the **CITY** may designate. Any records transfer shall be completed within fifteen (15) calendar days of the termination date. Any such transfer of records or funds shall be completed at **VENDOR'S** sole cost and expense. All files are the property of the **CITY** and, at the **CITY'S** request, will be delivered at no cost to the **CITY** or its designated recipient on the effective date of

termination. Any **CITY** funds held in any escrow account(s) shall be returned to the **CITY** within thirty (30) calendar days after the effective termination date.

- 24.6 Upon termination or cancellation of this **CONTRACT**, **CITY** may immediately commence audit of **VENDOR'S** books, accounts, and records. Within 30 calendar days after being notified by **CITY** of the results of said audit, **VENDOR** shall pay **CITY** any amount shown by said audit to be owed **CITY** or its employees. No waiver of existing default shall be deemed to waive any subsequent default.
- 24.7 If **CITY** conducts an audit, either party to this **CONTRACT** may conduct a second audit, at their own expense, by the same or another independent auditor. If the results from the second audit are different, a third audit may be conducted with the costs of said audit to be shared equally between **VENDOR** and **CITY**. The results from said third audit shall be final.
- 24.8 Upon termination of this **CONTRACT**, in whole or in part, and/or its nonrenewal, in entirety or of any major operating subsidiary, entity or portion thereof, **CITY** shall have the option to:
- 24.8.1 Assume all open claims pending for the terminated or non-renewed portion of the **CONTRACT**, as of the effective date of termination or non-renewal, provided however, that **VENDOR** shall be entitled to receive its full fee for all claims processed to completion into its data files prior to the effective date of termination or non-renewal; or,
- 24.8.2 Upon agreement of a rate of compensation by both parties, **CITY** requires **VENDOR** to continue administration, to conclusion, all incurred claims associated with that portion of the services terminated or non-renewed.
- 24.8.3 In the event **CITY** requests **VENDOR** to provide post-termination or non-renewal claims administration, upon agreement of a rate of compensation by both parties, **CITY** may continue to purchase on-line data services. Such rate of compensation shall thereafter be reviewed by the parties on an annual basis and continued on-line data services shall be the subject of a written agreement between the parties, subject to funding and approval of the **CITY** Council.
- 24.9 Within thirty (30) calendar days of the effective date of termination or cancellation, **VENDOR** shall submit to **CITY** its claims, in detail, for the monies owed by **CITY** for services performed under this **CONTRACT** through the effective date of termination, except for monies owed for processing of claims incurred prior to the termination date and submitted for processing after the termination date.

XXV. COMPLIANCE WITH LAWS

25.1 **VENDOR** hereby agrees to provide services hereunder in compliance with all applicable Federal, State and local laws, regulations, policies and procedures.

XXVI. SUCCESSORS AND ASSIGNS

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

XXVII. NOTICES

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

CITY

CITY of San Antonio
Human Resources Department
Employee Benefits Division
111 Soledad, Suite 200
San Antonio, TX 78205

VENDOR

Delta Dental Insurance Company/Alpha Dental Programs, Inc.
1130 Sanctuary Parkway, Suite 600
Alpharetta, GA 30009
ATTN: Contracts Department

XXIII. EXHIBITS

28.1 VENDOR understands and agrees that all exhibits referred to in this CONTRACT are intended to be and hereby are, specifically made a part of this CONTRACT. Said exhibits are as follows:

CITY's Request for Proposal	Exhibit A
VENDOR'S Proposal	Exhibit B
Plan Documents	Exhibit C
HIPAA Business Associate Agreement	Exhibit D
VENDOR's Implementation Timeline	Exhibit E

28.2 VENDOR understands and agrees that Exhibits A, B, C, D, and E are a part of this CONTRACT, as though fully set out herein, and that all obligations, conditions, tasks, products, and representations set forth in said documents are required to be fulfilled by

VENDOR as completely and fully as are the obligations, conditions, tasks, products and representations imposed by this **CONTRACT**.

28.3 The terms of this **CONTRACT** shall be final and binding where there is any conflict between the terms of **CITY'S** Request for Proposal, **VENDOR'S** Proposal and the terms of this **CONTRACT**; **CITY'S** Request for Proposal shall control where it conflicts with **VENDOR'S** Proposal.

XXIX. LEGAL AUTHORITY

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

XXX. VENUE AND GOVERNING LAW

30.1 Venue of any court action brought directly or indirectly by reason of this **CONTRACT** shall be in Bexar County, Texas. This **CONTRACT** shall be construed under and in accordance with the laws of the State of Texas and all obligations of the parties created hereunder are to be performed in Bexar County, Texas.

XXXI. GENDER

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

XXXII. CAPTIONS

32.1 The captions contained in this **CONTRACT** are for convenience or reference purposes only and shall in no way limit, enlarge or alter the terms and/or conditions of this **CONTRACT**.

XXXIII. ENTIRE AGREEMENT

33.1 This **CONTRACT**, its exhibits and the authorizing ordinance constitute the final and entire agreement between the parties hereto, superseding all verbal or written agreements, previous and/or contemporaneous agreements between the parties and relating to matters in this **CONTRACT**. No other agreements, oral or otherwise, regarding the matters of this **CONTRACT** shall be deemed to exist or to bind the parties hereto unless same is in writing, dated subsequent to the date hereto, and duly executed by the parties hereto.

XXXIV. SEVERABILITY

34.1 If any clause or provision of this **CONTRACT** is illegal, invalid 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 hercof and that the remainder of this CONTRACT shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein. It is also the intention of the parties to this CONTRACT that, in lieu of each clause or provision of this CONTRACT that is illegal, invalid or unenforceable, there be added as part of this CONTRACT a clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

XXXV. ACKNOWLEDGMENT

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

EXECUTED this the 21 day of August, 2012.

CITY OF SAN ANTONIO

Sheryl Sculley
CITY Manager

Delta Dental Insurance Company
Melissa Fullerton

Melissa Fullerton
Vice President, Sales

APPROVED AS TO FORM:

Assistant City Attorney