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**City of Las Cruces**<sup>®</sup>  
 PEOPLE HELPING PEOPLE

**Council Action and Executive Summary**

Item # 13

Ordinance/Resolution# 13-14-330B

For Meeting of \_\_\_\_\_  
 (Ordinance First Reading Date)

For Meeting of November 18, 2013  
 (Adoption Date)

Please check box that applies to this item:

QUASI JUDICIAL

LEGISLATIVE

ADMINISTRATIVE

**TITLE: A RESOLUTION APPROVING AN AGREEMENT FOR EMPLOYEE DENTAL INSURANCE BENEFITS WITH DELTA DENTAL OF NEW MEXICO.**

**PURPOSE(S) OF ACTION:**

Approve service agreement for employer sponsored dental insurance provider.

<b>COUNCIL DISTRICT: N/A</b>		
<b><u>Drafter/Staff Contact:</u></b> Andre Moquin	<b><u>Department/Section:</u></b> Human Resources	<b><u>Phone:</u></b> 528-3401
<b><u>City Manager Signature:</u></b>		

**BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:**

An objective of the strategic plan is to be the employer of choice by promoting attractive benefits and wages. The City of Las Cruces has traditionally offered health and related benefits to its employees. In 2004 the City elected to migrate benefits to the State of New Mexico Risk Management Division (NMRMD). This provided for an initial decrease in premiums and more affordable plan designs.

To ensure the best market position for employer sponsored benefits the City undertook an in-depth review of City sponsored offerings in late Fall 2012. This study was undertaken in conjunction with Gallagher Benefits Services (GBS) and was comprised of three (3) phases. Phase I provided for a review and analysis of current plan designs, premium costs, and claims history for a three (3) year period. Phase II included the development of Requests for Proposals (RFP's) to solicit bids from benefit providers to determine if plan design changes and cost savings could be achieved when compared with current offerings. Phase III included the negotiations of final proposals, premiums, fees, and plan designs.

Phase III results determined the best option for the City was to leave NMRMD sponsored benefits and move towards a fully insured position. The RFP bids for health benefits, dental and vision insurance, life and supplemental life insurance and short and long term disability has identified best available options for employee benefits.

(Continue on additional sheets as required)

After a careful review, evaluation, and rating of the bids submitted pursuant to the RFP's, one of the current providers of dental insurance, Delta Dental of New Mexico, was rated higher than other carriers that responded. It is recommended that Delta Dental of New Mexico become the City of Las Cruces fully insured sole dental insurance provider effective January 1, 2014.

**SUPPORT INFORMATION:**

1. Resolution.
2. Exhibit "A", Purchasing Manager's Request to Contract (PMRC).
3. Exhibit "B", Service Agreement.

**SOURCE OF FUNDING:**

<b>Is this action already budgeted?</b>	Yes	<input checked="" type="checkbox"/>	See fund summary below
	No	<input type="checkbox"/>	If No, then check one below:
	<i>Budget Adjustment Attached</i>	<input type="checkbox"/>	Expense reallocated from: _____
		<input type="checkbox"/>	Proposed funding is from a new revenue source (i.e. grant; see details below)
		<input type="checkbox"/>	Proposed funding is from fund balance in the _____ Fund.
<b>Does this action create any revenue?</b>	Yes	<input type="checkbox"/>	Funds will be deposited into this fund: _____ in the amount of \$ _____ for FY _____
	No	<input checked="" type="checkbox"/>	There is no new revenue generated by this action.

**BUDGET NARRATIVE**

Total fees for leaving NMRMD sponsored benefits are estimated at \$66,000. These funds are partially available within the current health care line item and will be recovered through an initial administrative fee of five (5) percent added to dental insurance benefit premiums.

Certain plan premiums are being recommended at more favorable rates. Given a proposed decrease to some of the premiums and a potential increase in enrollment we believe the effect of this action on departmental budgets will be neutral or positive.

**FUND EXPENDITURE SUMMARY:**

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
Various	Various	Various	Various	Various	Various

(Continue on additional sheets as required)

**OPTIONS / ALTERNATIVES:**

1. Vote "Yes"; this will approve the service agreement with Delta Dental of New Mexico and allow for the continued offering of employer sponsored dental insurance benefits to City employees.
2. Vote "No"; this will delay the implementation of revised employer sponsored dental insurance benefits for City employees and result in no benefit coverage for City employees.
3. Vote to "Amend"; this could modify the Resolution to reflect the wishes of the City Council.
4. Vote to "Table"; this will delay the implementation of revised employer sponsored dental insurance benefits for City employees and result in a gap in coverage for City employees.

**REFERENCE INFORMATION:**

N/A

(Continue on additional sheets as required)

**RESOLUTION NO. 13-14-330B**

**A RESOLUTION APPROVING AN AGREEMENT FOR EMPLOYEE DENTAL INSURANCE BENEFITS WITH DELTA DENTAL OF NEW MEXICO.**

The City Council is informed that:

**WHEREAS**, an objective of the strategic plan is for the City to be the employer of choice and promote attractive benefits and wages; and

**WHEREAS**, the City's participation in the benefit programs offered through the State of New Mexico will expire December 31, 2013; and

**WHEREAS**, the Requests for Proposals (RFP's) were developed to solicit bids from benefit providers to determine if plan design changes and cost savings could be achieved when compared with current offerings; and

**WHEREAS**, Delta Dental of New Mexico, was rated higher than other carriers that responded.

**NOW, THEREFORE**, be it resolved by the governing body of the City of Las Cruces:

**(I)**

**THAT** the Purchasing Manager is hereby authorized to contract with Delta Dental of New Mexico, by approving the service agreement, Exhibit "B" attached hereto, in the signed Purchasing Manager's Request to Contract form, Exhibit "A", attached hereto.

**(II)**

**THAT** City staff is hereby authorized to do all deeds necessary in the accomplishment of the above.

**DONE AND APPROVED** on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

APPROVED:

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

(SEAL)

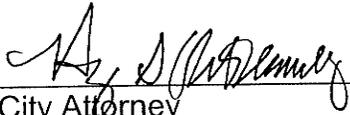
VOTE:

Mayor Miyagishima:	_____
Councillor Silva:	_____
Councillor Smith:	_____
Councillor Pedroza:	_____
Councillor Small:	_____
Councillor Sorg:	_____
Councillor Levatino:	_____

Moved by: \_\_\_\_\_

Seconded by: \_\_\_\_\_

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney

CITY OF LAS CRUCES

PURCHASING MANAGER'S REQUEST TO CONTRACT

For Meeting of: November 18, 2013

Resolution No.: 13-14-330B

Contract Purchase For Employee Dental Insurance Benefits

The Las Cruces City Council is provided the following information concerning this request:

RFP SOLICITATION INFORMATION:

- 1. RFP No./ Due Date: RFP No. 13-14-330 / August 20, 2013
2. Description: Employee Dental Insurance Benefits
3. Using Department: Human Resources
4. Number of Reponses Solicited: Sixty-seven (67)
5. Number of Responses Accepted: One (1)
6. Award Recommendation To: Delta Dental Plan of NM
7. Total Award Amount: Indefinite quantity/cost
8. Contract Duration: One year with annual renewals

LOCAL PREFERENCE FACTOR

Table with 4 columns: Local Preference Factor Applied Per LCMC §24-100, No, Yes, and LCMC §24-100 not applicable to this solicitation. Includes 'X' marks for 'Yes' and 'Made No Difference To Bid Award(s)'.

PROCUREMENT CODE COMPLIANCE:

The City of Las Cruces Procurement Code was administered in the conduct of this procurement and approval to purchase is hereby requested pursuant to Section 24-92.

Handwritten signature and date 11/8/13 over lines for Purchasing Manager and Date.

CONFIRMATION OF FUND ENCUMBRANCE:

Table with 2 columns: REQUISITION or PURCHASE ORDER NUMBER: and TBD.

## PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT, made and entered into on this \_\_\_\_\_, 2013 by and between the City of Las Cruces, New Mexico, hereinafter called "CITY" and Delta Dental of New Mexico, of 2500 Louisiana Blvd. Suite 600 NE, Albuquerque, NM 87110 hereinafter called "CONTRACTOR".

### 1. PROJECT DESCRIPTION

Employee dental insurance coverage and related administrative service for dental services.

### 2. SCOPE OF SERVICES

In a satisfactory and proper manner, the CONTRACTOR shall provide insurance coverage for dental services as proposed in response to the CITY'S RFP No. 13-14-330 and also including the Group Dental Insurance Contract incorporated herein by reference and made a part of this Agreement.

### 3. APPROPRIATIONS

The terms of this Agreement are contingent on sufficient appropriations and authorization being made by the City Council for the performance of this Agreement. If sufficient appropriations and authorizations are not made by the City Council, this Agreement shall terminate upon written notice given by the CITY to CONTRACTOR. The CITY'S decision as to whether sufficient appropriations and authorizations exist shall be accepted by CONTRACTOR and shall be final.

### 4. COMPENSATION

In consideration for the provision of insurance coverage and services under this Agreement, the CITY shall pay the cost for such coverage as proposed by the CONTRACTOR in response to the CITY'S RFP No. 13-14-330.

CONTRACTOR is responsible for payment of State of New Mexico Gross Receipts Tax levied on the amounts payable under this Agreement. CONTRACTOR agrees to comply with all federal and state tax payments and report all items of gross receipts as income from the operations of its business.

### 5. DEVOTION OF ADEQUATE TIME

CONTRACTOR will devote the necessary hours each week to the administration of the coverage under this AGREEMENT and it will serve the CITY diligently, faithfully, according to its best ability in all respects, and will promote the best interests of the CITY.

## 6. TERM AND SCHEDULE

This Agreement shall become effective on \_\_\_\_\_, 2013 for a twelve month term through \_\_\_\_\_, 2014 and, pending mutual written agreement, may be extended annually thereafter pending approved budget appropriations.

## 7. EXTENSIONS, CHANGES, AND AMENDMENTS

This Agreement shall not be extended, changed, or amended except by instrument in writing executed by the parties. The CITY shall not be liable for payment of any extra coverage or services nor shall CONTRACTOR be obligated to provide extra coverage or perform any extra services except upon such written agreement. Such written approval shall indicate the date said extension, change, or amendment is effective and shall be signed by the parties to this Agreement. In the event that the parties cannot reach agreement as to a particular change, the issue shall be resolved pursuant to Article 21.

## 8. CHANGES AND EXTRA SERVICES BY THE CITY

The CITY may make changes to coverage or services under this Agreement plus may also request CONTRACTOR to provide extra coverage or perform other extra services not incorporated within the Scope of Services set forth in this Agreement. If the CONTRACTOR is of the opinion that such change causes an increase or decrease in the cost and/or the time required for performing the changes required by the City, CONTRACTOR shall so notify the CITY of that fact within five (5) business work days from the date of receipt of change by the CITY. The CITY shall provide written response to the CONTRACTOR within five (5) business work days from the date of receipt of CONTRACTOR'S written notification.

## 9. CHANGES AND EXTRA SERVICES BY THE CONTRACTOR

In the event a condition is identified by the CONTRACTOR which, in the opinion of the CONTRACTOR, changes the coverage, services, costs, and/or time required for performance under this Agreement, the CONTRACTOR shall provide written notification to the CITY within five (5) business work days of such identification. The CITY shall respond in writing to such notification within five (5) business work days from the date of receipt of CONTRACTOR'S notification.

If, after good faith negotiations, the parties are unable to reach an agreement on the changes requested by the Contractor, either: 1) the Agreement shall continue unmodified in accordance with the terms and conditions contained herein; or 2) the Contractor may terminate this agreement upon fifteen (15) days written notice.

## 10. DELAYS

In the event that the provision of coverage or related services under this Agreement is delayed by causes beyond reasonable control of CONTRACTOR, and without the fault or negligence of CONTRACTOR, the terms and conditions of this Agreement may be equitably adjusted by written agreement to reflect the extent of such delay. CONTRACTOR shall provide the CITY with written notice of delay pursuant to Article 9 including therein a description of the delay and the steps contemplated or actually taken

by CONTRACTOR to mitigate the effect of such delay. The CITY will make the final determination as to reasonableness of delays.

#### 11. TERMINATION

This Agreement may be terminated by either party hereto upon ninety (90) calendar day written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement through no fault of the terminating party. This Agreement may also be terminated by the CITY for its convenience or because the PROJECT has been permanently abandoned, but only upon ninety (90) calendar days written notice to CONTRACTOR.

In the event of termination, CONTRACTOR shall be compensated for cost of coverage and services performed up to the effective date of termination for which CONTRACTOR has not been previously compensated.

Upon receipt of notice of termination from the CITY, CONTRACTOR shall discontinue the coverage and related services unless otherwise directed and, upon final payment from the CITY, deliver to the CITY the required number of copies of all data, reports, estimates, summaries, and such other information and materials as may have been accumulated by CONTRACTOR in the performance of this Agreement, whether completed or in process.

Contractor retains all termination rights as set forth in the group dental insurance contract.

#### 12. RECORDS AND AUDITS

The CITY has the right to audit CONTRACTOR files, books, and records (both paper and electronic) pertaining to services provided. The CITY will bear the entire cost of any such audits. The CITY may assign this right to audit to an agent, provided the agent is a licensed firm and the audit is led by an individual who holds a nationally recognized audit accreditation. CONTRACTOR will allow the CITY or the CITY's agent to audit the work areas at which services under this Contract are performed, within 14 business days of receipt of a fully-signed Confidentiality Agreement. Where applicable, CONTRACTOR agrees to segregate the CITY's records from third-party records in order to allow accurate assessment of CONTRACTOR-specific processes. Such audits will take place no more than once in a 12-month period, unless both the CITY and CONTRACTOR mutually agree that there is reasonable cause to conduct an audit more frequently, in which case the CITY will give 14 business days' written notice before such audit. During the audit, if claims samples are selected using a financially stratified methodology, the results will be extrapolated to the entire population of claims during the audit period using a weighted average method for each category.

#### 13. DISCLOSURE AND OWNERSHIP OF DOCUMENTS, PRODUCTS, DESIGN, ELECTRONIC FILES

Each Party shall hold in strict confidence and trust the other Party's ("Disclosing Party") Confidential Information and shall not disclose, sell, rent or otherwise provide or

transfer, directly or indirectly, any Confidential Information or anything related to the Confidential Information to any person or entity without the prior written consent of the Disclosing Party. Notwithstanding the preceding sentence, the Party receiving Confidential Information ("Receiving Party") may disclose Confidential Information to its representatives, counsel, shareholders, directors, officers, employees, agents or consultants ("Representatives") who need to know such information in order to enable the Receiving Party to perform its obligations hereunder. The Receiving Party and its Representatives shall use the Disclosing Party's Confidential Information only in connection with the performance of the Receiving Party's obligations hereunder. The Receiving Party shall require any of its Representatives who obtain the Disclosing Party's Confidential Information to comply with this Agreement and shall be responsible for any breach of this Agreement by such Representatives.

#### 14. INDEPENDENT CONTRACTOR

CONTRACTOR represents that it has, or will secure, at its own expense, all personnel required in providing the coverage and related services under this Agreement. Such personnel shall not be employees of, nor have any contractual relationship with the CITY. CONTRACTOR, consistent with its status as an independent contractor, further agrees that its personnel will not hold themselves out as, nor claim to be officers or employees of the CITY by reason of this Agreement.

To the extent that CONTRACTOR employs any employees, CONTRACTOR shall be solely responsible for providing its own form of insurance for its employees and in no event shall CONTRACTOR's employees be covered under any policy of the CITY.

CONTRACTOR'S retention hereunder is not exclusive. Subject to the terms and provisions of this Agreement: (i) CONTRACTOR is able, during the Term hereof, to perform services for other parties; and (ii) CONTRACTOR may perform for its own account other professional services outside the scope of this Agreement.

CONTRACTOR is and shall be an Independent Contractor and shall be responsible for the management of its business affairs. In the provision of coverage and performance of the services under this Agreement, CONTRACTOR will at all times be acting and performing as an Independent Contractor, as that term is understood for federal and state law purposes, and not as an employee of the CITY. Without limitation upon the foregoing, CONTRACTOR shall not accrue sick leave, jury duty pay, retirement, insurance, bonding, welfare benefits, or any other benefits, which may or may not be afforded employees of the CITY. CONTRACTOR will not be treated as an employee for purposes of: Workers' Compensation benefits; the Federal Unemployment Tax Act; Social Security; other payroll taxes, federal or any state income tax withholding; or the employee benefit provisions described in the Internal Revenue Code of 1986, as amended. Neither the CITY, nor its agents or representatives, shall have the right to control or direct the manner, details or means by which CONTRACTOR accomplishes and performs its services. Nevertheless, CONTRACTOR shall be bound to fulfill the duties and responsibilities contained in the Agreement.

#### 15. NO JOINT VENTURE OR PARTNERSHIP

Nothing contained in this Agreement shall create any partnership, association, joint venture, fiduciary or agency relationship between CONTRACTOR and CITY. Except as otherwise specifically set forth herein, neither CONTRACTOR nor CITY shall be authorized or empowered to make any representation or commitment or to perform any act which shall be binding on the other unless expressly authorized or empowered in writing.

#### 16. ASSIGNMENT

CONTRACTOR shall provide coverage and perform all the services under this Agreement and shall not assign any interest in this Agreement or transfer any interest in same or assign any claims for money due or to become due under this Agreement without the prior written consent of the CITY.

Notwithstanding the foregoing restrictions, Contractor may assign the performance of certain duties to its affiliates without the City's prior written consent.

#### 17. INSURANCE

CONTRACTOR shall obtain and maintain insurance at its own cost and expense during the life of this Agreement, and shall require Subcontractors, if any, to maintain during the life of his subcontract:

- a. Professional Liability:       \$1,000,000 per claim

CONTRACTOR shall furnish the CITY with a certificate(s) of insurance showing CONTRACTOR and Subcontractors, if any, have complied with this Article. The CONTRACTOR shall provide insurance certificates before work is to start on the project and shall provide the CITY thirty (30) days written notification of cancellation of such policies.

#### 18. INDEMNITY AND LIMITATION

CONTRACTOR shall indemnify, defend, and hold harmless the CITY from and against any and all claims, suits, actions, judgments, demands, losses, costs, expenses, damages, and liability caused solely by, resulting solely from, or arising solely out of the negligent acts, errors, or omissions of CONTRACTOR, its officers, employees, agents, or representatives in the performance of SERVICES under this agreement.

#### 19. APPLICABLE LAW

This Agreement and the rights and obligations of the parties shall be governed by and construed by the laws of the State of New Mexico applicable to Agreements between New Mexico parties made and performed in that state, without regard to conflicts of law principles. Venue shall be in the Third Judicial District, State of New Mexico.

CONTRACTOR shall abide and be governed by all applicable state law, CITY ordinances, and laws regarding the CONTRACTOR'S services or any work done pursuant to this Agreement.



agreement. No prior agreement or understanding verbal or otherwise of the parties or their agents shall be valid or enforceable unless embodied in this agreement.

DELTA DENTAL OF NM

THE CITY OF LAS CRUCES

BY: \_\_\_\_\_  
PRINCIPAL

BY: \_\_\_\_\_  
PURCHASING MANAGER

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY ATTORNEY