City of Las Cruces®
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Council Action and Executive Summary

Item # 15 Ordinance/Resolution# 13-14-330B-1

For Meeting of _____ (Ordinance First Reading Date)

For Meeting of December 15, 2014 (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.

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

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

In November of 2013 the City Council approved a contract with Delta Dental of New Mexico (Delta) to become the City's sole fully insured dental insurance provider.

To ensure the best market position for employer sponsored benefits and cost effective municipal service, the City undertook an in-depth review of City sponsored offerings throughout the year. This study was undertaken in conjunction with Gallagher Benefits Services (GBS) and was comprised of an in-depth review of our expenditures compared to premiums shared by the City and its employees.

The results indicate that the best option for the City was to move from fully insured to self-insured status for dental benefits. The most significant change is reflected in Delta remaining as the City's third party administrator for dental benefits and the City building and maintaining reserves for related costs based on shared premiums.

Changing to a self-insured status will substantially decrease to amount paid to Delta. A revised contract is being recommended to Council.

(Continue on additional sheets as required)

SUPPORT INFORMATION:

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

SOURCE OF FUNDING:

Is this action already budgeted?			
	Yes	☒	See fund summary below
	No	☐	If No, then check one below:
	Budget Adjustment Attached	☐	Expense reallocated from: _____
		☐	Proposed funding is from a new revenue source (i.e. grant; see details below)
		☐	Proposed funding is from fund balance in the _____Fund.
Does this action create any revenue?			
	Yes	☐	Funds will be deposited into this fund: _____in the amount of $_____for FY__.
	No	☒	There is no new revenue generated by this action.

BUDGET NARRATIVE

There is no change to dental insurance premiums or the budget.

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

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 benefits to City employees.
2. Vote "No"; this will delay the implementation of employer sponsored dental 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 benefits for City employees and result in a gap in coverage for City employees.

(Continue on additional sheets as required)

REFERENCE INFORMATION:

N/A

(Continue on additional sheets as required)

RESOLUTION NO. 13-14-330B -1

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

The City Council is informed that:

WHEREAS, in November of 2013 the City Council approved a contract with Delta Dental of New Mexico (Delta) to become the City's sole fully insured dental insurance provider; and

WHEREAS, a study was undertaken in conjunction with Gallagher Benefits Services (GBS) and was comprised of an in-depth review of our expenditures compared to premiums shared by the City and its employees; and

WHEREAS, the results indicate that the best option for the City was to move from fully insured to self-insured status for dental benefits; and

WHEREAS, a revised contract is being recommended to Council as one of our available renewals.

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

(I)

THAT the service agreement with Delta Dental of New Mexico, Albuquerque, NM, attached hereto as Exhibit "B", is hereby approved.

(II)

THAT the Purchasing Manager is hereby authorized to contract with Delta Dental of New Mexico, Albuquerque, NM, as outlined in Exhibit "A", attached hereto.

(III)

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:

_____
Deputy City Attorney

Exhibit A

CITY OF LAS CRUCES

PURCHASING MANAGER'S REQUEST TO CONTRACT

For Meeting of: December 15, 2014

Resolution No. 13-14-330B

Existing Contract Purchase For Employee Dental Benefits

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

BID/RFP SOLICITATION INFORMATION:

1.	Original Bid/RFP & Due Date:	**RFP #13-14-330 / August 20, 2013**
2.	Description of Bid/RFP:	**Employee Dental Benefits**
3.	Number of Original Responses Accepted:	**One (1)**
4.	Existing Contract Expiration Date:	**December 31, 2014**
5.	Last Contract Renewal by Council:	**N/A**
6.	Using Department:	**Human Resources**
7.	Current Award Recommendation To:	**Delta Dental of NM**
8.	Total Award Amount (includes tax and contingency)	**TBD**
9.	Contract Duration:	**One (1) Year**

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 24-316.**

for Diana M. [signature] / 12/5/14
Purchasing Manager Date
Karen Medina

CONFIRMATION OF FUND ENCUMBRANCE:

REQUISITION OR PURCHASE ORDER NUMBER:	**TBD**

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DELTA DENTAL

PPONew Mexico

ADMINSTRATIVE SERVICES AGREEMENT

ARTICLE 1. DECLARATIONS

This Agreement is effective the 1st day of January, 2015, by and between City of Las Cruces, hereinafter referred to as the Plan Sponsor, and Delta Dental Plan of New Mexico, Inc., a New Mexico non-profit corporation, hereinafter referred to as Delta Dental. The benefits afforded are only with respect to such benefits as are indicated in this Agreement. Plan Sponsor's liability is limited to the benefits stated herein; subject to all the terms of this Agreement having reference thereto. This Declarations Article supersedes any contrary provision of the subsequent articles of this Agreement.

1.1. Effective Date of Agreement Term:

12:01 A.M. Standard Time, January 1, 2015

1.2. Renewal Date:

January 1, 2016

1.3. Group Number: 8548-0001, 1999

1.4. Fee(s)

Plan Sponsor will remit to Delta Dental the fees shown below or as amended:

A Delta Dental Administrative Services Fee of $3.80 per Primary Plan Participant per month

In addition to the Administrative Service Fee, Delta Dental shall invoice Plan Sponsor for the Cost of Claims for the preceding week every Tuesday. Payment shall be due via Electronic Funds Transfer on or before Friday of that week. These fees assume there is a 30-day grace period for the payment of fees.

1.5 Delta Dental agrees to accept self-billing of administrative fees provided that the Plan Sponsor agrees to an annual settlement of fees as follows: If payments for each 12-month period of the Agreement are less than 99% of the billed administrative fees based upon the eligibility submitted to Delta Dental by the Plan Sponsor, the Plan Sponsor will remit within 90 days of the end of each 12-month period the difference between the amount paid to date for the Agreement and the billed amount as calculated by Delta Dental.

Authorized Plan Sponsor Representative

Date

Sara Limón

Sara Limón, Chief Operating Officer

December 4, 2014

Date

ARTICLE 2. DEFINITIONS

2.1. Administrative Services Fee(s): the fees from the Plan Sponsor due to Delta Dental for Plan administration.

2.2. Administrative Services Agreement or Contract: this document (Articles 1 through 8), including attachments, and successor Agreements or renewals now or hereafter issued or executed.

2.3. COBRA: Title X of Consolidated Omnibus Budget Reconciliation Act (Public Law 99-272) as amended from time to time.

2.4. Contract Term: the period of time from the effective date shown in Article 1 to a specified cancellation or non-renewal date.

2.5. Covered Services: the unique dental services selected for benefits, and subject to the terms and conditions of this Agreement.

2.6. Delta Dental: Delta Dental of New Mexico or Delta Dental Plan of New Mexico, Inc.

2.7. Dental Benefit Handbook: the benefit booklet that may be provided by Delta Dental, which is not the complete Summary Plan Description provided to Plan Participants by the Plan Sponsor.

2.8. ERISA: Employee Retirement Income Security Act of 1974, as amended.

2.9. Group: the employer named on the Administrative Services application (implementation instructions).

2.10. HIPAA: the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.

2.11. Plan Administrator: the Group.

2.12. Plan Participant: an enrolled employee, enrolled dependent, COBRA-enrolled person, or other person who meets the conditions of eligibility outlined by the Plan Sponsor.

2.13. Plan Sponsor: the employer or employee organization that establishes or maintains the Dental Benefit Plan and with whom Delta Dental has this Agreement to provide administrative services related to the Plan.

2.14. Primary Plan Participant: an eligible employee or other person who meets the conditions of individual coverage eligibility outlined by the Plan Sponsor, whose completed enrollment information has been received and approved for coverage.

2.15. Spouse: the individual legally married to a Primary Plan Participant as determined and recognized by New Mexico state law.

ARTICLE 3. OBLIGATIONS OF PLAN SPONSOR

3.1. Plan Sponsor is solely responsible for funding the payment of benefits and expenses of the Plan.

3.2. Plan Sponsor will remit to Delta Dental the Administrative Services Fee(s) stated in Article 1, Declarations, on or before the 5th of month for the month which they were billed, in accordance with Delta Dental's billing statement. **The Plan Sponsor shall be allowed a grace period of thirty (30) days for Administrative Services Fee(s). Failure to pay within the grace period subjects the Contract to possible cancellation by Delta Dental under Article 6.8.** If the Plan Sponsor submits eligibility records in a HIPAA compliant 834 format, they will be used in the determination of the number of Primary Plan Participants for whom Administration Services Fees are due.

3.3. Plan Sponsor will fund claims by making a weekly electronic payment to Delta Dental on or before the Friday of each week for which they were billed, in accordance with Delta Dental's claim payment detail.

3.4. Unless otherwise negotiated by the Plan Sponsor, twelve months of claims run-out services will be provided.

3.5. If during the term of this Agreement, any new tax is imposed upon Delta Dental by any government agency on the amount of administrative and/or claims fees payable under this Agreement or the number of persons covered, Plan Sponsor agrees to the associated increase in fees. The change will be effective as of the date defined under the applicable tax law.

3.6. Any additional fees or services not specifically referenced herein shall be agreed upon in writing by Plan Sponsor and Delta Dental.

3.7. Plan Sponsor shall furnish to Delta Dental the eligibility provisions, dental Plan design, and dental benefits available to Plan Participants by providing Delta Dental with a copy of the dental benefits section of the Plan Document and Summary Plan Description (SPD), or Plan Sponsor shall verify its use of the Delta Dental handbook and/or the Summary of Dental Plan Benefits provided. The Plan Sponsor will provide Delta Dental with a written notice of any changes to the dental benefits section of the Plan Document or the SPD thirty (30) days prior to the date those changes are to become effective. Plan Sponsor acknowledges that Plan design is subject to Delta Dental management information system capabilities. Non-standard plan designs could be subject to an implementation fee.

3.8. Plan Sponsor will determine all eligibility, and manage enrollment, disenrollment, and COBRA obligations. Plan Participants are subject to the provisions of the Plan.

3.9. Notifications of newly eligible persons or enrollment changes must be submitted to Delta Dental within thirty-one (31) days from the date of the person's eligibility or change of status. The Plan Sponsor's failure to submit notifications within the time limit shall not void eligibility for claims payment under this agreement if it is shown it was not reasonably possible for the Plan Sponsor to submit within the thirty-one (31) day period. Retroactive terminations up to 24 months are accepted to allow Delta Dental eligibility records to match those maintained by the Plan. Claim and ASO fee credits are subject to a three (3) month maximum. Provider agreements restrict the time frame during which retroactive claim adjustments can be made.

3.10. Plan Sponsor shall be named the Plan Fiduciary and Plan Administrator and, as such, comply with all duties and responsibilities of a "plan administrator" and program fiduciary as defined and delineated in ERISA, as applicable.

3.11. Plan Sponsor shall be solely responsible for identifying persons entitled to COBRA continuation benefits. Plan Sponsor is responsible for the provision of all required notices in connection with the availability of such benefits, for billing and collecting any payments or contributions required by Plan Sponsor in connection with such benefits, and for otherwise administering all facets of its continuation program. Delta Dental and Plan Sponsor agree that Delta Dental is not a "Plan Administrator" as that term is used in federal laws governing the provision of continuation benefits. Persons availing themselves of continuation benefits through enrollment in Plan Sponsor's Plan shall be considered and treated by Delta Dental in a manner consistent with treatment of active employees of Plan Sponsor. Delta Dental shall assume no obligation with respect to such persons that is different from or in addition to its obligation to non-COBRA Plan Participants.

3.12. Plan Sponsor agrees that, as the Plan sponsor, it is responsible for complying with the Administrative Simplification Requirements of HIPAA, as amended from time to time, and the regulations promulgated thereunder, including the Standards for Privacy of Individually Identifiable Health Information, 45 CFR 160, 162 and 164 ("Privacy Rule"). Plan Sponsor is responsible for (i) implementing administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of electronic protected health information that it creates, receives, maintains, or transmits on behalf of Plan Sponsor's dental Plan; (ii) ensuring that requirements of section 164.504(f)(2)(iii) are supported by reasonable and appropriate security measures; (iii) ensuring that any agent, including a subcontractor, to whom it provides this information agrees to implement reasonable and appropriate security measures to protect the information; and (iv) reporting to Plan Sponsor's dental Plan any security incident of which it becomes aware.

ARTICLE 4. ELECTRONIC ENROLLMENT AND ELIGIBILITY (EEE)

4.1. If at the inception of this Agreement, or at any time subsequent to that, the Plan Sponsor requests to maintain eligibility records through the Delta Dental on-line tool/web based program, Benefit Manager Toolkit (BMT), or through any other electronic enrollment or eligibility format approved by Delta Dental, the following agreement applies. Delta Dental agrees:

4.1.1. To provide the Plan Sponsor with access to the Delta Dental eligibility records which are needed to manage the enrollment and eligibility maintenance of the dental Plan;

4.1.2. To provide EEE at no additional cost to the Plan Sponsor;

4.1.3. To provide the Plan Sponsor with initial EEE training that may be reasonably required prior to enabling EEE, and to accommodate any Plan Sponsor staff changes by providing access to reasonable subsequent training;

4.1.4. To provide the Plan Sponsor access which allows the capability to assign confidential log in and/or password IDs for each designated individual;

4.1.5. When applicable, to terminate individual website access to the Delta Dental eligibility system by the next business day following receipt of notification by the Plan Sponsor of the termination of any individual's EEE access authorization;

4.1.6. To provide, upon request, the Plan Sponsor with an annual (calendar year) schedule reflecting Delta Dental's billing cut off dates;

4.1.7. To generate and provide the Plan Sponsor with online access to monthly billing based on the enrollment and eligibility information provided by the Plan Sponsor through EEE;

4.1.8. To enable all eligibility verification and claims payment functions for the Plan Sponsor's enrolled members immediately upon the Plan Sponsor's entry/update of eligibility data.

4.2. The Plan Sponsor recognizes that EEE transfers the responsibility for maintenance of dental plan eligibility and enrollment to the Plan Sponsor and that all electronic entries are immediately "live" in the Delta Dental claims processing system. The Plan Sponsor agrees:

4.2.1. To designate the individual(s) who will be authorized by the Plan Sponsor to manage enrollment and eligibility maintenance for the dental plan and to notify Delta Dental by the next business day following the termination of the employment or EEE authorization for said individual(s);

4.2.2. To require that individuals authorized for EEE access will receive training from either Delta Dental or an employee at the Plan Sponsor who has previously received EEE training;

4.2.3. To establish a policy and procedure for the security of EEE login and password IDs provided by Delta Dental;

4.2.4. To follow the eligibility guidelines specified by the Plan Sponsor and approved by Delta Dental;

4.2.5. To enter enrollment and eligibility updates on a timely basis as defined by the Delta Dental billing cut off cycles;

4.2.6. That every reasonable effort will be made to ensure the accuracy of the enrollment and eligibility data transmitted;

4.2.7. To protect and preserve the confidentiality of enrollment and eligibility information provided in the Plan Sponsor's on-site dental plan records, including but not limited to enrollment documentation that could include court orders, divorce or other personal records needed to administer eligibility;

4.2.8. That information, if any, which is of a proprietary nature and required solely for EEE documentation will not be released to any other party without the express written consent of Delta Dental or the individual/guardian to which the documentation refers;

4.3. Delta Dental provides no guarantees as to the future availability of the Plan Sponsor's EEE access and retains the right to cancel, without advance notice, EEE access if enrollment fraud or abuse is determined.

4.4. The Plan Sponsor authorizes Delta Dental to recover from enrollees, on behalf of the Plan, any claims payments based on inaccurate enrollment or eligibility information provided by the Plan Sponsor that would not have been made in the absence of incorrect data entry.

ARTICLE 5. OBLIGATIONS OF DELTA DENTAL

5.1. Delta Dental shall provide administration for enrollees covered under the Plan Sponsor's dental Plan including:

5.1.1. for all claims incurred and paid during the term of this Agreement, determination of benefit payments in accordance with (a) the provisions of the Summary of Dental Plan Benefits and the Dental Benefit Handbook described in Attachment 1 and Attachment 2, respectively, which are included herein by reference, and (b) specific information regarding Plan Participants' dental history and claims processing history in Delta Dental possession;

5.1.2. provision of an established network of participating dentists who have agreed to Delta Dental Maximum Approved Fees for covered dental services provided to Plan Participants and who agree to charge the Plan Participant only the patient deductible, copayment, non-covered services and tax, as applicable. Delta Dental requires participating dentists to adhere to Delta Dental credentialing and claims processing policies.

5.1.3. issuance of benefit payments to: a) Delta Dental participating providers who perform covered services for Plan Participants, or b) Plan Participant or other designated payees when non-participating providers perform covered dental services, in the form of checks which Delta Dental shall mail directly to payees;

5.1.4. if requested by the Plan Sponsor, Delta Dental will make available a Dental Benefit Handbook to each Primary Plan Participant when initially enrolled as shown in Article 8, Attachment 2. Handbooks requiring customization may be subject to separate fees.

5.1.5. make available an Explanation of Benefits (EOBs) to dentists and Plan Participants;

5.1.6. provision of customer service representatives for Plan Participants and their dentists to address inquiries or complaints, eligibility, Plan interpretation, claims, benefits and other matters relevant to the administration of the Plan. These representatives shall have access to online eligibility and Plan design parameters as well as specific information regarding dental history and claims processing information;

5.1.7. dental, peer review, clinical review and other professional expertise necessary to properly adjudicate claims;

5.2. Delta Dental will select and maintain the bank account to which Plan Sponsor will direct payment of Administrative Fees and claims payments.

5.3. Delta Dental will provide Plan Sponsor a weekly claims payment report and a weekly claims summary report of claims paid on behalf of the Plan. Plan Sponsor will reimburse Delta Dental for benefit claims paid as stated in Article 3.2 of this Agreement.

5.4. Delta Dental will provide periodic reports to Plan Sponsor at a mutually agreeable frequency. Samples of standard reports are provided in Attachment 4. Delta Dental may charge for production of non-standard reports as agreed to in advance by Plan Sponsor.

5.5. Delta Dental will maintain acceptable practices to prevent payment of fraudulent or non-valid claims.

5.6. In the event Delta Dental inadvertently overpays a benefit, then Delta Dental will attempt to recover the overpayment from the patient or dentist. Attempts may include a deduction from future benefit amounts payable on any covered family member.

5.7. Upon discovery of clerical errors or delays receiving enrollment data, Administrative Services Fees will be adjusted retroactively up to a maximum of three (3) months.

5.8. Delta Dental will be the "appropriate named fiduciary" of the Plan for purposes of denial and/or review of denied claims under the Plan. In exercising its fiduciary responsibility, Delta Dental will have discretionary authority to verify eligibility for coverage, to determine the amount of benefits for each claim received and to construe the terms of the Plan. Delta Dental's decision on any claim will be final.

ARTICLE 6. AMENDMENT, RENEWAL, OR TERMINATION

6.1. The Plan Sponsor's payment of the first month's fees for Delta Dental administration following the effective date of any fee anniversary adjustment by Delta Dental will constitute the Plan Sponsor's renewal of this Agreement for the period to which the new fees applied.

6.2. Unless non-renewed or cancelled by the Plan Sponsor, this Agreement shall continue in effect until cancelled by Delta Dental.

6.3. Delta Dental may change the fee referred to in Article 1.4 at the renewal date (Article 1.2) with a minimum of one hundred and twenty (120) day written notice to the Plan Sponsor of the proposed fee change. Fee changes imposed by Delta Dental will not be made more frequently than once every 36 months except as noted in 6.4, 6.5 and 6.6.

6.4. Any mutually agreed upon fee change related to a change in the services being provided by Delta Dental will be effective on a mutually agreeable date.

6.5. If during the term of this Agreement, there is a significant change in the benefit design or the number of Primary Plan Participants for whom benefits are being administered, Delta Dental fees may be adjusted. In the event a fee change is necessary, a minimum of ninety (90) day written notice will be given to the Plan Sponsor.

6.6. If during the Contract Term, any new tax is imposed on Delta Dental by any government agency on the amount of fees or the rate of an existing tax, Delta Dental fees will be increased by the amount of such new tax or increased taxes.

6.7. If Delta Dental intends to terminate this Agreement, Delta Dental will give Plan Sponsor a ninety (90) day written notice of cancellation.

6.8. In the event payments described in Articles 3.1 and 3.2 are not paid by Plan Sponsor when due, Delta Dental may give written notice that payment is due and, if such payment is not received ten (10) calendar days thereafter, Delta Dental may, at its option, terminate all further administrative services and be released from all further obligations hereunder. Cancellation of this Agreement is effective on the last date for which payments are received.

6.9. If this Agreement is canceled for any cause, Delta Dental is not required to authorize payment for services incurred or submitted for a payment date which will occur beyond the Agreement cancellation date, or for

any service date for which Plan Sponsor payments have not been received by Delta Dental. Administrative fees and services for run-out claims shall be negotiated at the time of cancellation if Plan Sponsor desires such services.

6.10. If Delta Dental cancels this Agreement due to non-payment of administrative fees or claim reimbursements, Delta Dental reserves the right to approve or deny reinstatement of service upon receipt of past-due payment.

6.11. If this Agreement is canceled by Delta Dental for any cause, Plan Sponsor will be liable for any unpaid Administrative Fees or claims reimbursement owed on the date this Agreement is canceled.

6.12. If Plan Sponsor intends to change benefits, administration of benefits or terms of this Agreement to be effective at the beginning of a new benefit year, Plan Sponsor will give Delta Dental a ninety (90) day advance written notice.

6.13. If Plan Sponsor cancels this Agreement for any cause, Plan Sponsor will give Delta Dental a ninety (90) day advance written notice.

6.14. If Plan Sponsor cancels this Agreement for any cause, Plan Sponsor will be liable for any unpaid Administrative Fees or claims reimbursement due through the effective date of the cancellation.

6.15. Plan Sponsor will give notice to Plan Participants of Agreement termination.

6.16. Delta Dental reserves the right to terminate this Agreement for fraud or if the Plan Sponsor ceases to be domiciled or headquartered in New Mexico or a viable business entity operating within the scope of its license and charter, including but not limited to closing the business, selling the business, or bankruptcy, by giving the Plan Sponsor thirty (30) days written notice.

ARTICLE 7. GENERAL PROVISIONS

7.1. Entire Agreement. This Agreement, including the attachments listed in Article 8, is the entire Agreement between the parties. No agent has the authority to change this Agreement or waive any of its provisions. This Agreement shall be subject to amendment or modification by mutual written Agreement between Delta Dental and Plan Sponsor.

7.2. Arbitration. Any disputes arising out of or relating to this Agreement or its breach will be settled by arbitration under the Commercial Arbitration Rules of the American Arbitration Association. Giving notice to each other party to the dispute starts arbitration. Two (2) copies of the notice must be filed with the Association. The Association will provide copies of its Rules.

7.3. Severability. If any part of this Agreement or an amendment of it is found by an arbitrator, court, or other authority to be illegal, void, or not enforceable, all other portions of this Agreement shall remain in full force and effect.

7.4. Conformity with State Laws. The laws of the State of New Mexico, where this Agreement was entered into and is to be performed, shall govern all legal questions about this Agreement. Any part of this Agreement which, on its effective date, conflicts with the laws of New Mexico is hereby amended to conform to the minimum requirements of such laws.

7.5. Legal Actions. No action at law or in equity shall be brought to recover on this Agreement before sixty (60) days after proof of loss has been filed in accordance with requirements of this Agreement, nor shall an action be brought at all unless brought within three (3) years from expiration of the time within which proof of loss is required by this Agreement.

7.6. Publications About Plan. Plan Sponsor and Delta Dental agree to consult concerning all material published or distributed relating to this Agreement. No such material shall be published or distributed which is contrary to the terms of this Agreement. Plan Sponsor agrees to obtain prior approval from Delta Dental for use of its name and/or logo when identifying Delta Dental's services, networks and products.

7.7. Notice. All formal notice under this Agreement must be in writing and sent by first-class United States mail, overnight delivery service, or personal delivery. Notice by United States mail will be effective forty-eight (48) hours after mailing with fully prepaid postage. Notices shall be sent to the addressee party at the following address:

If to Plan Sponsor:
Karen Medina
Purchasing
City of Las Cruces
700 N. Main St. Suite 2200
Las Cruces, NM 88001

If to Delta Dental:
Sara Limón
Chief Operating Officer
Delta Dental Plan of New Mexico, Inc.
2500 Louisiana Boulevard N.E., Suite 600
Albuquerque, New Mexico 87110

7.8. Reliance on Plan Sponsor's Data. Delta Dental's performance of services pursuant to this Agreement is dependent upon Plan Sponsor's submission of timely, accurate and complete information as required by Delta Dental. Plan Sponsor agrees to furnish such information. Plan Sponsor understands that failure to submit such information accurately and completely to Delta Dental within any requested time frames may delay or prevent access to the services provided pursuant to this Agreement. Plan Sponsor agrees that Delta Dental may rely on such information in performing its services pursuant to this Agreement and that Plan Sponsor is solely responsible for its accuracy. Delta Dental may use data provided by Plan Sponsor for statistical, reporting or other related commercial purposes in a manner that will not disclose the identity or any other confidential information of any person.

7.9. Limitation of Services. Plan Sponsor agrees that: (a) Delta Dental does not provide, direct or control the provision of medical/dental services to Plan Participants; (b) the provision of contracted provider information in any medium by Delta Dental is not the provision of medical/dental diagnostic or treatment services, medical/dental advice or health advice; (c) all decisions regarding medical/dental services are made solely by the Plan Participant and the practitioner rendering medical/dental services to a Plan Participant and the results thereof are solely within the control of the provider of such medical/dental services and the Plan Participant(s); and (d) execution of this Agreement and the performance of its obligations does not constitute an undertaking by Delta Dental to render any medical/dental services, or to assume or guarantee the results thereof to Plan Participants, or to guarantee that medical/dental services will be rendered in accordance with generally accepted standards or procedures.

7.10. Subrogation. The Plan Sponsor shall retain all subrogation rights resulting from claims paid by Delta Dental. In the event the Plan Sponsor elects to pursue a subrogation matter, Delta Dental shall provide reasonable assistance to the Plan Sponsor. Such assistance shall be limited to providing the Plan Sponsor with documents, records and demand letters.

7.11. Change of Law. If, based on the issuance of a ruling, order, interpretation or determination by a court or government agency or the promulgation or the taking effect of a law, regulation, or amendment to the same, Delta Dental, in good faith, determines that in order to comply with such changes in law, it will be necessary to increase the fees for services set forth in Article 1, or otherwise pursuant to this Agreement or the arrangements contemplated herein, then Delta Dental agrees to provide ninety (90) days notice of the effective date of such fee revision and to substantiate the request with any pertinent documents and records of Delta Dental related to the proposed change.

7.12. Assignment and Delegation. Delta Dental may delegate, in whole or in part, its rights or duties under its various administrative or provider service Contracts with Plan Sponsor provided that such delegation will not relieve Delta Dental of any liability for its obligations under this Agreement.

7.13. Independent Contractors. In performing services under this Agreement, Delta Dental performs all acts as an independent Contractor and not as an officer, employee or agent of Plan Sponsor or any plan administrators (if other than Plan Sponsor) or specific benefit plan. Nothing in this Agreement shall be construed to mean that Plan Sponsor retains any control over the manner and means of how Delta Dental performs the services contracted for herein, but only a right to review the results of the work performed. Delta Dental does not assume any responsibility for any act, omission or breach by a fiduciary or for the adequacy of funding of the benefit plan, and Delta Dental is not, and shall not, be deemed to be an insurer, underwriter or guarantor with respect to any benefits payable under any such benefit plan.

7.14. No Third-Party Beneficiaries. This Agreement is entered into by and between the Parties hereto solely for their benefit. The Parties have not created or established any third-party beneficiary status or rights in any person or entity not a party hereto including, but not limited to, any client, Plan Participant, provider, subcontractor or other third-party, and no such third-party will have any right to enforce any right or enjoy any benefit created or established under this Agreement.

ARTICLE 8. ATTACHMENTS

8.1. These documents are attached to this Contract and made a part of it:

Attachment 1: Summary of Benefits

Attachment 2: Dental Benefit Handbook

Attachment 3: Business Associate Agreement

Attachment 4: Standard Report Samples

Delta Dental of New Mexico
2500 Louisiana Blvd NE Suite 600
Albuquerque, NM 87110
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