

**CITY OF SAN ANTONIO  
INTERDEPARTMENTAL MEMORANDUM  
SAN ANTONIO METROPOLITAN HEALTH DISTRICT**

**TO:** Mayor and City Council

**FROM:** Fernando A. Guerra, M.D., M.P.H., Director of Health

**THROUGH:** Terry M. Brechtel, City Manager

**COPIES:** Frances A. Gonzalez, Assistant to the City Manager; City Attorney's Office; Office of Management and Budget; Finance Department; Project; File

**SUBJECT:** ORDINANCE ACCEPTING FUNDS FROM THE TEXAS DEPARTMENT OF HEALTH

**DATE:** October 9, 2003

**SUMMARY AND RECOMMENDATIONS**

This ordinance authorizes the City Manager to accept contract funding support up to \$5,465,482.00 from the Texas Department of Health (TDH) for the ongoing Special Supplemental Nutrition Program for Women, Infants & Children (WIC Program) in the San Antonio Metropolitan Health District (SAMHD) for the period October 1, 2003 through September 30, 2004. This ordinance further authorizes the execution of Contract Change Notice No. 10 to the contract with TDH, establishes a fund for the WIC Program, adopts the program budget, approves the personnel complement, authorizes the execution of a subcontract with Lactation Connection, Inc., and approves payments for contractual services and existing WIC clinic leases.

Staff recommends approval.

**BACKGROUND INFORMATION**

The City Manager was authorized to execute the Public Health State Support Project 2003/2004 contract with TDH through an ordinance passed and approved on February 6, 2003. This contract, including nine (9) contract amendments that were approved in previous ordinances, currently provides \$1,299,849.00 in cash support. TDH has now offered another contract amendment that will furnish up to \$5,465,482.00 in funding support to renew the WIC Program in the SAMHD. This program provides nutritious foods and nutrition education to qualified pregnant, breastfeeding or postpartum women along with infants and children less than five years of age. The program currently serves approximately 48,000 participants each month.

The funding of \$5,465,482.00 for the WIC Program is \$246,501.00 more than last year's amount of \$5,218,981.00 due to a small increase budgeted for staff salaries and increased rental cost for leased facilities. The proposed personnel complement for this activity, one hundred thirty-two (132) positions, has not changed from the current year.

Part of the funds provided by TDH for the WIC Program supports a contract in the amount of \$15,000.00 for a certified lactation consultant. This person will provide up-to-date training to WIC staff on breastfeeding and will be available to assist WIC mothers who are experiencing difficulties in breastfeeding their infants.

### **POLICY ANALYSIS**

Acceptance of this grant from TDH will continue the long-standing practice of utilizing Federal and State aid to support the local public health programs of the City.

### **FISCAL IMPACT**

This fee-for-service contract amendment will provide up to \$5,465,482.00 in support from the TDH to the SAMHD. It is classified as "contract" support because reimbursement will be based on a contract rate of \$9.00 per participant served each month payable on a fee-for-service basis. This additional funding brings the total cash support to \$1,299,849.00 and the contract support to \$5,465,482.00 for the Public Health State Support Project 2003/2004 contract with TDH (Grand Total: \$6,765,331.00).

This grant supports the existing WIC Program leases (approved in previous ordinances) listed below for the period October 1, 2003 through September 30, 2004:

<b><u>Clinic Lease</u></b>	<b><u>Address</u></b>	<b><u>Amount</u></b>
Callaghan	4412 Callaghan Rd.	\$60,000.00
Fredericksburg Road	3600 Fredericksburg Rd	\$63,360.00
Sam Houston Center	1013 Rittiman Rd.	\$48,000.00
Marbach	7542 Military Drive West	\$53,760.00
Southeast	3630 Southeast Military Drive	\$11,475.00
South Flores	6723 S. Flores, Suite #101	\$74,925.00
Thousand Oaks	4346 Thousand Oaks	\$53,400.00

Acceptance of this contract amendment will place no demands on the City General Fund.

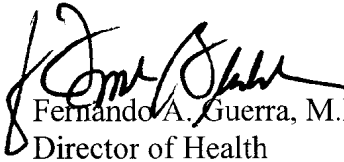
### **COORDINATION**

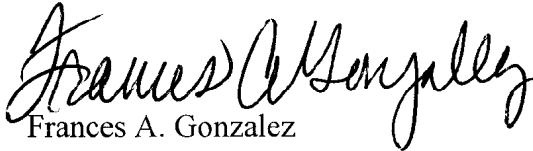
The City Attorney's Office and the Office of Management and Budget, Risk Management Division, have reviewed and approved the contract with TDH and the contract of the lactation consultant. The Finance Department has approved the proposed budget.

## SUPPLEMENTARY COMMENTS

The required Discretionary Contracts Disclosure forms are attached for the buildings leased by the WIC Program and for the certified lactation consultant, Ms. Kathy Parkes.

Attachments: Discretionary Contracts Disclosure Form – Callaghan Clinic  
Discretionary Contracts Disclosure Form – Fredericksburg Clinic  
Discretionary Contracts Disclosure Form – Sam Houston Center Clinic  
Discretionary Contracts Disclosure Form – Marbach Clinic  
Discretionary Contracts Disclosure Form – Southeast Clinic  
Discretionary Contracts Disclosure Form – South Flores Clinic  
Discretionary Contracts Disclosure Form – Thousand Oaks Clinic  
Discretionary Contracts Disclosure Form – Ms. Kathy Parkes  
Attachment I: Program Budget and Personnel Complement  
Attachment II: TDH Contract Change Notice No. 10  
Attachment III: Consultant Services Contract

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

  
Frances A. Gonzalez  
Assistant to the City Manager

APPROVED BY:

  
Terry M. Brechtel  
City Manager

CALLAGHAN CLINIC  
4412 CALLAGHAN  
SAN ANTONIO TX 78228

City of San Antonio  
**Discretionary Contracts Disclosure**  
For use of this form, see City of San Antonio Ethics Code, Part D, Section 1&2  
Attach additional sheets if space provided is not sufficient

ATTN: Yolanda

**Disclosure of Parties, Owners, and Closely Related Persons**

For the purpose of assisting the city in the enforcement of provisions contained in the City Charter and the code of ethics, an individual or business entity seeking a discretionary contract from the city is required to disclose in connection with a proposal for a discretionary contract:

(1) the identity of any individual who would be a party to the discretionary contract;

NONE

(2) the identity of any business entity that would be a party to the discretionary contract;

and the name of:

(A) any individual or business entity that would be a subcontractor on the discretionary contract;

NONE

(B) any individual or business entity that is known to be a partner, or a parent or subsidiary business entity, of any individual or business entity who would be a party to the discretionary contract;

NONE

(3) the identity of any lobbyist or public relations firm employed for purposes relating to the discretionary contract being sought by any individual or business entity who would be a party to the discretionary contract.

NONE

**Political Contributions**

Any individual or business entity seeking a discretionary contract from the city must disclose in connection with a proposal for a discretionary contract all political contributions totaling one hundred dollars (\$100) or more within the past twenty-four (24) months made directly or indirectly to any member of City Council, or to any political action committee that contributes to City Council elections, by any individual or business entity whose identity must be disclosed under (1), (2) or (3) above. Indirect contributions by an entity include, but are not limited to, contributions made through the officers, owners, or registered lobbyists of the entity.

To Whom Made:	Amount:	Date of Contribution:
NONE		

**City of San Antonio**  
**Discretionary Contracts Disclosure**  
*For use of this form, see City of San Antonio Ethics Code, Part D, Section 1&2*  
*Attach additional sheets if space provided is not sufficient*

**Disclosures in Proposals**

Any individual or business entity seeking a discretionary contract with the city shall disclose any known facts which, reasonably understood, raise a question<sup>1</sup> as to whether any city official would violate Section 1 of Part B by participating in official action relating to the discretionary contract.

Signature: <i>Michel Shapiro</i>	Title: <i>President</i> Company: <i>Callaghan Sq.</i>	Date: <i>09/04/2002</i>

<sup>1</sup> For purposes of this rule, facts are "reasonably understood" to "raise a question" about the appropriateness of official action if a disinterested person would conclude that the facts, if true, require recusal or require careful consideration of whether or not recusal is required.

FREDERICKSBURG CLINIC  
3600 FREDERICKSBURG RD.  
SAN ANTONIO TX 78201

City of San Antonio  
Discretionary Contracts Disclosure

For use of this form, see City of San Antonio Ethics Code, Part D, Section 1 & 2  
Attach additional sheets if space provided is not sufficient

**Disclosure of Parties, Owners, and Closely Related Persons**

For the purpose of assisting the city in the enforcement of provisions contained in the City Charter and the code of ethics, an individual or business entity seeking a discretionary contract from the city is required to disclose in connection with a proposal for a discretionary contract:

- (1) the identity of any individual who would be a party to the discretionary contract;

--

- (2) the identity of any business entity that would be a party to the discretionary contract:

S&S Shopping Centers, Ltd. and the name of:

- (A) any individual or business entity that would be a subcontractor on the discretionary contract;

--

- (B) any individual or business entity that is known to be a partner, or a parent or subsidiary business entity, of any individual or business entity who would be a party to the discretionary contract;

--

- (3) the identity of any lobbyist or public relations firm employed for purposes relating to the discretionary contract being sought by any individual or business entity who would be a party to the discretionary contract.

Partners are:  
Stanley Spiegel, Barbara Spiegel, Stuart Spiegel,  
Julie Rose, Spiegel Properties, Inc.

**Political Contributions**

Any individual or business entity seeking a discretionary contract from the city must disclose in connection with a proposal for a discretionary contract all political contributions totaling one hundred dollars (\$100) or more within the past twenty-four (24) months made directly or indirectly to any member of City Council, or to any political action committee that contributes to City Council elections, by any individual or business entity whose identity must be disclosed under (1), (2) or (3) above. Indirect contributions by an entity include, but are not limited to, contributions made through the officers, owners, or registered lobbyists of the entity.

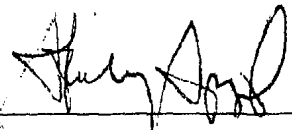
To Whom Made: Ed Garza Tony Sanchez	Amount: 200.00 1000.00	Date of Contribution: 5-6-02 6-26-02
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**City of San Antonio**  
**Discretionary Contracts Disclosure**

*For use of this form, see City of San Antonio Ethics Code, Part D, Section 1 & 2  
Attach additional sheets if space provided is not sufficient*

**Disclosures in Proposals**

Any individual or business entity seeking a discretionary contract with the city shall disclose any known facts which, reasonably understood, raise a question<sup>1</sup> as to whether any city official would violate Section 1 of Part B by participating in official action relating to the discretionary contract.

<b>Signature:</b> 	<b>Title:</b> PRESIDENT SPICE PROPERTIES INC. <b>Company:</b> General Partner S&S SHOPPING CENTERS, LTD.	<b>Date:</b> 8-30-02

<sup>1</sup> For purposes of this rule, facts are "reasonably understood" to "raise a question" about the appropriateness of official action if a disinterested person would conclude that the facts, if true, require recusal or require careful consideration of whether or not recusal is required.

RITTIMAN CLINIC  
1013 RITTIMAN ROAD  
SAN ANTONIO TX 78218

City of San Antonio  
Discretionary Contracts Disclosure

For use of this form, see City of San Antonio Ethics Code, Part D, Section 14.2  
Attach additional sheets if space provided is not sufficient

**Disclosure of Parties, Owners, and Closely Related Persons**

For the purpose of assisting the city in the enforcement of provisions contained in the City Charter and the code of ethics, an individual or business entity seeking a discretionary contract from the city is required to disclose in connection with a proposal for a discretionary contract:

(1) the identity of any individual who would be a party to the discretionary contract;

Sam Houston Shopping Center

(2) the identity of any business entity that would be a party to the discretionary contract;

Sam Houston Shopping Center

and the name of:

(A) any individual or business entity that would be a subcontractor on the discretionary contract;

None

(B) any individual or business entity that is known to be a partner, or a parent or subsidiary business entity, of any individual or business entity who would be a party to the discretionary contract;

none

(3) the identity of any lobbyist or public relations firm employed for purposes relating to the discretionary contract being sought by any individual or business entity who would be a party to the discretionary contract.

none

**Political Contributions**

Any individual or business entity seeking a discretionary contract from the city must disclose in connection with a proposal for a discretionary contract all political contributions totaling one hundred dollars (\$100) or more within the past twenty-four (24) months made directly or indirectly to any member of City Council, or to any political action committee that contributes to City Council elections, by any individual or business entity whose identity must be disclosed under (1), (2) or (3) above. Indirect contributions by an entity include, but are not limited to, contributions made through the officers, owners, or registered lobbyists of the entity.

To Whom Made:	Amount:	Date of Contribution:
None		

City of San Antonio  
Discretionary Contracts Disclosure

For use of this form, see City of San Antonio Ethics Code, Part D, Section 1 & 2  
Attach additional sheets if space provided is not sufficient

**Disclosures in Proposals**

Any individual or business entity seeking a discretionary contract with the city shall disclose any known facts which, reasonably understood, raise a question<sup>1</sup> as to whether any city official would violate Section 1 of Part B by participating in official action relating to the discretionary contract.

Signature: <i>Michelle Fontenot</i>	Title: <i>Property Manager</i> Company: <i>Brian Brady Company, Inc.</i>	Date: <i>9/4/02</i>

<sup>1</sup> For purposes of this rule, facts are "reasonably understood" to "raise a question" about the appropriateness of official action if a disinterested person would conclude that the facts, if true, require recusal or require careful consideration of whether or not recusal is required.

**City of San Antonio  
Discretionary Contracts Disclosure**

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Attach additional sheets if space provided is not sufficient*

**Disclosure of Parties, Owners, and Closely Related Persons**

For the purpose of assisting the city in the enforcement of provisions contained in the City Charter and the code of ethics, an individual or business entity seeking a discretionary contract from the city is required to disclose in connection with a proposal for a discretionary contract:

(1) the identity of any individual who would be a party to the discretionary contract;

Bradley J. Parman; Bryan Parman; Stanley Rosenberg & Jane P. Super

(2) the identity of any business entity that would be a party to the discretionary contract: Marbach/Kedland Partners, LTD.  
Marbach Investments, Inc. and the name of:

(A) any individual or business entity that would be a subcontractor on the discretionary contract;

None

(B) any individual or business entity that is known to be a partner, or a parent or subsidiary business entity, of any individual or business entity who would be a party to the discretionary contract:

Bradley J. Parman; Bryan Parman; Stanley Rosenberg; Jane P. Super; Jane P. Super, Inc.; Marbach Investments, Inc.; Manchester Financial Partners, LTD.; Marbach/Kedland Partners, LTD.

(3) the identity of any lobbyist or public relations firm employed for purposes relating to the discretionary contract being sought by any individual or business entity who would be a party to the discretionary contract.

None

**Political Contributions**

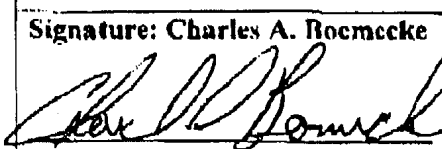
Any individual or business entity seeking a discretionary contract from the city must disclose in connection with a proposal for a discretionary contract all political contributions totaling one hundred dollars (\$100) or more within the past twenty-four (24) months made directly or indirectly to any member of City Council, or to any political action committee that contributes to City Council elections, by any individual or business entity whose identity must be disclosed under (1), (2) or (3) above. Indirect contributions by an entity include, but are not limited to, contributions made through the officers, owners, or registered lobbyists of the entity.

To Whom Made:	Amount:	Date of Contribution:
Banwolf for Mayor	\$500.00	10/27/00
Ed Garza Campaign	\$1,000.00	10/15/00
Ed Garza Campaign	\$1,000.00	12/15/00

**City of San Antonio**  
**Discretionary Contracts Disclosure**  
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*Attach additional sheets if space provided is not sufficient*

**Disclosures in Proposals**

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Signature: Charles A. Boemecke 	Title: Agent  Company: Marbach/Redland Partners, Ltd. By: Charles A. Boemecke	Date: 9/5/02

<sup>1</sup> For purposes of this rule, facts are "reasonably understood" to "raise a question" about the appropriateness of official action if a disinterested person would conclude that the facts, if true, require recusal or require careful consideration of whether or not recusal is required.

SOUTHEAST CLINIC  
3630 S.E. MILITARY DR.  
SAN ANTONIO TX 78223

City of San Antonio  
**Discretionary Contracts Disclosure**

For use of this form, see City of San Antonio Ethics Code, Part D, Section 1&2  
Enough additional sheets if space provided is not sufficient

**Disclosure of Parties, Owners, and Closely Related Persons**

For the purpose of assisting the city in the enforcement of provisions contained in the City Charter and the code of ethics, an individual or business entity seeking a discretionary contract from the city is required to disclose in connection with a proposal for a discretionary contract:

(1) the identity of any individual who would be a party to the discretionary contract;

Carol Kote PO BOX 6053 Moraga Calif 94570-6053
--

(2) the identity of any business entity that would be a party to the discretionary contract

None

and the name of:

(A) any individual or business entity that would be a subcontractor on the discretionary contract;

None
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(B) any individual or business entity that is known to be a partner, or a parent or subsidiary business entity, of any individual or business entity who would be a party to the discretionary contract;

None
------

(3) the identity of any lobbyist or public relations firm employed for purposes relating to the discretionary contract being sought by any individual or business entity who would be a party to the discretionary contract

None
------

**Political Contributions**

Any individual or business entity seeking a discretionary contract from the city must disclose in connection with a proposal for a discretionary contract all political contributions totaling one hundred dollars (\$100) or more within the past twenty-four (24) months made directly or indirectly to any member of City Council, or to any political action committee that contributes to City Council elections, by any individual or business entity whose identity must be disclosed under (1), (2) or (3) above. Indirect contributions by an entity include, but are not limited to, contributions made through the officers, owners, or registered lobbyists of the entity.

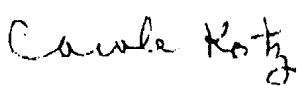
To Whom Made:	Amount:	Date of Contribution:
None		

**City of San Antonio  
Discretionary Contracts Disclosure**

*For use of this form, see City of San Antonio Ethics Code, Part D, Section 14.2  
Attach additional sheets if space provided is not sufficient*

**Disclosures in Proposals**

Any individual or business entity seeking a discretionary contract with the city shall disclose any known facts which, reasonably understood, raise a question<sup>1</sup> as to whether any city official would violate Section 1 of Part D by participating in official action relating to the discretionary contract.

<b>Signature:</b> 	<b>Title:</b> Owner <b>Company:</b>	<b>Date:</b> 9-2-02

<sup>1</sup> For purposes of this rule, facts are "reasonably understood" to "raise a question" about the appropriateness of official action if a disinterested person would conclude that the facts, if true, require recusal or require careful consideration of whether or not recusal is required.

**City of San Antonio**  
**Discretionary Contracts Disclosure\***

*For use of this form, see City of San Antonio Ethics Code, Part D, Sections 1&2  
Attach additional sheets if space provided is not sufficient.  
State "Not Applicable" for questions that do not apply.*

*\* This form is required to be supplemented in the event there is any change in the information under (1), (2), or (3) below, before the discretionary contract is the subject of council action, and no later than five (5) business days after any change about which information is required to be filed.*

**Disclosure of Parties, Owners, and Closely Related Persons**

For the purpose of assisting the City in the enforcement of provisions contained in the City Charter and the Code of Ethics, an individual or business entity seeking a discretionary contract from the City is required to disclose in connection with a proposal for a discretionary contract:

(1) the identity of any **individual** who would be a party to the discretionary contract:

Capital Foresight Limited Partnership, a Nevada Limited Partnership  
c/o: D. B. Harrell Co.  
801 N. St. Mary's St.  
San Antonio, TX 78205

(2) the identity of any **business entity** that would be a party to the discretionary contract:

D. B. Harrell Co.  
801 N. St. Mary's St.  
San Antonio, TX 78205

and the name of:

(A) any individual or business entity that would be a **subcontractor** on the discretionary contract;

None

and the name of:

(B) any individual or business entity that is known to be a **partner**, or a **parent** or **subsidiary** business entity, of any individual or business entity who would be a party to the discretionary contract;

None

<sup>1</sup> A **business entity** means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, unincorporated association, or any other entity recognized by law.

- (3) the identity of any *lobbyist* or *public relations firm* employed for purposes relating to the discretionary contract being sought by any individual or business entity who would be a party to the discretionary contract.

None

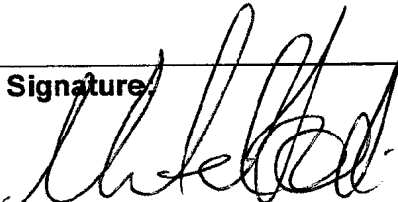
#### Political Contributions

Any individual or business entity seeking a discretionary contract from the city must disclose in connection with a proposal for a discretionary contract all political contributions totaling one hundred dollars (\$100) or more within the past twenty-four (24) months made directly or indirectly to any *current* or *former member* of City Council, any *candidate* for City Council, or to any *political action committee* that contributes to City Council elections, by any individual or business entity whose identity must be disclosed under (1), (2) or (3) above. Indirect contributions by an individual include, but are not limited to, contributions made by the individual's spouse, whether statutory or common-law. Indirect contributions by an entity include, but are not limited to, contributions made through the officers, owners, attorneys, or registered lobbyists of the entity.

To Whom Made:	Amount:	Date of Contribution:
None		

#### Disclosures in Proposals

Any individual or business entity seeking a discretionary contract with the city shall disclose any known facts which, reasonably understood, raise a question<sup>2</sup> as to whether any city official or employee would violate Section 1 of Part B, Improper Economic Benefit, by participating in official action relating to the discretionary contract.

None		
Signature: 	Title: General Partner Company: Capital Foresight Limited Partnership	Date: 8/28/03

<sup>2</sup> For purposes of this rule, facts are "reasonably understood" to "raise a question" about the appropriateness of official action if a disinterested person would conclude that the facts, if true, require recusal or require careful consideration of whether or not recusal is required.

THOUSAND OAKS CLINIC  
4344 THOUSAND OAKS  
SAN ANTONIO TX 78217

City of San Antonio  
Discretionary Contracts Disclosure

For use of this form, see City of San Antonio Ethics Code, Part D, Section 1&2  
Attach additional sheets if space provided is not sufficient

**Disclosure of Parties, Owners, and Closely Related Persons**

For the purpose of assisting the city in the enforcement of provisions contained in the City Charter and the code of ethics, an individual or business entity seeking a discretionary contract from the city is required to disclose in connection with a proposal for a discretionary contract:

(1) the identity of any individual who would be a party to the discretionary contract:

Brian Brady Company

(2) the identity of any business entity that would be a party to the discretionary contract:

Brian Brady Company

and the name of:

(A) any individual or business entity that would be a subcontractor on the discretionary contract:

None

(B) any individual or business entity that is known to be a partner, or a parent or subsidiary business entity, of any individual or business entity who would be a party to the discretionary contract:

None

(3) the identity of any lobbyist or public relations firm employed for purposes relating to the discretionary contract being sought by any individual or business entity who would be a party to the discretionary contract

None

**Political Contributions**

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To Whom Made:	Amount:	Date of Contribution:
None		

City of San Antonio  
Discretionary Contracts Disclosure

*For use of this form, see City of San Antonio Ethics Code, Part D, Section 1.62  
Attach additional sheets if space provided is not sufficient*

**Disclosures in Proposals**

Any individual or business entity seeking a discretionary contract with the city shall disclose any known facts which, reasonably understood, raise a question<sup>1</sup> as to whether any city official would violate Section 1 of Part B by participating in official action relating to the discretionary contract.

Signature: <i>Michelle Santeno</i>	Title: <i>Property Manager</i> Company: <i>Brian Brady Company</i>	Date: <i>9/4/02</i>

<sup>1</sup> For purposes of this rule, facts are "reasonably understood" to "raise a question" about the appropriateness of official action if a disinterested person would conclude that the facts, if true, require recusal or require careful consideration of whether or not recusal is required.

**City of San Antonio**  
**Discretionary Contracts Disclosure\***

*For use of this form, see City of San Antonio Ethics Code, Part D, Sections 1&2*

*Attach additional sheets if space provided is not sufficient.*

*State "Not Applicable" for questions that do not apply.*

*\* This form is required to be supplemented in the event there is any change in the information under (1), (2), or (3) below, before the discretionary contract is the subject of council action, and no later than five (5) business days after any change about which information is required to be filed.*

**Disclosure of Parties, Owners, and Closely Related Persons**

For the purpose of assisting the City in the enforcement of provisions contained in the City Charter and the Code of Ethics, an individual or business entity seeking a discretionary contract from the City is required to disclose in connection with a proposal for a discretionary contract:

(1) the identity of any **individual** who would be a party to the discretionary contract:

Kathy Parkes

(2) the identity of any **business entity**<sup>1</sup> that would be a party to the discretionary contract:

The Lactation Connection Inc.

and the name of:

(A) any individual or business entity that would be a **subcontractor** on the discretionary contract;

Not Applicable

and the name of:

(B) any individual or business entity that is known to be a **partner**, or a **parent** or **subsidiary** business entity, of any individual or business entity who would be a party to the discretionary contract;

Not Applicable

<sup>1</sup> A business entity means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, unincorporated association, or any other entity recognized by law.

- (3) the identity of any lobbyist or public relations firm employed for purposes relating to the discretionary contract being sought by any individual or business entity who would be a party to the discretionary contract.

Not Applicable

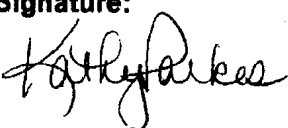
### Political Contributions

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To Whom Made:	Amount:	Date of Contribution:
None		

### Disclosures in Proposals

Any individual or business entity seeking a discretionary contract with the city shall disclose any known facts which, reasonably understood, raise a question<sup>2</sup> as to whether any city official or employee would violate Section 1 of Part B, Improper Economic Benefit, by participating in official action relating to the discretionary contract.

None		
Signature: 	Title: President, CEO Company: The Lactation Connection Inc.	Date: 9/25/03

<sup>2</sup> For purposes of this rule, facts are "reasonably understood" to "raise a question" about the appropriateness of official action if a disinterested person would conclude that the facts, if true, require recusal or require careful consideration of whether or not recusal is required.

**ATTACHMENT I**  
**Women, Infants & Children (WIC Program) 2003/2004**  
**Fund No. 26-016065**  
**TDH Contract No. 7460020708 2004**

<u>INDEX:</u>	<u>ESTIMATED REVENUES</u>	<u>OBJECT</u> <u>CODE</u>	<u>AMOUNT</u>	<u>TOTAL</u>
082263	Attachment #10 - Contract	00-004	<u>\$5,465,482</u>	
	Total Estimated Revenues:			<u><b>\$5,465,482</b></u>

**APPROPRIATIONS:**

**Activity 36-06-11**

**10/01/2003 to 09/30/04**

752535	Regular Salaries & Wages	01-010	\$2,896,394
752683	Overtime Salaries & Wages	01-011	\$40,000
753319	Shift Differential Pay	01-013	\$200
754002	Language Skill Pay	01-019	\$42,000
754226	Social Security	01-030	\$221,574
754523	TMRS	01-040	\$329,175
754671	Group Health Insurance	01-050	\$582,825
754853	Life Insurance	01-051	\$6,307
755058	Workers' Disability Compensation	01-060	\$42,858
755207	Personal Leave Buy Back Pay	01-072	\$50,000
755702	Communications: Telephones	02-110	\$100,000
756171	Pagers/Mobile phones	02-112	\$4,000
756312	Mail & Parcel Post Service	02-113	\$8,000
756478	Callaghan Lease	02-116	\$60,000
756668	Fredericksburg Lease	02-116	\$63,360
756858	Sam Houston Ctr Lease	02-116	\$48,000
756999	Marbach Lease	02-116	\$53,760
757005	Southeast Lease (Old)	02-116	\$11,475
757138	Southeast Lease (New)	02-116	\$74,925
757385	Thousand Oaks Lease	02-116	\$53,400
758136	Records Storage Rental	02-116	\$10,000
758748	Rental of Equipment	02-119	\$12,000
758904	Rent of City Rolling Equipment	02-121	\$4,000
759100	Travel-Official	02-124	\$20,000
759340	Education	02-128	\$8,000
759639	Car Expense Allowance	02-130	\$18,000
760090	Freight & Storage	02-133	\$1,500
760306	Linen & Laundry Service	02-136	\$5,000
760512	Maint. & Repair - Buildings & Impr.	02-139	\$9,407
760686	Cleaning Services	02-140	\$3,000
760900	Maint. & Repair - Mach. & Equipment	02-142	\$10,000
761049	Maint & Repair - Automotive	02-143	\$10,000
761247	Maint & Repair - Commercial	02-144	\$5,000
761395	Gas & Electricity	02-154	\$60,000
761643	Sewer & Water Charges	02-157	\$5,000
761817	Alarm & Security Services	02-159	\$50,000
761957	Fees to Professional Contractors	02-160	\$15,000
762112	Temporary Services	02-161	\$1,383
762278	Automotive Admin Charge	02-167	\$500
762450	Automatic Data Processing Services	02-172	\$35,000
762617	Advertising & Publication	02-175	\$2,000



ATTACHMENT II

TEXAS DEPARTMENT OF HEALTH  
1100 WEST 49TH STREET  
AUSTIN, TEXAS 78756-3199

STATE OF TEXAS  
COUNTY OF TRAVIS

TDH Document No. 7460020708 2004  
Contract Change Notice No. 10

The Texas Department of Health, hereinafter referred to as RECEIVING AGENCY, did heretofore enter into a contract in writing with SAN ANTONIO METROPOLITAN HEALTH DISTRICT hereinafter referred to as PERFORMING AGENCY. The parties thereto now desire to amend such contract attachment(s) as follows:

SUMMARY OF TRANSACTION:

ATT NO. 10 : BNS - WIC CARD PARTICIPATION

All terms and conditions not hereby amended remain in full force and effect.

EXECUTED IN DUPLICATE ORIGINALS ON THE DATES SHOWN.

Authorized Contracting Entity (type above if different from PERFORMING AGENCY) for and in behalf of:

PERFORMING AGENCY:

SAN ANTONIO METROPOLITAN HEALTH  
DISTRICT

By: \_\_\_\_\_  
(Signature of person authorized to sign)

\_\_\_\_\_  
(Name and Title)

Date: \_\_\_\_\_

RECOMMENDED:

By: \_\_\_\_\_  
(PERFORMING AGENCY Director, if different from person authorized to sign contract)

RECEIVING AGENCY :

TEXAS DEPARTMENT OF HEALTH

By: Eduardo J. Sanchez MD  
(Signature of person authorized to sign)

Eduardo J. Sanchez, M.D., M.P.H.  
Commissioner of Health  
(Name and Title)

Date: 9/12/2003

TP GMD - Rev. 12/95

# DETAILS OF ATTACHMENTS

Att/ Amd No.	TDH Program ID/ TDH Purchase Order Number	Term		Financial Assistance		Direct Assistance	Total Amount (TDH Share)
		Begin	End	Source of Funds*	Amount		
01	HIV/SURV 0000000332	01/01/03	12/31/03	93.944	81,344.00	0.00	81,344.00
02A	HIV/PREV 0000000279	01/01/03	12/31/03	93.940	246,220.00	0.00	246,220.00
03A	STD/HIV 0000000335	01/01/03	12/31/03	93.977	212,093.00	0.00	212,093.00
04	TB/PC 0000000382	01/01/03	12/31/03	93.116	356,702.00	0.00	356,702.00
05	EPI/LEAD 0000000833	07/01/03	06/30/04	93.262	45,000.00	0.00	45,000.00
06	STD/HIV 0000000960	09/01/03	08/31/04	State	77,046.00	0.00	77,046.00
07	TB/PC 0000000943	09/01/03	08/31/04	State	199,444.00	0.00	199,444.00
08	ACFH/POP 0000001241	09/01/03	08/31/04	State 93.994	66,000.00	0.00	66,000.00
09	HIV/HEP 0000001267	09/01/03	12/31/03	93.940	16,000.00	0.00	16,000.00
10	BNS/WIC-CARD 0000001443	10/01/03	09/30/04	10.557	0.00	0.00	0.00
TDH Document No. 7460020708 2004 Change No. 10					Totals	\$ 0.00	\$1,299,849.00

\*Federal funds are indicated by a number from the Catalog of Federal Domestic Assistance (CFDA), if applicable. REFER TO BUDGET SECTION OF ANY ZERO AMOUNT ATTACHMENT FOR DETAILS.

DOCUMENT NO. 7460020708-2004  
ATTACHMENT NO. 10  
PURCHASE ORDER NO. 0000001443

PERFORMING AGENCY: SAN ANTONIO METROPOLITAN HEALTH DISTRICT

RECEIVING AGENCY PROGRAM: BUREAU OF NUTRITION SERVICES

TERM: October 01, 2003 THRU: September 30, 2004

SECTION I. SCOPE OF WORK:

PERFORMING AGENCY shall provide supplemental food instruments, nutrition education and counseling to enhance good health care at no cost to low-income pregnant and postpartum women, infants and children identified to be at nutritional risk. In meeting this goal, PERFORMING AGENCY shall:

- A. Perform professional, administrative and clerical services necessary to determine eligibility, provide food instruments, and provide appropriate nutrition education and counseling to qualified women, infants and children in a specified geographic area. PERFORMING AGENCY shall ensure adequate staff coverage and uninterrupted delivery of services. Services shall be performed according to the terms and specifications of RECEIVING AGENCY'S Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) and/or the United States Department of Agriculture (USDA) as referenced in this Attachment. During the term of this Attachment, USDA will issue regulations, instructions, policies and/or directives which may be incorporated into the State WIC Policy and Procedures Manual and program rules.

PERFORMING AGENCY shall provide services in the authorized geographic service area(s) described in PERFORMING AGENCY'S application and agreed to by RECEIVING AGENCY. PERFORMING AGENCY can change the authorized geographic service area(s) with approval from RECEIVING AGENCY. If RECEIVING AGENCY disagrees on change of geographic service area(s), PERFORMING AGENCY may terminate this contract with at least thirty (30) days written notice.

- B. Assist in the collection of data that will identify benefits of this nutrition intervention program and furnish financial, health, nutrition education and any other special reports in a timely manner as required by RECEIVING AGENCY Program's written rules and policies for the compilation of such data.
- C. Determine eligibility of applicants through assessment of their income, residence and nutritional status; provide nutrition education and counseling; train staff; conduct outreach to potential applicants; make referrals to other health and human service providers; complete surveys as requested; and maintain records as required by RECEIVING AGENCY Program's written rules and policies.

- D. Determine participants' access to health care, medical care and other human services, and make appropriate referrals. PERFORMING AGENCY shall have a system in place to provide participants with appropriate health services or make appropriate referrals to health care providers under written agreements that ensure confidentiality of participants' personal information.
- E. Issue prenumbered food instruments furnished by RECEIVING AGENCY to qualified participants who shall use such instruments to obtain specified food items from participating vendors; maintain complete accountability and security of all food instruments received from RECEIVING AGENCY; and be held financially responsible for all unaccounted for food instruments and/or for the redeemed value of those issued to ineligible participants. PERFORMING AGENCY shall be held financially liable for issuance of infant formula instruments that are not authorized or prescribed according to the State WIC Policy and Procedure Manual.
- F. Review the immunization records of WIC Program applicants/participants to ensure that immunizations are current. Make appropriate referrals to health care providers for necessary immunizations.
- G. Offer services during extended hours of operation outside the traditional times of 8:00 a.m. to 5:00 p.m., Monday through Friday, according to the Annual Plan of Operations as approved by RECEIVING AGENCY and incorporated by reference.
- H. Implement or expand PERFORMING AGENCY'S breastfeeding peer counseling program for training and salaries of peer counselors who assist pregnant and breastfeeding WIC participants in normal breastfeeding situations, when funding is available, if participation in this program is requested by PERFORMING AGENCY and approved in writing by RECEIVING AGENCY.
- I. Implement lactation services for WIC clients who have breastfeeding problems that are beyond the expertise of their local WIC staff and/or peer counselors using International Board Certified Lactation Consultants or the most qualified equivalent. Lactation services may also include staff training and lactation equipment. RECEIVING AGENCY will provide written approval of PERFORMING AGENCY'S plan to use lactation funding. The plan must include qualifications of any non-board certified lactation consultant PERFORMING AGENCY proposes to use.
- J. Ensure adequate staff coverage and uninterrupted delivery of WIC services if any member of PERFORMING AGENCY'S staff is approved in writing by the RECEIVING AGENCY to participate in RECEIVING AGENCY'S dietetic internship program. This internship will consist of no less than 900 hours of supervised learning experiences in a variety of nutrition-related facilities and will prepare PERFORMING AGENCY'S selected staff member to better meet the needs of WIC participants.

- K. RECEIVING AGENCY will provide three (3) types of breastpumps for eligible WIC participants by distributing breastpumps to PERFORMING AGENCY or by authorizing PERFORMING AGENCY to purchase breastpump collection kits. If PERFORMING AGENCY is authorized to purchase the breastpump collection kits, RECEIVING AGENCY will provide written notification of the specific types of collection kits. If this requirement is implemented, then the actual cost of collection kits purchased by PERFORMING AGENCY will be reimbursed by RECEIVING AGENCY utilizing WIC Food Grant funds. When PERFORMING AGENCY receives or is authorized to purchase collection kits, Nutrition Services and Administration funds may not be used for that purpose. The cost for the purchase of the breastpump collection kits will not affect administrative surplus calculations. The number and cost of the collection kits purchased shall be identified separately on the face of the claim for reimbursement (State of Texas Purchase Voucher, Form B-13).
- L. Implement or expand PERFORMING AGENCY'S use of a registered dietitian (RD) to provide an array of technical services. With prior written approval from RECEIVING AGENCY, obtain the services of a RD who is registered with the Commission on Dietetic Registration to provide services for PERFORMING AGENCY such as: assistance with quality assurance, staff training, assistance with the annual nutrition education and breastfeeding plan, individual counseling for high-risk participants, and facilitated discussion classes.

PERFORMING AGENCY shall comply with all applicable federal and state laws, rules, regulations, standards, and guidelines in effect on the beginning date of this Attachment unless amended. The following documents are incorporated by reference and made a part of this contract Attachment.

1. Child Nutrition Act of 1966, as amended, 42 USC 1786;
2. Uniform Federal Assistance Regulations, 7 CFR Parts 15, 15a, 15b, 246, 248, 3016, 3017 and 3018;
3. RECEIVING AGENCY *Quality Care: Client Services Standards for Public Health and Community Clinics*;
4. WIC Program Rules, 25 Texas Administrative Code, §§ 31.11-31.37;
5. Food and Nutrition Service (FNS) Guidelines; and
6. FNS Instructions issued under the FNS Directives Management System

A copy of the current WIC Policy and Procedure Manual has been made available to PERFORMING AGENCY. The WIC Policy and Procedure Manual, all revisions made to the WIC Policy and Procedure Manual through the Texas WIC Bulletin, and written notices are incorporated into this Agreement by reference. PERFORMING AGENCY has a duty to become familiar with the contents and procedures contained within the WIC Policy and Procedure Manual. PERFORMING AGENCY shall comply with all of the requirements of the WIC Policy and Procedure Manual and Program rules as well as state and federal laws and amendments governing or regulating the WIC Program.

PERFORMING AGENCY is responsible for ensuring that employees or agents acting on behalf of the PERFORMING AGENCY comply with all of the requirements of the WIC Policy and Procedure Manual, Program rules and all state and federal laws and amendments governing and regulating the WIC Program.

Within thirty (30) days of receipt of an amended policy or rule, PERFORMING AGENCY shall inform RECEIVING AGENCY program in writing if it will not continue performance under this Attachment in compliance with the amended policy or rule. RECEIVING AGENCY may terminate the Attachment immediately or within a reasonable period of time as determined by RECEIVING AGENCY.

### PERFORMANCE MEASURES

The following performance measures will be used to assess, in part, PERFORMING AGENCY'S effectiveness in providing the services described in this contract Attachment, without waiving the enforceability of any of the other terms of the contract.

- 98% of families who participate in the WIC program by receiving food instruments shall also receive nutrition education classes or individual counseling services to coincide with food voucher issuance;
- Of all pregnant women who enter the WIC program, at least 32% shall be certified as eligible during the period of the first trimester of their pregnancy;
- 88% of clients who are enrolled in the program, excluding dual participants, transfer locked and/or migrant clients, shall participate as food instrument recipients each month (breast-feeding infants are also included in the client count);
- 60% of infants whose mothers were participants in the program during pregnancy shall be breast-fed at or before the time of their certification of eligibility;
- 98% of clients who indicate during the enrollment process that they have no source of health care shall be referred to at least one source of health care at certification of eligibility; and,
- A monthly activity report which demonstrates PERFORMING AGENCY'S efforts towards meeting assigned annual targets shall be completed and submitted to RECEIVING AGENCY within seven (7) working days after the end of each month.

### SECTION II. SPECIAL PROVISIONS:

General Provisions, **Assurances** Article, is hereby amended to include the following:

PERFORMING AGENCY hereby agrees that it shall comply with Title VI of the Civil Rights Act of 1964, 42 USC §§ 2000d *et seq.*, Title IX of the Education Amendments of 1972, 20 USC §§1681 *et seq.*, Section 504 of the Rehabilitation Act of 1973, 29 USC §

794, Age Discrimination Act of 1975, 42 USC §§ 6101 *et seq.*; all provisions required by implementing the regulations of the Department of Agriculture, 7 CFR Part 246; Department of Justice Guidelines for Enforcement of Title VI, Civil Rights Act of 1964; 28 CFR § 50.3 and 28 CFR Part 42; and Food & Nutrition Service (FNS) directives and guidelines, to the effect that no person will, on the grounds of race, color, national origin, sex, age, or disability be excluded from participation under any program or activity for which PERFORMING AGENCY receives federal financial assistance from FNS; and hereby gives assurance that it shall immediately take measures necessary to implement this Attachment.

PERFORMING AGENCY shall compile data, maintain records and submit reports, as required, to permit effective enforcement of the nondiscrimination laws and permit authorized USDA and State of Texas personnel, during normal working hours, to review such records, books, and accounts as needed to ascertain compliance with the nondiscrimination laws. The Department of Agriculture, Food and Nutrition Services, has the right to seek judicial enforcement if PERFORMING AGENCY violates any nondiscrimination laws. This Assurance is binding on PERFORMING AGENCY, its successors, transferees, and assignees, as long as they receive assistance or retain possession of any assistance from the Department of Agriculture. The person or persons whose signatures appear on the COVER PAGES of this Attachment are authorized to sign this Assurance on behalf of PERFORMING AGENCY.

General Provisions, **Standards for Financial and Programmatic Management** Article, Item A, regarding internal budgeting and Item C, regarding billing, collection, and fee schedules are not applicable to this Attachment.

General Provisions, **Terms and Conditions of Payment** Article, is hereby modified to include the following paragraphs:

The participant caseload will be assigned by RECEIVING AGENCY Program by giving written notice to PERFORMING AGENCY. The participant caseload is subject to change upon written notice to PERFORMING AGENCY from RECEIVING AGENCY Program with PERFORMING AGENCY'S concurrence. PERFORMING AGENCY assumes liability for all food costs resulting from PERFORMING AGENCY exceeding its assigned caseload. The number of individuals served in excess of assigned caseload are not to be included in the calculation of earned administrative funds as described below.

RECEIVING AGENCY will reimburse PERFORMING AGENCY for administrative costs incurred when determining eligibility, providing appropriate nutrition education and counseling, issuing food instruments, making participant referrals, vendor evaluation, outreach, start-up costs and general administrative support.

Administrative costs will be reimbursed based on actual costs, but not to exceed the "maximum reimbursement" set out below, based upon the sum of the participants who actually receive food instruments each month plus infants who do not receive any food

instruments whose breastfeeding mothers were participants to the extent that the total so derived does not exceed PERFORMING AGENCY'S total assigned caseload within any given month. Surplus funds (the amount by which maximum reimbursements exceed actual costs) can be accumulated and carried forward within the Attachment term. Surplus encumbered by September 30 shall be billed and vouchers received by RECEIVING AGENCY no later than December 31, 2003.

PARTICIPANTS SERVED PER MONTH MAXIMUM REIMBURSEMENT:

During the term of the Attachment, PERFORMING AGENCY shall earn administrative funds at the rate of \$9.00 for each participant served as defined above.

PERFORMING AGENCY agrees that:

- (1) PERFORMING AGENCY shall identify and document separately not less than 19% of total administrative costs as expenditures directly related to nutrition education and counseling. Nutrition education and counseling expenditures shall be supported by documentation of participant attendance or non-attendance.
- (2) RECEIVING AGENCY will reimburse PERFORMING AGENCY for administrative expenses at a rate not greater than 5.26 times the amount of properly documented expenditures for nutrition education and counseling, but not more than is earned based on actual participation not to exceed PERFORMING AGENCY'S assigned participant caseload, plus any incentive funds allocated to PERFORMING AGENCY by RECEIVING AGENCY.
- (3) RECEIVING AGENCY will limit (cap) PERFORMING AGENCY'S indirect costs to the lesser of the rate approved by RECEIVING AGENCY'S Fiscal Division or twenty (20) percent applied to PERFORMING AGENCY'S total direct salaries plus benefits reimbursed by RECEIVING AGENCY. However, approval shall be obtained from RECEIVING AGENCY'S Fiscal Division before the recovery of any indirect costs is permitted, except for indirect cost recoveries using amounts contained in the Uniform Grants Management Standards (UGMS) for which approval can be granted by the WIC Program office.
- (4) RECEIVING AGENCY will identify annually to PERFORMING AGENCY an amount of funds that shall be spent for breastfeeding promotion. The allocation of breastfeeding funds to PERFORMING AGENCY will be based on PERFORMING AGENCY'S proportional share of the statewide combined total of pregnant and breastfeeding participants as reported to RECEIVING AGENCY.
- (5) RECEIVING AGENCY also reserves the right to withhold a proportionate amount of earned administrative funds when evidence exists that nutrition education and/or breastfeeding promotion is not being provided by PERFORMING AGENCY, or PERFORMING AGENCY is not complying with the provisions of USDA and/or RECEIVING AGENCY directives.

- (6) RECEIVING AGENCY reserves the right to utilize a competitive offering for the award of any future contracts at the end of the term of this Attachment.
- (7) RECEIVING AGENCY may amend or terminate this Attachment if available funds become reduced, depleted, or unavailable during the term of the Attachment to the extent that the WIC Program is unable to provide administrative funding at the rate(s) shown above. RECEIVING AGENCY will provide written notification to PERFORMING AGENCY of such fact.
- (8) RECEIVING AGENCY may pay for additional services as specified in this Attachment if provided by PERFORMING AGENCY during the term of this Attachment (but not otherwise paid during the term of this Attachment) if it is in the best interest of the State and RECEIVING AGENCY Program to do so. If PERFORMING AGENCY exceeds the amount of earned administrative funds as stated above, PERFORMING AGENCY shall continue to bill RECEIVING AGENCY for the services provided. If additional funds become available at a later date for the provision of these services, RECEIVING AGENCY may pay PERFORMING AGENCY a share of these funds.
- (9) RECEIVING AGENCY may provide incentives to WIC local agencies for clients who are provided WIC services outside the normal traditional hours to the extent that federal funding is available.
- (10) RECEIVING AGENCY may adjust the base reimbursement rate defined above during the term of this Attachment if it is in the best interest of the State and RECEIVING AGENCY and if additional administrative WIC Grant funds are available.

PERFORMING AGENCY shall indicate separately on the face of the claim for reimbursement (State of Texas Purchase Voucher, TDH Form B-13) the costs associated with nutrition education, breast-feeding, and other administrative costs.

General Provisions, **Advance Payments** Article, is not applicable to this Attachment. However, PERFORMING AGENCY will be allowed the option of receiving a two (2) month cash advance in accordance with WIC Program Policy and Procedures.

General Provisions, **Program Income**, paragraph one, is not applicable to this Attachment.

General Provisions, **Overtime Compensation** Article, is not applicable to this Attachment.

General Provisions, **Equipment and Supplies** Article, is replaced with the following:

PERFORMING AGENCY shall accept responsibility and financial liability for all equipment and supplies purchased with RECEIVING AGENCY funds, whether purchased locally by PERFORMING AGENCY or by RECEIVING AGENCY and

transferred to the care and custody of PERFORMING AGENCY. PERFORMING AGENCY shall conduct an annual physical inventory of all equipment purchased by RECEIVING AGENCY and submit it at a time to be specified by RECEIVING AGENCY. RECEIVING AGENCY reserves the right to recover the cost of equipment or supplies purchased by RECEIVING AGENCY and placed in the custody of PERFORMING AGENCY if such articles are lost, stolen, or otherwise unaccounted for.

General Provisions, **Reports** Article, second paragraph, second sentence, is replaced with the following:

A final report, Financial Status Report, Federal form 269 (TDH Form GC-3), shall be submitted no later than December 31, 2004.

### SECTION III. BUDGET:

All categories of costs billed to RECEIVING AGENCY, and allocation of such costs, shall be in accordance with the "Plan to Allocate Direct Costs" (PADC) submitted by PERFORMING AGENCY and approved by RECEIVING AGENCY. This document is incorporated herein by reference and made a part of this Attachment.

**CERTIFICATION REGARDING LOBBYING**  
**CERTIFICATION FOR CONTRACTS, GRANTS,**  
**LOANS AND COOPERATIVE AGREEMENTS**

The undersigned certifies, to the best of his or her knowledge and belief that:

- (1) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or an employee of any agency, a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-111, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name of Authorized Individual

7460020708 2004-10

Application or Contract Number

SAN ANTONIO METROPOLITAN HEALTH DISTRICT

Organization Name and Address

332 W COMMERCE ST STE 307

SAN ANTONIO, TX 78205-2489

STATE OF TEXAS  
COUNTY OF BEXAR

§  
§  
§

CONSULTANT 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 the City Manager pursuant to Ordinance No. XXXXXX, and Ms. Kathy Parkes, d/b/a The Lactation Connection, Inc., (hereinafter referred to as "TLC"), WITNESSETH:

WHEREAS, the City of San Antonio Metropolitan Health District's WIC (Women, Infants, and Children) Project has adopted a budget which includes an allocation of funds for a lactation information and instruction project; and

WHEREAS, the City wishes to engage Ms. Kathy Parkes, RN, IBCLC, doing business as "The Lactation Connection, Inc.", herein known as Ms. Parkes or "TLC" to carry out the project; NOW THEREFORE:

The parties hereto agree as follows:

**I. GENERAL PROVISIONS**

1. TLC understands and agrees that this Grant Fund Contract is subject to mutual termination. Therefore, either party shall have the option of terminating this contract by giving the second party no less than thirty days written notice. Such notice shall specify the effective date of termination, which date shall not be sooner than the end of thirty days following the day on which notice is sent.
2. TLC understands and agrees that this Contract may be revised by the City. Therefore, TLC agrees that, at such time as any revisions are adopted through Council action during a contract period, this contract will be amended to include such revisions. In the event TLC does not agree to any changes, TLC shall have the option of terminating this contract by giving thirty days written notice to the City. TLC shall have the right to exercise such option within thirty days of receipt of notice of any such revisions.
3. TLC understands and agrees that this contract is subject to a general reduction in funding. If and when the City is required to implement a reduction in Grant Fund expenditures for the WIC Program, Grant fund expenditures allocated for this contract may be reduced in a like manner.
4. In no event shall the City be liable for any expense of TLC, and in no event shall employees of TLC be deemed to be employees of the City.
5. Should TLC fail to fulfill in a timely and proper manner obligations under this contract, or if TLC should violate any of the covenants, agreements, or stipulations of the contract, the City shall thereupon have the right to terminate this contract by sending written notice to TLC of such termination and specifying the effective date thereof, which date shall not be sooner than the end of 30 days following the day on which notice is sent. A Previous breach of any of the terms or conditions herein shall not be construed as a waiver of same nor preclude the City's termination right for successive breach of the same condition. The submission of falsified information by TLC or the failure of TLC to submit information as requested by City is grounds for termination of the contract by City.
6. TLC shall be entitled to receive just and equitable compensation for any work satisfactorily completed prior to termination date. The question of satisfactory completion of such work shall be determined by the City alone and its decision shall be final.
7. It is expressly understood and agreed by both parties hereto that City is contracting with TLC as an independent contractor and that neither has authority to bind the other or hold out to third parties that it has the authority to bind the other.
8. This agreement shall be construed according to, and the rights of the parties shall be governed by, the laws of the State of Texas.

9. TLC agrees that all work, reporting, reproduction cost, typing, travel, insurance, communication, computer access, materials, supplies, and all other consultant expenses necessary to complete the duties under this contract shall be borne solely by TLC.

## **II. TERM:**

1. This contract shall commence on October 1, 2003, and shall terminate September 30, 2004 unless extension or earlier termination shall occur pursuant to the terms of this contract.

## **III. DESCRIPTION OF SERVICES TO BE PROVIDED BY CONSULTANT:**

1. The consultant, Ms. Kathy Parkes, d/b/a TLC, will provide, administer and carry out the following activities and services in satisfactory and efficient manner as determined by the City:
  - a. **Staff Development In-services** -- Two breastfeeding in-services must be provided to WIC staff, between 45 and 60 minutes in length, including a period for questions. TLC will provide all handouts, reference materials, and audiovisual aids.
  - b. **Public Health Aide Workshops** -- Ms. Parkes must provide bi-monthly workshops for the program's Public Health Aides in order to hone their skills in assisting the participants. Dates, times and topics will be set by mutual agreement. Each workshop should be between 45 and 60 minutes in length and the consultant will supply all handouts, reference materials and audiovisual aids.
  - c. **Telephone Consultations** -- Ms. Parkes will be available by telephone to consult with both WIC staff and clients regarding more complicated lactation situations. A monthly itemization must be provided for each consultation billed.
  - d. **Home/Hospital Consultations** -- Ms. Parkes will make home or hospital visits to support lactation for high-risk mother/baby situations as needed on a case-by-case basis. A monthly itemization must be provided for each consultation billed.

## **IV. PRICING AND BILLING**

1. **Two Staff Development In-Service** -- The cost of each in-service will be \$150.00.
2. **Six Peer Counselor Workshops** -- The cost per workshop will be \$95.00.
3. **Staff and Client Consultations** -- The rate of each consultation is \$35.00 per hour.
4. Notwithstanding any other provision of this contract, the total of all payments to be made by City to TLC shall not exceed the sum of Fifteen Thousand and No/100 dollars (\$15,000.00). City shall pay TLC on a monthly basis upon: 1) submission of necessary documentation by TLC; and 2) the approval of such documentation by the WIC Health Program Manager.

## **V. NOTICES**

1. All official communications and notices between TLC and City shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, to the addresses set forth below:

City of San Antonio  
San Antonio Metropolitan Health District  
332 W. Commerce  
San Antonio, Texas 78205

Ms. Kathy Parkes, R.N., I.B.C.L.C.  
d/b/a The Lactation Connection  
10615 Perrin Beitel, Suite 601  
San Antonio, Texas 78217

## **VI. NO SUBCONTRACTING**

1. None of the work or services covered by this contract shall be subcontracted without the prior written approval of City in writing. Any subcontract approved by the City shall be subject by its terms to each and every provision of this contract. Compliance by subcontractors with this contract shall be the responsibility of TLC.

## **VII. CONFLICT OF INTEREST**

1. TLC acknowledges that it is informed that Texas law prohibits contracts between the City and any local public official, such as a City officer or employee, and that the prohibition extends to an officer and employee of City agencies, such as City -owned utilities and certain City boards and commissions, and to contracts involving a business entity in which that official has a substantial interest, as defined by Texas law, if it is reasonably foreseeable that an action on the matter would confer an economic benefit on the business entity. TLC certifies (and this Contract is made and entered into in reliance thereon) that neither it, its individual officers, employees, agents or representatives, nor any person having a substantial interest in this Contract is an officer or employee of the City or any of its agencies.
2. TLC further covenants that no member of its governing body or of its staff shall possess any interest in, or use their position for, a purpose that is or gives the appearance of being motivated by desire for personal gain for themselves or others, particularly those with which they have family, business or other ties.

## **VIII. INDEMNITY**

1. TLC covenants and agrees to **FULLY INDEMNIFY and HOLD HARMLESS**, the City and the elected officials, employees, officers, directors, volunteers and representatives of the City, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, **personal or bodily injury, death and property damage, made upon the City** directly or indirectly arising out of, resulting from or related to TLC's activities under this Contract, including any acts or omissions of TLC, any agent, officer, director, representative, employee, consultant or subcontractor of TLC, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this Contract, all without however, waiving any governmental immunity available to the City under Texas Law and without waiving any defenses of the parties under Texas Law. **IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF CITY, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES OF CITY, UNDER THIS CONTRACT.** 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. TLC shall promptly advise the City in writing of any claim or demand against the City or TLC known to TLC related to or arising out of TLC's activities under this Contract and shall see to the investigation and defense of such claim or demand at TLC's cost. The City shall have the right, at its option and at its own expense, to participate in such defense without relieving TLC of any of its obligations under this paragraph.
2. It is the **EXPRESS INTENT** of the parties to this Contract, that the INDEMNITY provided for in this article, is an INDEMNITY extended by TLC to INDEMNIFY, PROTECT and HOLD HARMLESS, the City from the consequences of the CITY's OWN NEGLIGENCE, provided however, that the INDEMNITY provided for in this article SHALL APPLY only when the NEGLIGENCE ACT of the City is a CONTRIBUTORY CAUSE of the resultant injury, death, or damage, and shall have no application when the negligent act of the City is the sole cause of the resultant injury, death, or damage. TLC further AGREES TO DEFEND, AT ITS OWN EXPENSE and ON BEHALF OF THE CITY AND IN THE NAME OF THE CITY, any claim or litigation brought against the CITY and its elected officials, employees, officers, directors, volunteers and representatives, in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.

## IX. INSURANCE

1. Any and all employees, representatives, agents or volunteers of **CONSULTANT** while engaged in the performance of any work required by the **CITY** or any work related to a Lease of space, License **CONTRACT**, or Concession **CONTRACT** with the **CITY** shall be considered employees, representatives, agents or volunteers of **CONSULTANT** only and not of the **CITY**. Any and all claims that may result from any obligation for which **CONSULTANT** may be held liable under any Workers' Compensation, Unemployment Compensation or Disability Benefits law or under any similar law on behalf of said employees, representatives, agents or volunteers shall be the sole obligation and responsibility of **CONSULTANT**.
2. Prior to the commencement of any work under this **CONTRACT**, **CONSULTANT** shall furnish an original completed Certificate(s) of Insurance to the (appropriate Department Director) and City Clerk's Office, which shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, and which shall furnish and contain all required information reference or indicated thereon. The original certificate(s) must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed directly from the agent to the **CITY**. The **CITY** shall have no duty to pay or perform under this **CONTRACT** until such certificate shall have been delivered to the **CITY'S** (appropriate Department Director) and the City Clerk's Office, and no officer or employee shall have authority to waive this requirement.
3. The **CITY** reserves the right to review the insurance requirements of this section during the effective period of the Lease **CONTRACT** and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by the **CITY'S** Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding the Lease **CONTRACT**, but in no instance will the **CITY** allow modification whereupon the **CITY** may incur increased risk.
4. A **CONSULTANT'S** financial integrity is of interest to **CITY**, therefore, subject to right to maintain reasonable deductibles in such amounts as are approved by **CITY**, **CONSULTANT** shall obtain and maintain in full force and effect for the duration of the Lease **CONTRACT**, and any extension hereof, at **CONSULTANT'S** sole expense, insurance coverage written, on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated A-or better by A.M. Best Company and/or otherwise acceptable to the **CITY**, as approved by the Risk Manager, in the following types and amounts:

1. Professional Liability (Claims Made Form)	\$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 professional services.
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5. The City shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by the City, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Contractor shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided in Section \_\_\_\_ herein within 10 days of the requested change. Contractor shall pay any costs incurred resulting from said changes.
6. **CONSULTANT** agrees that with respect to the above required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions:
  - Name the City and its officers, employees, volunteers, and elected representatives as additional insureds as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;

- Provide for an endorsement that the “other insurance” clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
  - Workers’ compensation and employers’ liability policies will provide a waiver of subrogation in favor of the City.
7. When there is a cancellation, non-renewal or material change in coverage which is not made pursuant to a request by City, CONSULTANT shall notify the City of such and shall give such notices not less than thirty (30) days prior to the change, if CONSULTANT knows of said change in advance, or ten (10) days notice after the change, if the CONSULTANT did not know of the change in advance. Such notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to the City at the following address:

**City of San Antonio  
Dept./Client  
P.O. Box 839966  
San Antonio, Texas 78283-3966**

**City of San Antonio  
City Clerk’s Office  
P.O. Box 839966  
San Antonio, Texas 78283-3966**

8. If CONSULTANT fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, the City may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under the CONTRACT; however, procuring of said insurance by the City is an alternative to other remedies the City may have, and is not the exclusive remedy for failure of CONSULTANT to maintain said insurance or secure such endorsement. In addition to any other remedies the City may have upon CONSULTANT’s failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order CONSULTANT to stop work hereunder, and/or withhold any payment(s) which become due to CONSULTANT hereunder until CONSULTANT demonstrates compliance with the requirements hereof. (Note: This is not applicable to Tenants.)
9. Nothing herein contained shall be construed as limiting in any way the extent to which CONSULTANT may be held responsible for payments of damages to persons or property resulting from CONSULTANT’s or its subcontractors’ performance of the work covered under this CONTRACT.
10. It is agreed that CONSULTANT’s insurance shall be deemed primary with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this contract.

#### **X. SPECIAL PROVISIONS**

1. Under no circumstances will the funds received under this Contract be used, either directly or indirectly, to pay costs or attorney fees incurred in any adversarial proceeding against the City or any other public entity.
2. During the term of this Contract, if TLC files and/or pursues an adversarial proceeding against the City then, at the City’s option, this Contract and all access to the funding provided for hereunder may terminate if TLC is in violation Section 1 of this Article.
3. TLC, at the City’s option, could be ineligible for consideration to receive any future funding while any adversarial proceedings against the City remains unresolved.
4. For purposes of this Article, “adversarial proceedings” include any cause of action filed by the TLC in any state or federal court, as well as any state or federal administrative hearing, but does not include Alternative Dispute Resolution proceedings.

#### **XI. SEVERABILITY**

1. If any of the provisions of this contract are found by a court of competent jurisdiction to be invalid or unenforceable, they shall be severable from the remainder of the contract and shall not cause the invalidity or unenforceability of the remainder of this contract.

## **XII. ENTIRE AGREEMENT**

1. This contract sets forth the entire agreement between the parties.

IN WITNESS OF WHICH THIS AGREEMENT HAS BEEN EXECUTED ON THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2003, to be effective October 1, 2003.

CITY OF SAN ANTONIO:

THE LACTATION CONNECTION, INC.:

BY: \_\_\_\_\_  
Frances A. Gonzalez  
Assistant to the City Manager

BY: \_\_\_\_\_  
Kathy Parkes  
d/b/a The Lactation Connection Inc.

ATTEST: \_\_\_\_\_  
Yolanda L. Ledesma  
Acting City Clerk

APPROVED  
AS TO FORM: \_\_\_\_\_  
Andrew Martin  
City Attorney