

**CITY OF SAN ANTONIO
SAN ANTONIO METROPOLITAN HEALTH DISTRICT
CITY COUNCIL AGENDA MEMORANDUM**

TO: Mayor and City Council

FROM: Fernando A. Guerra, MD, MPH, Director of Health

SUBJECT: ORDINANCE ACCEPTING FUNDS FROM THE TEXAS DEPARTMENT OF STATE HEALTH SERVICES

DATE: November 18, 2004

SUMMARY AND RECOMMENDATIONS

This ordinance authorizes the Interim City Manager to accept contract funding support up to \$5,535,600.00 from the Texas Department of State Health Services (TDSHS) 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, 2004 through September 30, 2005. This ordinance further authorizes the execution of Contract Change Notice No. 14, Attachment No. 12 to the contract with TDSHS, adopts the program budget, approves the personnel complement, authorizes the execution of a subcontract with The Lactation Connection, Inc., and approves payments for contractual services and existing WIC clinic leases.

Staff recommends approval.

BACKGROUND INFORMATION

Ordinance No. 98536, passed and approved on December 4, 2003, authorized the execution of Contract 7460020708 2005 between the City of San Antonio and TDSHS, covering operation of the Public Health State Support Project 2004/2005 - Federal providing annual assistance to the City in support of the core public health activities provided by the SAMHD. Since then, the City has received several Contract Change Notices totaling \$2,003,777.00 for this contract effort that ends December 31, 2004 (See Attachment II).

TDSHS has now offered another contract change that will furnish up to \$5,535,600.00 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 49,000 participants each month. This funding for the WIC Program is \$70,118.00 more than last year's amount of \$5,465,482.00 due to a small increase budgeted for staff salaries and increased rental cost for leased facilities.

The proposed personnel complement for this activity of one hundred thirty-four (134) positions, is a net increase of two (2) positions from last year (See Attachment I).

Part of the funds provided by TDSHS 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 TDSHS 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 \$5,535,600.00 in support from the TDSHS 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 grant supports the existing WIC Program leases (approved in previous ordinances) listed below for the period October 1, 2004 through September 30, 2005:

<u>Clinic Lease</u>	<u>Address</u>	<u>Vendor No.</u>	<u>SAP Record No.</u>	<u>Amount</u>
Callaghan	4418 Callaghan Rd.	1013376	4600000392	\$61,200.00
Fredericksburg Road	3600 Fredericksburg Rd	1008482	4600000389	\$63,360.00
Sam Houston Center	1013 Rittiman Rd.	1017413	4600000395	\$43,440.00
Marbach	7542 Military Drive West	1019232	4600000391	\$53,760.00
South Flores	6723 S. Flores, Suite #101.	1013431	4600000397	\$87,000.00
Thousand Oaks	4346 Thousand Oaks	1016506	4600000390	\$57,120.00

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

COORDINATION

The City Attorney's Office and the Human Resources Department, Risk Management Division, have reviewed and approved the contract with TDSHS 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.

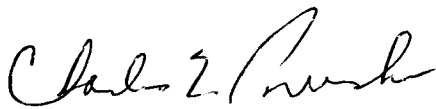
Attachments:

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 – South Flores Clinic
Discretionary Contracts Disclosure Form – Thousand Oaks Clinic
Discretionary Contracts Disclosure Form – Ms. Kathy Parkes

Attachment I: Women, Infants & Children (WIC Program) Budget and
Personnel Complement

Attachment II: TDSHS 7460020708 2005 Contract Change Notice No. 14,
Attachment No. 12

Attachment III Consultant Services Contract



Fernando A. Guerra, MD, MPH
Director of Health



Frances A. Gonzalez
Assistant City Manager

APPROVED:



J. Rolando Bono
Interim City Manager

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**¹ 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;

N/A

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;

N/A

¹ 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.

N/A

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 question² 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.

N/A

Signature: 	Title: President Company: The Lactation Connection Inc	Date: 11/5/04
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² 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.

AN ORDINANCE

AUTHORIZING THE ACCEPTANCE OF A CONTRACT CHANGE FOR FUNDING SUPPORT UP TO \$5,535,600.00 FROM THE TEXAS DEPARTMENT OF STATE HEALTH SERVICES (TDSHS) FOR THE ONGOING SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS & CHILDREN (WIC PROGRAM) IN THE SAN ANTONIO METROPOLITAN HEALTH DISTRICT FOR THE PERIOD OCTOBER 1, 2004 THROUGH SEPTEMBER 30, 2005; APPROVING THE EXECUTION OF A CHANGE TO THE CONTRACT WITH TDSHS; ADOPTING THE PROGRAM BUDGET; APPROVING THE PERSONNEL COMPLEMENT; AUTHORIZING THE EXECUTION OF A SUBCONTRACT WITH THE LACTATION CONNECTION, INC.; AND APPROVING PAYMENTS FOR CONTRACTUAL SERVICES AND EXISTING WIC CLINIC LEASES.

* * * * *

WHEREAS, Ordinance 98536, passed and approved on December 4, 2003, authorized the execution of Contract 7460020708 2005 between the City of San Antonio and the Texas Department of State Health Services (TDSHS) providing funding for the operation of various comprehensive public health programs to protect the health of all residents within the jurisdiction of the San Antonio Metropolitan Health District (SAMHD); and

WHEREAS, TDSHS has now offered up to \$5,535,600.00 in contractual funding support to renew the ongoing Women, Infants & Children (WIC Program) in the SAMHD through Contract Change Notice No. 14, Attachment 12 to the above contract for the period October 1, 2004 through September 30, 2005; and

WHEREAS, the WIC contract funding includes support for a certified lactation consultant to provide lactation consultation services to program clients who have breastfeeding problems that are beyond the expertise of the program staff; and

WHEREAS, it is now necessary to accept the contractual funding support, approve the execution of the contract change notice, adopt the program budget, approve the personnel complement, authorize the subcontract for a lactation consultant, and approve payments for contractual services and existing WIC clinic leases; **NOW THEREFORE:**

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

SECTION 1. The Interim City Manager, or his designee, is authorized to accept Contract Change Notice No. 14, Attachment No.12 to Grant Contract 7460020708 2005, with TDSHS,

which will provide up to \$5,535,600.00 in contract funding support to renew the ongoing Women, Infants & Children (WIC Program) in the SAMHD for the period October 1, 2004 through September 30, 2005. The Interim City Manager, or his designee, is hereby authorized to execute such documents as the agency may require in awarding this agreement. A copy of Contract Change Notice No. 14, Attachment No. 12 is set out in Attachment II and incorporated herein for all purposes.

SECTION 2. The account entitled "Public Health State Support Project 2004/2005 - Federal", SAP Fund No. 26-016000, Fund Center 3606110000 is designated for use in accounting for the fiscal transactions of this project. For the appropriation of funds for the 2004-2005 WIC Program, the Cost Center 3606110001, the Functional Area 3600500000030002, and Internal Order 136000000251 are hereby established.

SECTION 3. The sum of \$5,535,600.00 is hereby appropriated in the above-designated fund for the Women, Infants & Children (WIC Program) 2004-05 and the budget set out in Attachment I is hereby approved and adopted for entry on the City books.

SECTION 4. Funds, as enumerated by vendor number below, are encumbered in SAP Fund No. 26-016000, Cost Center 3606110001, Internal Order 136000000251 for the following Women, Infants & Children (WIC Program) clinic leases (approved in previous ordinances) for the period October 1, 2004 through September 30, 2005:

<u>Clinic Lease</u>	<u>Address</u>	<u>Vendor No.</u>	<u>SAP Record No.</u>	<u>Amount</u>
Callaghan	4418 Callaghan Rd.	1013376	4600000392	\$61,200.00
Fredericksburg Road	3600 Fredericksburg Rd	1008482	4600000389	\$63,360.00
Sam Houston Center	1013 Rittiman Rd.	1017413	4600000395	\$43,440.00
Marbach	7542 Military Drive West	1019232	4600000391	\$53,760.00
South Flores	6723 S. Flores, Suite #101.	1013431	4600000397	\$87,000.00
Thousand Oaks	4346 Thousand Oaks	1016506	4600000390	\$57,120.00

SECTION 5. Payments in an aggregate amount of \$2,000.00 are hereby authorized to be paid from SAP Fund No. 26-016000, Cost Center 3606110001, Internal Order 136000000251, SAP GL No. 5206010, Rental of Facilities, for records storage.

SECTION 6. The Interim City Manager, or his designee, is authorized to execute a Consultant Services Contract with Kathy Parkes, RN, IBCLC for program staff development, peer counselor workshops, and participant consultations on breastfeeding for the Women, Infants & Children (WIC Program) for the period October 1, 2004 through September 30, 2005. The sum of \$15,000.00 is authorized for encumbrance in SAP Fund No. 26-016000, Cost Center 3606110001, Internal Order 136000000251 and payments are to be made on a fee-for-service basis. A copy of this contract, in substantially correct form, is affixed hereto and incorporated herein for all purposes as Attachment III.

SECTION 7. The one-hundred and thirty-four (134) personnel positions set out in Attachment I and incorporated herein are authorized for the activity shown thereon.

SECTION 8. The Director of Finance, may, subject to concurrence by the Interim City Manager or the Interim City Manager's designee, correct allocation to specific internal order numbers, account numbers and fund numbers as necessary to carry out the purpose of this ordinance.

SECTION 9. Should the grant awarded be in an amount other than that budgeted for, or should the grant contain terms and conditions different than those currently existing, acceptance of the grant, budget and corresponding personnel complement will be subject to subsequent City Council ordinance.

SECTION 10. This ordinance shall be effective on and after the tenth day after passage hereof.

PASSED AND APPROVED this _____ day of November, 2004.

M A Y O R

ATTEST:

City Clerk

APPROVED AS TO FORM: _____

City Attorney

ATTACHMENT I

Women, Infants & Children (WIC Program) 2004/2005

SAP Fund No. 26-016000

Fund Center 3606110000

Functional Area 3600500000030002

Internal Order 136000000251

TDSHS Contract No. 7460020708 2005

<u>INDEX:</u>	<u>ESTIMATED REVENUES</u>	<u>SAP GL No.</u>	<u>AMOUNT</u>	<u>TOTAL</u>
	Attachment No. 12	4501100	\$ 5,535,600	
	Total Estimated Revenues:		\$	<u><u>5,535,600</u></u>

APPROPRIATIONS:**Activity 36-06-11****10/01/2004 to 09/30/05****Cost Center 3606110001**

Regular Salaries & Wages	5101010	2,959,540
Overtime Salaries & Wages	5101020	30,000
Shift Differential Pay	5101040	100
Language Skill Pay	5101050	50,400
Social Security	5103005	226,405
TMRS	5105010	330,861
Group Health Insurance	5405040	636,599
Life Insurance	5103010	6,339
Workers' Disability Compensation	5405020	46,754
Personal Leave Buy Back Pay	5103035	50,000
Communications: Telephones	5403010	105,000
Pagers/Mobile phones	5403030	4,500
Mail & Parcel Post Service	5205010	5,000
Callaghan Lease	5206010	61,200
Fredericksburg Lease	5206010	63,360
Sam Houston Ctr Lease	5206010	43,440
Marbach Lease	5206010	53,760
So. Flores Lease (New)	5206010	87,000
Thousand Oaks Lease	5206010	57,120
Records Storage Rental	5206010	2,000
Rental of Equipment	5204070	10,000
Rent of City Rolling Equipment	5407510	4,000
Travel-Official	5207010	12,000
Education	5201025	5,000
Car Expense Allowance	5103055	17,896
Freight & Storage	5205050	1,816
Linen & Laundry Service	5204010	5,500
Maint. & Repair - Buildings & Impr.	5204050	6,000
Cleaning Services	5204060	5,400
Maint. & Repair - Mach. & Equipment	5204080	7,000
Maint & Repair - Automotive	5204090	5,000
Maint & Repair - Commercial	5204020	2,000
Gas & Electricity	5404530	65,000
Sewer & Water Charges	5404540	5,000
Alarm & Security Services	5208530	10,000
Fees to Professional Contractors	5201040	15,000
Automotive Admin Charge	5404510	500

Automatic Data Processing Services	5403520	35,000	
Advertising & Publication	5203040	1,410	
Membership Dues & Licenses	5203050	1,500	
Binding, Printing & Repro.	5203060	850	
Subscriptions to Publications	5203070	2,000	
Office Supplies	5302010	40,000	
Janitor Supplies	5303010	19,000	
Food	5304010	300	
Motor Fuel & Lubricants	5403545	5,000	
Chemicals, Medical & Drugs	5304040	42,000	
Tools, Apparatus, & Accessories	5304050	18,096	
Maint & Repair Matls - Bldgs. & Impr.	5301010	7,000	
Maint & Rep Materials - Automotive	5301020	2,000	
Maint & Rep Matls - Mach. & Equip.	5301030	2,000	
Computer Software	5304075	5,000	
Other Commodities	5304080	35,000	
Indirect Cost	5406530	295,954	
Computer Equipment	5501000	15,000	
Machinery & Equipment - Other	5709060	5,000	
Furniture & Fixtures	5501065	7,000	
Total 36-06-11:		\$ 5,535,600	\$ 5,535,600

PERSONNEL COMPLEMENT:

Activity 36-06-11

Internal Order 136000000251

Class No.	Title	PREVIOUS POSITIONS	ADD (DEDUCT)	CURRENT POSITIONS
0010	Office Assistant	28	(1)	27
0014	Secretary II	1	0	1
0021	Stock Clerk	2	0	2
0038	Administrative Secretary	1	0	1
0040	Administrative Assistant I	3	0	3
0047	Special Activities Coordinator	0	1	1
0067	Administrative Aide	14	(1)	13
0206	Health Program Manager	1	0	1
0222	Peer Counselors	0	8	8
0239	Public Health Aide	25	0	25
0239	Public Health Aide (.50 FTE)	6	(4)	2
0267	Licensed Vocational Nurse	20	0	20
0267	Licensed Vocational Nurse (.50 FTE)	1	(1)	0
0282	Health Program Specialist	3	0	3
0286	Nutritionist	11	0	11
0288	Nutritionist/Dietician	2	0	2
0889	Department Systems Supervisor	1	0	1
0908	Assistant Social Services Manager	3	0	3
0909	Customer Services Representative	2	0	2
7560	Building Custodian	7	0	7
7920	Building Maintenance Supervisor	1	0	1
Total: 36-06-11		132	2	134



ATTACHMENT II

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

STATE OF TEXAS
COUNTY OF TRAVIS

TDH Document No. 7460020708 2005
Contract Change Notice No. 14

The Department of State Health Services, 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. 12 : 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 :

DEPARTMENT OF STATE HEALTH SERVICES

By: _____
(Signature of person authorized to sign)

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

Date: 9-9-04

DL PCS - Rev. 6/04

DETAILS OF ATTACHMENTS

Att/ Amd No.	DSHS Program ID/ DSHS Purchase Order Number	Term		Financial Assistance		Direct Assistance	Total Amount (DSHS Share)
		Begin	End	Source of Funds*	Amount		
01	TB/PC 0000001629	01/01/04	12/31/04	93.116	356,700.00	0.00	356,700.00
02	HIV/PREV 0000001706	01/01/04	12/31/04	93.940	232,350.00	0.00	232,350.00
03A	STD/HIV 0000001818	01/01/04	12/31/04	93.977	258,617.00	0.00	258,617.00
04A	IMM/LOCALS 0000001769	01/01/04	12/31/04	State	286,541.00	0.00	286,541.00
05A	HIV/SURV 0000002157	04/01/04	12/31/04	93.944	86,303.00	0.00	86,303.00
06	EPI/LEAD 0000002255	07/01/04	06/30/05	93.262	45,000.00	0.00	45,000.00
07	DIAB/CDSP 0000002262	07/01/04	03/29/05	93.988	90,000.00	0.00	90,000.00
08	TB/PC C038632000	09/01/04	08/31/05	State	199,444.00	0.00	199,444.00
09	STD/HIV C038634000	09/01/04	08/31/05	State	77,046.00	0.00	77,046.00
10	ACFH/POP C038881000	09/01/04	08/31/05	93.994	66,000.00	0.00	66,000.00
11	OPHP/LPHS C039361000	09/01/04	08/31/05		305,776.00	0.00	305,776.00
12	BNS/WIC-CARD C039468000	10/01/04	09/30/05	10.557	0.00	0.00	0.00
DSHS Document No.7460020708 2005 Change No. 14					Totals	\$ 0.00	\$2,003,777.00

*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. 7460020708-2005
ATTACHMENT NO. 12
PURCHASE ORDER NO. C039468000

PERFORMING AGENCY: SAN ANTONIO METROPOLITAN HEALTH DISTRICT

RECEIVING AGENCY PROGRAM: BUREAU OF NUTRITION SERVICES

TERM: October 01, 2004 THRU: September 30, 2005

SECTION I. SCOPE OF WORK:

PERFORMING AGENCY shall administer RECEIVING AGENCY'S Special Supplemental Nutrition Program for Women, Infant, and Children (WIC) to 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. PERFORMING AGENCY shall complete the following:

- 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 contract Attachment. During the term of this contract Attachment, USDA will issue regulations, instructions, policies and/or directives, which may be incorporated into the RECEIVING AGENCY'S WIC Program 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'S WIC Program. PERFORMING AGENCY can change the authorized geographic service area(s) with written approval from RECEIVING AGENCY'S WIC Program. If RECEIVING AGENCY'S WIC Program disagrees on change of geographic service area(s), PERFORMING AGENCY may terminate this contract Attachment 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'S WIC 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, and provide nutrition education and counseling to eligible applicants.

- D. Train PERFORMING AGENCY'S Local WIC Agency staff;
- E. Conduct outreach to potential applicants and make referrals to other Health and Human Service providers.
- F. Complete surveys as requested.
- G. Maintain applicant/participant records as required by RECEIVING AGENCY'S WIC Program's written rules and policies.
- H. 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.
- I. Issue prenumbered food instruments furnished by RECEIVING AGENCY'S WIC Program 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'S WIC Program. PERFORMING AGENCY shall be held financially responsible for all unaccounted for food instruments and/or for the redeemed value of those issued to ineligible participants. In addition, PERFORMING AGENCY shall be held financially liable for issuance of infant formula instruments that are not authorized or prescribed according to the Texas WIC Policy and Procedure Manual.
- J. 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.
- K. 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 PERFORMING AGENCY'S Annual Plan of Operations as approved by RECEIVING AGENCY'S WIC Program and incorporated by reference.
- L. Implement or expand PERFORMING AGENCY'S Breastfeeding Peer Counseling program to provide training and salary incentives of peer counselors who assist pregnant and breastfeeding WIC participants in normal breastfeeding situations. This funding item is contingent upon availability and whether participation is requested by PERFORMING AGENCY and approved in writing by RECEIVING AGENCY'S WIC Program.
- M. Implement Lactation services for WIC participants who have breastfeeding problems that are beyond the expertise of PERFORMING AGENCY'S local WIC staff and/or peer counselors using International Board Certified Lactation Consultants or the most qualified equivalent. Lactation services may also include PERFORMING AGENCY'S

Local WIC Agency staff training and provision of lactation equipment. RECEIVING AGENCY'S WIC Program will provide written approval of PERFORMING AGENCY'S plan to use lactation funding. PERFORMING AGENCY'S plan must include qualifications of any non-board Certified Lactation consultant, which is included in the proposal.

- N. Ensure adequate staff coverage and uninterrupted delivery of WIC services if any member of PERFORMING AGENCY'S staff is approved in writing by RECEIVING AGENCY'S WIC Program 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.
- O. RECEIVING AGENCY'S WIC Program 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'S WIC Program 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'S WIC Program 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).
- P. 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'S WIC Program, 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, including, but not limited to:

1. Uniform Federal Assistance Regulations, 7 CFR Parts 15, 15a, 15b, 246, 248, 3016, 3017 and 3018;
2. WIC Program Rules, 25 Texas Administrative Code, §§ 31.11-31.37; and
3. Child Nutrition Act of 1966, as amended, 42 USC 1786.

The following documents are incorporated by reference and made a part of this contract Attachment:

1. RECEIVING AGENCY Standards for Public Health Clinic Services, revised January 31, 2004;
2. USDA Food and Nutrition Service (FNS) Guidelines;
3. USDA FNS Instructions issued under the FNS Directives Management System; and
4. Texas WIC Policy and Procedures Manual, dated 6/2002 or latest revision.

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 website, 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 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'S WIC Program in writing if it will not continue performance under this contract Attachment in compliance with the amended policy or rule. RECEIVING AGENCY'S WIC Program may terminate this contract Attachment immediately or within a reasonable period of time as determined by RECEIVING AGENCY'S WIC Program.

PERFORMING AGENCY shall perform all activities in accordance with PERFORMING AGENCY'S FY 05 workplan, timeframes, and budget, and any revisions as approved by RECEIVING AGENCY. These documents are hereby incorporated by reference and made a part of this contract Attachment.

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.

PERFORMING AGENCY shall ensure:

- 1) 98% of families who participate in RECEIVING AGENCY'S WIC Program by receiving food instruments shall also receive nutrition education classes or individual counseling services to coincide with food voucher issuance;
- 2) Of all pregnant women who enter RECEIVING AGENCY'S WIC Program, at least 32% shall be certified as eligible during the period of the first trimester of their pregnancy;
- 3) 88% of clients who are enrolled in RECEIVING AGENCY'S WIC 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);
- 4) 60% of infants whose mothers were participants in RECEIVING AGENCY'S WIC Program during pregnancy shall be breast-fed at or before the time of their certification of eligibility; and
- 5) 98% of participants who indicate during the enrollment process of RECEIVING AGENCY'S WIC Program that they have no source of health care shall be referred to at least one (1) source of health care at certification of eligibility.

PERFORMING AGENCY shall submit a monthly activity report which demonstrates PERFORMING AGENCY'S efforts towards meeting assigned annual targets as described in items 1-5 of the performance measures. The report shall be in an approved format as provided by RECEIVING AGENCY'S WIC Program, and shall be completed and submitted to RECEIVING AGENCY'S WIC Program 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 contract 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 contract 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 contract 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'S WIC Program by giving written notice to PERFORMING AGENCY. The participant caseload is subject to change upon written notice to PERFORMING AGENCY from RECEIVING AGENCY WIC 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'S WIC Program 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 contract Attachment term. Surplus encumbered by September 30 shall be billed and vouchers received by RECEIVING AGENCY'S WIC Program no later than December 31, 2005.

PARTICIPANTS SERVED PER MONTH MAXIMUM REIMBURSEMENT:

During the term of the contract 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 within the RECEIVING AGENCY'S WIC Program.
- (2) RECEIVING AGENCY'S WIC Program 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'S WIC Program.
- (3) RECEIVING AGENCY'S WIC Program will limit (cap) PERFORMING AGENCY'S indirect costs approved by a federal cognizant agency to twenty (20) percent applied to PERFORMING AGENCY'S total direct salaries plus benefits reimbursed by RECEIVING AGENCY'S WIC Program.
- (4) RECEIVING AGENCY'S WIC Program 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'S WIC Program.
- (5) RECEIVING AGENCY'S WIC Program 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'S WIC Program directives.
- (6) RECEIVING AGENCY'S WIC Program reserves the right to utilize a competitive offering for the award of any future contracts at the end of the term of this contract Attachment.
- (7) RECEIVING AGENCY'S WIC Program may amend or terminate this contract Attachment if available funds become reduced, depleted, or unavailable during the term of the contract Attachment to the extent that the WIC Program is unable to provide administrative funding at the rate(s) shown above. RECEIVING AGENCY'S WIC Program will provide written notification to PERFORMING AGENCY of such fact.

- (8) RECEIVING AGENCY'S WIC Program may pay for additional services as specified in this contract Attachment if provided by PERFORMING AGENCY during the term of this contract Attachment (but not otherwise paid during the term of this contract Attachment) if it is in the best interest of the State and RECEIVING AGENCY'S WIC 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'S WIC Program for the services provided. If additional funds become available at a later date for the provision of these services, RECEIVING AGENCY'S WIC Program may pay PERFORMING AGENCY a share of these funds.
- (9) RECEIVING AGENCY'S WIC Program may provide incentives to PERFORMING AGENCY'S Local WIC Agencies for participants who are provided WIC services outside the normal traditional hours to the extent that federal funding is available.
- (10) RECEIVING AGENCY'S WIC Program may adjust the base reimbursement rate defined above during the term of this contract Attachment if it is in the best interest of the State of Texas and RECEIVING AGENCY'S WIC Program 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 contract 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 contract Attachment.

General Provisions, **Overtime Compensation** Article, is not applicable to this contract 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'S WIC Program funds, whether purchased locally by PERFORMING AGENCY or by RECEIVING AGENCY'S WIC Program 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'S WIC Program and submit it at a time to be specified by RECEIVING AGENCY'S WIC Program. RECEIVING AGENCY'S WIC Program reserves the right to recover the cost of equipment or supplies purchased

by RECEIVING AGENCY'S WIC Program 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 (Form GC-3), shall be submitted no later than December 31, 2005.

SECTION III. BUDGET:

All categories of costs billed to RECEIVING AGENCY'S WIC Program, 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'S WIC Program. This document is incorporated herein by reference and made a part of this contract 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 2005-12

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

§
§
§CONSULTANT SERVICES
CONTRACT

COUNTY OF BEXAR

This Contract is, entered into by and between the City of San Antonio (hereinafter referred to as "City"), a Texas Municipal Corporation, on behalf of the San Antonio Metropolitan Health District (SAMHD), and Ms. Kathy Parkes, d/b/a The Lactation Connection, Inc., (hereinafter referred to as "TLC"), WITNESSETH:

WHEREAS, the City has adopted a budget for the ongoing special supplemental nutrition program of the San Antonio Metropolitan Health District's Women, Infants, and Children (WIC Program) 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, 2004, and shall terminate September 30, 2005 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

Ms. Kathy Parkes, R.N., I.B.C.L.C.
d/b/a The Lactation Connection

332 W. Commerce, Suite 307
San Antonio, Texas 78205

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 NEGLIGENT 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 TLC 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 TLC only and not of the CITY. Any and all claims that may result from any obligation for which TLC 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 TLC.
2. Prior to the commencement of any work under this CONTRACT, TLC 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 CONTRACT, but in no instance will the CITY allow modification whereupon the CITY may incur increased risk.
4. A TLC'S financial integrity is of interest to CITY, therefore, subject to right to maintain reasonable deductibles in such amounts as are approved by CITY, TLC shall obtain and maintain in full force and effect for the duration of the CONTRACT, and any extension hereof, at TLC'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)	\$500,000 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 7 of this article herein within 10 days of the requested change. Contractor shall pay any costs incurred resulting from said changes.

6. TLC 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, TLC shall notify the City of such and shall give such notices not less than thirty (30) days prior to the change, if TLC knows of said change in advance, or ten (10) days notice after the change, if the TLC 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 TLC 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 TLC to maintain said insurance or secure such endorsement. In addition to any other remedies the City may have upon TLC'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 TLC to stop work hereunder, and/or withhold any payment(s) which become due to TLC hereunder until TLC 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 TLC may be held responsible for payments of damages to persons or property resulting from TLC'S or its subcontractors' performance of the work covered under this CONTRACT.
10. It is agreed that TLC'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 of 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

This contract sets forth the entire agreement between the parties.

IN WITNESS OF WHICH THIS AGREEMENT HAS BEEN EXECUTED ON THIS THE _____ DAY OF _____, 2004, to be effective October 1, 2004.

CITY OF SAN ANTONIO:

THE LACTATION CONNECTION, INC.:

BY: _____
Frances A. Gonzalez
Assistant City Manager

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

ATTEST: _____
Leticia M. Vacek
City Clerk

APPROVED
AS TO FORM: _____
Andrew Martin
City Attorney

INTERSTATE
INSURANCE
GROUP

CHICAGO INSURANCE COMPANY

Executive Offices
55 E. MONROE STREET
CHICAGO, ILLINOIS 60603

Client #
262300

MEDICAL PROFESSIONAL LIABILITY OCCURRENCE INSURANCE POLICY

Region	Producer	Issued	Prior Certificate Number	Purchasing Group Policy Number
23	0001614	06/25/04	AHL-1163632	44-2010129

Offered through Allied Health Purchasing Group Association

SECTION I

DECLARATIONS

Item	CERTIFICATE NUMBER: AHL 1163632
1. Named Insured:	KATHY PARKES DBA THE LACTATION CONNECTION
2. Mailing Address: C/O	10615 PERRIN-BEITEL STE 601 SAN ANTONIO, TX 78217-3140
3. Policy Period:	From: 07/26/2004 To: 07/26/2005 12:01 A.M. Standard Time At Location of Designated Premises
4. Business or Profession: Affiliation:	ALLIED HEALTH PROFESSION LACTATION CONSULTANT S/E MORE THAN 20 HOURS A WEEK
5. The Named Insured is a(n):	<input type="checkbox"/> Partnership <input type="checkbox"/> Corporation <input type="checkbox"/> Individual <input type="checkbox"/> Sole Proprietor (with employees) <input checked="" type="checkbox"/> Other: Organization

This policy is made and accepted subject to the printed conditions of this policy together with the provisions, stipulations and agreements contained in the following forms(s) or endorsements(s):

PLE-2087(04/00), PLJ-2037(05/98), PON-2003

SECTION II

Item	COVERAGE	Premium
A.	Professional Liability <input checked="" type="checkbox"/>	
B.	General Liability <input type="checkbox"/>	
	Endorsements <input type="checkbox"/>	
TOTAL:		
LIMITS OF LIABILITY		
\$ 1,000,000	each Incident and each Occurrence	\$ 3,000,000 Aggregate

SECTION III

SUPPLEMENTARY PAYMENTS

- A. First Party Assault
- B. Licensing Board Reimbursement
- C. Wage Loss and Expense
- D. Deposition Expense
- E. First Aid Reimbursement

Representative Agent or Broker

Joan F. O'Sullivan, RTA
MARSH Affinity Group Services
a service of SEABURY & SMITH
1440 RENAISSANCE DRIVE
PARK RIDGE, IL 60068
1-800-503-9230

PLP-2037 (05/98)
PLP-2337 (PRNT)

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