

**INTERLOCAL AGREEMENT  
FOR  
COMMERCIAL OFFICE LEASE**

401C Broadway Street , San Marcos, Texas

This is a Interlocal Agreement for the Lease of Commercial Office Space (hereinafter "Agreement") dated August 21, 2012 and entered into between the City of San Marcos, Texas, administering the *Women, Infants, and Children ("WIC") Program of San Marcos*, as (hereinafter "Lessee") and *Hays County*, a political subdivision of the State of Texas as (hereinafter "Lessor"), whether one or more. The above-cited parties shall be collectively referred to as "the parties to this Agreement" or "the parties".

**1.1 Interlocal Agreement.**

This is an Agreement made pursuant to the Interlocal Cooperation Act (Chapter 791, Texas Government Code), which empowers the parties to contract with each other in the performance of services that each party is authorized to perform individually, including the leasing of real property. As required by the Interlocal Cooperation Act, (i) the execution of this agreement is authorized by the governing body of each party to this Agreement; (ii) payments of rent by Lessee under this Agreement shall be made from current revenues that are available to Lessee; and (iii) the rents paid under this agreement are considered by the parties to be fair compensation to Lessor for the Leased Premises.

**1.2 The Leased Premises.**

Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor the "Leased Premises" which consists of "Lessee's Office Space" as defined below.

(a) *Lessee's Office Space.* "Lessee's Office Space", to which Lessee shall have exclusive use rights to the office space outlined on the floor-plan contained in Exhibit A. The street address of the building is 401C Broadway Street, San Marcos, Texas 78666.

**1.3 Lease Purpose.**

Lessee shall use Lessee's Office Space for operation of the Women, Infants and Children ("WIC") Program office and clinic space for the provision of services to WIC Program eligible members of the public ("Lease Purpose").

**1.4 Rentable Area.**

Lessee's approximate "rentable area" is 3,200 square feet.

**2.1 Base Rent and Additional Rents.**

As set forth below, Lessee shall pay to Lessor "base rent(s)" per square foot of net rentable area per calendar year as set forth below, which amounts to the monthly and annualized rents set forth below.

<u>Base Rent:</u>	<u>Monthly</u>	<u>Annual Rent</u>
<u>Time Period</u>	<u>Rent</u>	
36 months	\$ <u>1,600.00</u>	\$ <u>19,200.00</u>

**3.1 Date and Place of Payment.**

The monthly rent shall be due on the first day of each calendar month without demand. Partial months shall be prorated. All rent and other sums are due in the county where the building is located at the address designated by Lessor from time to time. All sums due by Lessee shall be made from current funds, are not subject to any claim of credit by Lessee, and are without right of setoff or deduction. Monies mailed are considered timely paid only if received by Lessor by the due date. Rent and late payment charges shall be paid without notice or demand. All other sums shall be due upon delivery of written notice in accordance with paragraph 27.1.

Building name: 401C Broadway Street  
Lessor's Name: Hays County, Texas  
Lessee's Name: City of San Marcos, Texas, administering the  
Women, Infants, and Children ("WIC") Program of San Marcos

Lessor initials: bc  
Lessee initials: [Signature]

### 3.2 Late Payments.

If any rent payment or other sum due by Lessee to Lessor is received and accepted by Lessor later than five (5) days after its due date, Lessee shall pay a late charge of the greater of \$ 10.00 or 5% of such rent payment, plus \$10.00 thereof for each day thereafter (for up to 15 days) until such rent or other sum is paid. Late charges shall be considered liquidated damages for Lessor's time inconvenience and overhead (except for attorneys fees and litigation costs) in collecting late rent. Lessor's acceptance of late rent or other sum shall not constitute permission for Lessee to pay the rent or other sum late thereafter and shall not constitute a waiver of Lessor's remedies for subsequent late payments. Late payment charges are due immediately upon notice or demand. All payments shall be by check or money order on a local bank, not cash. For each returned check, Lessee shall pay all applicable bank charges incurred by Lessor plus \$25.00. Payments of any kind received by Lessor on behalf of Lessee may be applied at Lessor's option to non-rent items first, then to rent. Payment of rent by Lessee shall be an independent covenant. If Lessee has not timely paid rentals and other sums due on two or more occasions, or if a check from Lessee is returned for insufficient funds or no account, Lessor may, for the next twelve (12) months or the remainder of the lease term, whichever is shorter, require that all rent and other sums due be paid by cashier's check, certified check, or money order, without prior notice.

### 3.3 Security Deposit.

The total additional security deposit to be provided by Lessee, in current funds, is \$1,600.00, at the time of execution of this lease. This security deposit will be held by Lessor to secure performance of Lessee's obligations under this lease. Lessor shall have a lien on the security deposit for that purpose. If Lessee fails to pay rent or other sums when due under this lease, Lessor may apply any cash security deposit toward amounts due and unpaid by Lessee. Lessee shall immediately restore the security deposit to its original amount after any portion of it is applied to amounts due and unpaid by Lessee. Lessor shall return the security deposit to Lessee within thirty (30) days after the termination of this Agreement, minus the cost of any damages to the Leased Premises caused by Lessee that are beyond normal wear and tear.

### 4.1 Term, Possession, and Anniversary.

The initial lease term shall be for 35 full calendar months from commencement date, plus the remainder of the last month, the last day of the lease term being *August 31, 2015*. The commencement date of this lease shall be September 21, 2012. Rent will begin to accrue on the lease commencement date.

### 4.2 Delivery of Possession.

Lessor shall deliver keys and/or access cards or codes and possession of Lessee's office space to Lessee on the lease commencement date stated in paragraph 4.1 unless otherwise agreed in writing by the parties. Lessee shall not be liable for rent until Lessor delivers possession of the leased premises to Lessee. If there is a delay in delivery of possession, the commencement date shall be delayed until Lessee's office space is ready for occupancy; and neither Lessor nor Lessor's agents shall otherwise be liable for any damages; and the lease shall not terminate.

### 5.1 Tenant Finish-Out.

Subject to paragraph 13.1, Lessee shall be allowed to make such initial improvements or alterations as are reasonably necessary for Lease Purpose. Lessor shall allow Lessee full access to the Leased Premises during preparation for move-in in advance of delivery of possession and shall pay for all utilities up to the date Lessor delivers possession under paragraph 4.2 of this Agreement.

### 6.1 Quiet Possession.

If Lessee is current and in compliance with all of Lessee's obligations under this lease, Lessee shall be entitled to peaceful and quiet possession and enjoyment of Lessee's office space, subject to the terms and conditions of this lease. Lessee shall have access to common parking areas at all times, subject to paragraph 9.2. Construction noise or vibrations shall not be considered a default by Lessor.

### 7.1 Utilities and Services by Lessee.

Except where otherwise stated in this lease, Lessor agrees to maintain existing accounts in its name, pay for the associated utilities and services, and submit a monthly invoice pursuant to Section 27.1 to Lessee for

Building name: 401C Broadway Street  
Lessor's Name: Hays County, Texas  
Lessee's Name: City of San Marcos, Texas, administering the  
Women, Infants, and Children ("WIC") Program of San Marcos

Lessor initials: bc  
Lessee initials: jm

reimbursement. Lessee shall reimburse Lessor for the following utilities and services within thirty (30) days of receiving an undisputed invoice:

- (a) Electric
- (b) Water and Wastewater
- (c) Solid Waste Disposal
- (d) Phone/fax/data lines
- (e) Natural Gas
- (f) Security system monitoring
- (g) Interior janitorial services (if requested in writing by the City Manager of the City of San Marcos)

Disputed invoices under this section shall be resolved via the agreed-upon Dispute Resolution procedures cited in Section 23.1, below.

## **7.2 Utilities and Services by Lessor.**

Except where otherwise stated in this lease, Lessor agrees to provide the following utilities and services at no additional charge:

- (a) Grounds maintenance

## **7.3 Interruption of Utilities or Services.**

Temporary interruption or malfunction of utilities, services, and/or telephones shall not render Lessor liable for damages, rent abatements, or release of any Lessee obligation. Lessor shall use diligent efforts to have such utilities and services restored as soon as reasonably possible.

## **8.1 Maintenance and Repairs by Lessor.**

Except as provided in paragraph 8.2, Lessor shall repair and/or replace, as needed, the following items, so long as they are building standard items: including but not limited to ballasts, fixtures, exterior walls, the foundation, flooring beneath floor finishes, exterior windows, roofs, other structural elements, the electrical, plumbing, hardware, appliances, doors, wall and window coverings, and heating and ventilating systems of the building. Lessor shall provide additional maintenance necessary because of damages by persons other than Lessee, or Lessee's agents, employees, family, licensees, invitees or visitors. Lessor shall use diligence to provide for the maintenance, repair, reconnection of interrupted utilities or services, subject to any reimbursement obligations of Lessee under paragraph 8.2. Lessor may rekey at any time. Lessor may temporarily close any part of the common facilities if reasonably necessary for repairs or construction. Repairs and maintenance shall be in accordance with applicable governmental requirements. Lessor shall also provide weekly cleaning services

## **8.2 Maintenance and Repairs by Lessee.**

Lessee shall promptly reimburse Lessor for the cost of maintaining, repairing or replacing non-building standard items and the cost of repairing or replacing damage which is caused inside Lessee's office space by Lessee, Lessee's agents, employees, family, or licensees, invitees, visitors, or customers or outside Lessee's office space by Lessee or Lessee's employee's, agents, or contractors. Kitchen appliances and wet bars in the Premises are not considered building standard items. Lessor shall have right of approval of all repairmen or maintenance personnel. Lessee shall not damage or allow other persons listed above to damage any portion of the leased premises. Lessee shall pay for replacement of all non-building standard light bulbs and for unstopping any drains or water closets in Lessee's office space. If Lessee or Lessee's workmen or contractors are permitted to repair, alter, or modify Lessee's office space, Lessee shall warrant that no mechanic or materialman's lien shall be filed against the leased premises and that all such contractors shall provide evidence of liability insurance as required by Lessor. All such work shall be in accordance with applicable governmental requirements.

## **8.3 Telecommunications.**

All telecommunications equipment necessary to serve Lessee shall be located in Lessee's office space and paid for by Lessee. Lessee may not require Lessor to install or allow others, without the written consent of Lessor, to install telecommunication lines or equipment elsewhere in the building.

Building name: 401C Broadway Street  
Lessor's Name: Hays County, Texas  
Lessee's Name: City of San Marcos, Texas, administering the  
Women, Infants, and Children ("WIC") Program of San Marcos

Lessor initials: bc  
Lessee initials: [Signature]

## 9.1 Access, Keys, Locks, and Security.

- (a) *Access.* Except in emergency situations, Lessee shall have access to the Leased Premises at all times during the Lease Term. Lessor shall have access to the Leased Premises during working hours for reasonable business purposes upon prior notice to Lessee except notice shall not be necessary in the event of an emergency threatening life or property or the lawful exercise of Lessor's remedies in case of default by Lessee. Lessor may show the Leased Premises six (6) months before the lease expiration date or the date Lessee gives notice to vacate, whichever is earlier.
- (b) *Keys.* Lessor shall furnish Lessee up to five (5) keys or access codes or cards for the Leased Premises. An initial deposit of \$10.00 shall be charged for each key or access card provided by Lessor. Lessor shall not be liable for risk of loss resulting from Lessee's keys, access codes, or cards being stolen, lost or used by unauthorized persons. Lessor reserves the right to rekey or change locks for security reasons if new keys are timely furnished to Lessee.
- (c) *Locks.* Lessee may not add locks, change locks, or rekey locks without written permission of Lessor. Locks may be changed at Lessee's request and expense. If locks to the Leased Premises are changed, Lessor may specify kind and brand of locks, placement, installation, master key compatibility, etc. If Lessee or any of Lessee's employees lock themselves out of Lessee's suite, said person must call a fellow-employee to gain access. Lessor is not authorized to unlock a door that accesses an area leased solely by Lessee except for emergency purposes.
- (d) *Security.* Lessor shall have no duty to provide any security services of any kind unless expressly provided in this lease. Lessor shall not be liable to Lessee or Lessee's employees, family, customers, invitees, contractors, or agents for injury, damage, or loss to person or property caused by criminal conduct of other persons, including theft, burglary, assault, vandalism or other crimes. Lessee shall lock the doors of the Leased Premises when the last person leaves such Premises for the day. If such actions do not unreasonably interfere with Lessee's occupancy, Lessor may take reasonable measures that Lessor deems advisable for the security, safety, improvement, and preservation of the Building.

## 9.2 Parking.

Lessor shall have sole control of private parking spaces included within the subject matter of this lease. If vehicles are parked in violation of Lessor parking rules, if any, or in violation of state statutes, Lessor may exercise vehicle removal remedies under Texas Transportation Code, Chapter 684 upon compliance with statutory notice. Reserved parking spaces must be established by written agreement of the parties.

## 10.1 Occupancy, Nuisance, and Hazards.

Lessee's office space shall be occupied only by Lessee or Lessee's employees and shall not be left entirely vacant or used exclusively for storage. Lessee and Lessee's agents, employees, family, licensees, invitees, visitors, and contractors shall comply with all federal, state, and local laws relating to occupancy or to criminal conduct while such persons are on the leased premises. Lessee and the persons listed above shall not (i) use, occupy, or permit the use or occupancy of the leased premises for any purpose which is directly or indirectly forbidden by such laws or which may be dangerous to life or property, (ii) permit any public or private nuisance, (iii) disturb the quiet enjoyment of other tenants, (iv) do anything which might emit offensive odors or fumes, (v) make undue noise or vibrations, (vi) permit anything which would cancel insurance coverage or increase the insurance rate on the building or contents, or (vii) otherwise damage the leased premises, except for normal wear and tear. Normal wear and tear is damage that occurs without carelessness, negligence, accident, or abuse.

## 11.1 Taxes.

Lessor shall be responsible for payment of all taxes and assessments against the building. Lessee shall timely pay all taxes assessed against Lessee's furniture, equipment, fixtures, or other personal property in Lessee's office space.

## 12.1 Insurance.

Lessor and Lessee shall comply with the respective insurance obligations as set forth below:

Building name: 401C Broadway Street  
Lessor's Name: Hays County, Texas  
Lessee's Name: City of San Marcos, Texas, administering the  
Women, Infants, and Children ("WIC") Program of San Marcos

Lessor initials: BC  
Lessee initials: [Signature]

- (a) *Lessor.* Lessor shall maintain commercial general liability insurance and all-risk insurance subject to standard policy exclusions and limitations through the Texas Association of Counties Risk Pool.. Such insurance may contain policy exclusions as reasonably determined by Lessor. The coverage amounts shall be as Lessor may deem reasonably appropriate. Lessor shall have no responsibility to maintain any kind of insurance on Lessee's contents. Lessor shall have no responsibility to maintain fire and extended coverage insurance on Lessee's contents.
- (b) *Lessee.* Lessee shall provide Lessee's own public liability insurance for its operations on the leased premises. In no event shall such coverage limits be less than three-hundred-thousand dollars in United States currency (\$300,000 USD) per offense (aggregate). Lessee is required to maintain adequate fire and extended coverage insurance (including theft, vandalism and malicious mischief) on the contents in Lessee's office space, including fixtures, furniture, equipment, supplies, inventory, and other personal property. Such personal property is not covered by Lessor's insurance.
- (c) *Insurance certificates.* Lessee shall provide Lessor with a certificate of Lessee's insurance or a copy thereof as required above within seven (7) days after Lessee initially occupies Lessee's office space or any portion thereof.

## **12.2 Hold Harmless and Indemnity.**

To the extent that it is not covered by Lessor's insurance, Lessee shall indemnify Lessor for and shall hold Lessor harmless from all fines, claims, liabilities, and suits (including costs and expenses of defending against same) resulting from any breach or nonperformance of the lease by Lessee or Lessee's agents, employees, family, licensees, or invitees. To the extent that it is not covered by Lessee's insurance, Lessor shall indemnify Lessee for and shall hold Lessee harmless from all fines, claims, liabilities, and suits (including costs and expenses of defending against same) resulting from any breach or nonperformance of the lease by Lessor or Lessor's agents, employees, family, licensees, or invitees. To the extent that it is covered by Lessor's insurance, Lessor and Lessee shall not be liable to the other or the other's agents, employees, or family for any damage to personal property resulting from any act, omission, or negligence of any other tenant, visitor, or occupant of the office building. This paragraph shall survive termination or expiration of this lease. The provisions of this paragraph 12.2 are limited as follows: All obligations of the Lessee, shall be enforceable against Lessee only to the extent permitted by law and with the limitation and understanding of Lessor that Lessee in no manner waives any limitations on liability or any immunity from suit or liability granted by applicable laws or the Texas Constitution.

## **13.1 Alterations by Lessee.**

Lessee may not make any alterations, improvements, door lock changes, or other modifications of any kind to the leased premises without Lessor's written consent. Consent for governmentally required changes may not be unreasonably withheld. "Alterations" include but are not limited to improvements glued, screwed, nailed, or otherwise permanently attached to the building, structural changes, roof and wall penetrations, and all plumbing, electrical, and HVAC changes. Requests for Lessor's approval shall be in writing and shall be detailed to Lessor's reasonable satisfaction. The foregoing shall be done only by Lessor's contractors or employees or by third parties approved by Lessor in writing. Lessee shall pay in advance for any requested alterations, improvements, lock changes, or other modifications which are approved and performed by Lessor. If same are performed by Lessee with Lessor's permission, Lessee shall not allow any liens to be placed against the buildings as a result of such additions or alterations. Alterations, improvements, and modifications done at Lessee's request shall comply with all applicable laws. Changes in Lessee's alterations or improvements in Lessee's space which may be later required by governmental action shall also be paid for by Lessee.

## **13.2 Americans With Disabilities Act.**

Lessor shall be responsible for any requirements under the Americans with Disabilities Act or similar state or local laws as they relate to any common area entrance and exit doorways and elevators and any doors into Lessee's office space and to structural building items that Lessor is required to maintain under the terms of this lease. Lessee agrees to cooperate fully with Lessor to enable Lessor to timely comply with the provisions of this paragraph and to immediately forward to Lessor any notice Lessee receives regarding complaints, injuries, or claims by anyone claiming that those items which are the responsibility of Lessor do not comply with the provisions of the Americans

Building name: 401C Broadway Street  
Lessor's Name: Hays County, Texas  
Lessee's Name: City of San Marcos, Texas, administering the  
Women, Infants, and Children ("WIC") Program of San Marcos

Lessor initials: bc  
Lessee initials: [Signature]

with Disabilities Act. Lessee shall be responsible for any requirements under such architectural barrier laws as they relate to Lessee's use of Lessee's office space, including, but not limited to, the positioning of Lessee's furnishings within the office space.

#### **14.1 Removal of Property by Lessee.**

Lessee may remove its trade fixtures, furniture, and equipment only if (i) such removal is made prior to the end of the lease term, (ii) Lessee is not in default under this lease at time of removal, and (iii) such removal is not in anticipation of an early moveout prior to the end of the lease term. Lessee shall pay all costs of removal. Lessee shall have no rights to property remaining on the leased premises after moveout. Upon moveout, Lessee may not remove any alterations as defined in paragraph 13.1 or improvements such as wall-to-wall carpeting, book shelves, window coverings, drapes, cabinets, paneling, counters, kitchen or breakroom built-ins, shelving, wall covering, and anything else attached to the floor, walls, or ceilings. If and only if Lessor requests in writing no later than one month after Lessee moves out and receives the consent of Lessor, Lessee may remove alterations, fixtures, equipment, cabling, and other property installed by Lessee. Lessee shall pay for cleaning or repairing damage caused by Lessee's removal of any property.

#### **15.1 Subletting and Assignment.**

Lessee may not sublet, assign, pledge, or mortgage this lease and may not grant licenses, commissions, or other rights of occupancy to all or any part of the Leased Premises without Lessor's prior written approval.

#### **16.1 Destruction by Fire or Other Casualty.**

- (a) *Total destruction, rent abatement, and restoration.* If Lessee's office space is totally damaged by fire or other casualty so that it cannot reasonably be used by Lessee and if this lease is not terminated as provided in subparagraph "d" below, there shall be a total abatement of Lessee's rent and Lessee's obligation to pay office building operating expenses until Lessee's office space is restored by Lessor and Lessee.
- (b) *Partial destruction, rent abatement, and restoration.* If Lessee's office space is partially destroyed or damaged by fire or other hazard so that it can be only partially used by Lessee for the purposes allowed in this lease and if this lease is not terminated as provided in subparagraph "d" below, there shall be a partial abatement of Lessee's rent and Lessee's obligation to pay office building operating expenses which fairly and reasonably corresponds to the time and extent to which Lessee's office space cannot reasonably be used by Lessee.
- (c) *Restoration.* Lessor's obligation to restore shall be limited to the condition of the leased premises existing prior to the casualty. Lessor shall proceed with diligence to restore. During restoration, Lessee shall continue business to the extent practical in Lessee's reasonable judgment.
- (d) *Lease termination.* If Lessee's office space or the office center is so badly damaged that restoration and repairs cannot be completed within six (6) months after the fire or casualty, then this lease may be terminated as of the date of the destruction by either Lessor or Lessee by serving written notice upon the other. Termination notice must be delivered within one (1) month after the casualty.

#### **17.1 Condemnation.**

If the Leased Premises or any material portion thereof, including any portion of the parking lot is taken by condemnation and if the leased premises is thereby reasonably rendered unusable for Lessee's business use and activities, this lease shall automatically terminate as of the date title vests in the condemning authority pursuant to such taking or acquisition; and Lessor and Lessee shall be relieved of all further obligations under this lease. Lessor shall be entitled to recover from the condemning authority the full amount of Lessor's interest in this lease and in the property which is taken in condemnation; provided, however, if Lessee is not in default hereunder on the day of taking or acquisition by the condemning authority, Lessee shall be allowed to recover from the condemning authority, at Lessee's own expense, the value of Lessee's remaining leasehold interest and Lessee's trade fixtures, if any, which are taken in condemnation; but not otherwise. Lessee shall be responsible for Lessee's own attorney's fees and for proving its own damages.

Building name: 401C Broadway Street  
Lessor's Name: Hays County, Texas  
Lessee's Name: City of San Marcos, Texas, administering the  
Women, Infants, and Children ("WIC") Program of San Marcos

Lessor initials: bc  
Lessee initials: jm

### 18.1 Default by Lessor.

Lessee shall be entitled to recover actual damages and terminate this lease if (i) Lessor fails to pay any sum due and owing to Lessee within seven (7) days after written demand from Lessee, or (ii) Lessor remains in default on any other obligation for seven (7) days after Lessee's written demand for performance. However, Lessor shall not be in default if Lessor promptly commences to cure such noncompliance and diligently proceeds in good faith to cure same after receiving written notice of such default. If taxes and utilities are not timely paid, Lessee may pay same to the extent that it is necessary to avert foreclosure or cutoff. If Lessor fails to perform any covenant, term or condition of this lease that Lessor is obligated to perform and, as a consequence of such nonperformance, Lessee shall recover a money judgment against Lessor, such judgment shall be satisfied only out of Lessor's equity in the property. Lessor shall have no liability whatsoever for any deficiency, and no other property or assets of Lessor shall be subject to levy, execution or other enforcement procedures as a result of such judgment.

### 19.1 Default by Lessee.

If Lessee defaults, Lessor shall have any or all remedies set forth below.

- (a) *Definition of default.* The occurrence of any of the following shall constitute a default by Lessee: (i) failure to pay rent or any other sum due by Lessee under this lease within 3 days after written demand therefor by Lessor; (ii) failure to vacate on or before the last day of the lease term, renewal term, or extension period; (iii) failure to pay rent in advance on a daily basis in the event of unlawful holdover by Lessee; (iv) unauthorized early move-out or notice of same as set forth below; (v) acquisition of Lessee's interest in the lease by a third party by judicial or non-judicial process; or (vi) failure to comply with any other provision of the lease (including rules) if such failure to comply is not cured as soon as possible after delivery of written notice by Lessor to Lessee. However, Lessee shall not be in default under subclause (vi) above if Lessee promptly commences to cure such noncompliance and diligently proceeds in good faith to cure same after receiving written notice of such default.
- (b) *Utilities and services.* If Lessee is in default for nonpayment of rent or other sums due and if Lessee fails to pay same in full within three (3) days after Lessor hand delivers to Lessee or to Lessee's representative written notice of Lessor's intent to terminate utilities or services which are furnished by Lessor, then Lessor may terminate such utilities or services after such 3-day notice period, without further notice. Lessor's right to terminate such utilities or services shall occur automatically and without notice if Lessee's rent is accelerated under subparagraph "d" below, relating to unlawful early move-out.
- (c) *Acceleration after notice of rental delinquency.* If Lessee is in default for nonpayment of rent or other sums due and if Lessee fails to pay same in full within three (3) days after Lessor delivers to Lessee or to Lessee's office space a written notice of Lessor's intent to accelerate, then all rent for the remainder of the lease term shall be accelerated, due, and delinquent at the end of such 3-day notice period without further demand or notice. Such acceleration rights are in consideration of the rentals for the entire term being payable in monthly installments rather than in one lump sum at the beginning of the lease term. If Lessee has already vacated the leased premises, notice of acceleration may be delivered to Lessee pursuant to paragraph 27.1. Liability for additional rents accruing in the future (over and above any base rents) shall not be waived by such acceleration.
- (d) *Acceleration upon early move-out.* If Lessee is lawfully evicted, or if Lessee moves out or gives verbal or written notice (in person or by an authorized employee or agent) of intent to move out prior to the end of the lease term without the rent being paid in full for the entire remainder of the lease term or renewal or extension period or without prior written consent of Lessor, all remaining rents for the remainder of the lease term shall be accelerated and due immediately and automatically, without demand or notice. Such acceleration shall occur even if the rent for the current month has been paid in full.
- (e) *Termination of possession.* If Lessee is in default as defined in subparagraph "a" above and if Lessee remains in default for three (3) days after Lessor gives notice of such default to Lessee, or if Lessee abandons the leased premises, Lessor may (with or without demand for performance) terminate Lessee's right of possession by giving one day's written notice to vacate; and Lessor shall be entitled to immediate

Building name: 401C Broadway Street  
Lessor's Name: Hays County, Texas  
Lessee's Name: City of San Marcos, Texas, administering the  
Women, Infants, and Children ("WIC") Program of San Marcos

Lessor initials: bc  
Lessee initials: [signature]

possession without termination of Lessee's obligations under the lease. Lessor's repossession shall not be considered an election to terminate this lease unless written notice of such intention to terminate is given to Lessee by Lessor. Repossession may be by voluntary agreement or by eviction lawsuit. Commencement of an eviction lawsuit shall not preclude other Lessor remedies under this lease or other laws.

- (f) *Reletting costs.* If Lessee is in default under this lease and if Lessor terminates Lessee's right of possession without terminating this lease and Lessee's space is released, Lessee shall pay upon Lessor's demand the following: (i) all costs of reletting (which in no event shall be less than one month's rent), including leasing commissions, rent concessions (whether in the form of assuming or buying out lease remainders elsewhere, free rent for a period of time, or reduced rental rates), utilities during the vacancy, advertising costs, administrative overhead, and all costs of repair, remodeling, or redecorating for replacement tenants in Lessee's office space, (ii) all rent and other indebtedness due from Lessee to Lessor through the date of termination of Lessee's right of possession, and (iii) all rent and other sums required to be paid by Lessee during the remainder of the entire lease term, subject to the acceleration paragraphs above.
- (g) *Mitigation by Lessor.* Upon eviction or voluntary vacation of the leased premises by Lessee without the lease being terminated by Lessor, Lessor shall make reasonable efforts to relet the leased premises. After deduction of reasonable expenses incurred by Lessor, Lessee shall receive credit for any rentals received by Lessor through reletting the leased premises during the remainder of the lease term or renewal or extension period. Such deductible expenses may include real estate commissions, attorney's fees, and all other commercially reasonable expenses in connection with reletting. Lawsuit to collect amounts due by Lessee under this lease may be brought from time to time on one or more occasions without the necessity of Lessor's waiting until the expiration of the lease term. If judgment for accelerated rents is recovered, Lessor shall give credit against such judgment for subsequent payments made by Lessee and subsequent rentals received by Lessor from other tenants of Lessee's office space, less lawful deductions and expenses of reletting.
- (h) *Termination of lease.* Lessor may terminate this lease upon default by Lessee or at any time after Lessor's lawful re-entry or repossession following default by Lessee. Lessor's agents have authority to terminate the lease only by written notice given pursuant to paragraph 27.1. After termination, Lessee shall remain liable to Lessor for all sums accruing and unpaid prior to termination and any year-end adjustments of building operating expense, prorated through the date of termination.
- (i) *Damages.* In addition to other remedies, Lessor may recover actual damages incurred.

## **20.1 Late Payment Fees and Other Expenses.**

Late payment fees as set forth in paragraph 3.2 shall be considered reasonable liquidated damages for the time, trouble, inconvenience, and administrative overhead expense incurred by Lessor in collecting late rentals, such elements of damages being uncertain and difficult to ascertain. Late payment fees shall not be liquidated damages for attorney's fees or for Lessor's loss of use of such funds during the time of delinquency. Whenever Lessee requests Lessor to take any action or give any consent required or permitted under this Lease, Lessee will reimburse Lessor for Lessor's reasonable costs incurred in reviewing the proposed action or consent, including reasonable attorneys', engineers', or architects' fees, within ten (10) days after Lessor's delivery to Lessee of a statement of such costs. Lessee shall be obligated to make such reimbursement without regard to whether Lessor consents to any such proposed action.

## **21.1 Nonwaiver.**

The acceptance of monies past due or the failure to complain of any action, nonaction, delayed payment, or default, whether singular or repetitive, shall not constitute a waiver of rights or obligations under the lease. Lessor's or Lessee's waiver of any right or any default shall not constitute waiver of other rights, violations, defaults, or subsequent rights, violations, or defaults under this lease. No act or omission by Lessor or Lessor's agents shall be deemed an acceptance or surrender of the leased premises, and no agreement by Lessor to accept a surrender of the leased premises shall be valid unless it is in writing and signed by a duly authorized agent of Lessor.

Building name: 401C Broadway Street  
Lessor's Name: Hays County, Texas  
Lessee's Name: City of San Marcos, Texas, administering the  
Women, Infants, and Children ("WIC") Program of San Marcos

Lessor initials: ka  
Lessee initials: [Signature]



### 22.1 Transfer of Ownership by Lessor.

If Lessor transfers ownership of the office building (other than as security for a mortgage) and if Lessor has delivered to the transferee all of Lessee's security deposits and any prepaid rents, Lessor shall be released from all liability under the lease for Lessor obligations (other than for Lessor defaults arising prior to the transfer and noted in any estoppel certificate signed by Lessee); and such transferee shall become liable as Lessor. Such right to be released of liability shall accrue to subsequent owners only if such transfer is in good faith and for consideration.

### 23.1 Dispute Resolution.

- (a) Negotiation. The Parties will attempt in good faith to resolve promptly through negotiation any claim or controversy arising out of or relating to this Lease. If a controversy or claim should arise, the Parties agree to each select a Representative and to have those Representatives meet at least once to attempt in good faith to resolve the dispute. For such purpose, any Party may request the others to meet within ten (10) days, at a mutually-agreed-upon time and place. The Parties shall, within ten (10) days after the Effective Date of this Contract, each designate to the other their respective Representatives, who shall be an executive-level individual with authority to settle disputes. Each of the Parties may change the designation of its Representative, but shall maintain at all times during the term of this Contract a designated Representative and shall ensure that the other Parties are notified of any change in the designation of its Representative.
- (b) Mediation. If the dispute has not been resolved within thirty (30) days after the first meeting of the designated Representatives (or such longer period of time as may be mutually agreed upon), any of the parties may refer the claim or controversy to non-binding mediation conducted by a mutually-agreed-upon party qualified to perform mediation of disputes related to the subject matter of this Agreement (herein referred to as the "Mediator") by sending a written mediation request to the other party. In the event that such a request is made, the Parties agree to participate in the mediation process. The Parties and the Mediator may join in the mediation any other party necessary for a mutually acceptable resolution of the dispute. Should the Mediator ever be unable or unwilling to continue to serve, the parties shall select a successor Mediator. The mediation procedure shall be determined by the Mediator in consultation with the parties. The fees and expenses of the Mediator shall be borne equally by the parties.
- (c) Litigation. If the dispute is not resolved within thirty (30) days after the commencement of mediation, or if no mediation has been commenced within ninety (90) days after the first meeting between Representatives (or such longer period of time as may be mutually agreed upon), any of the Parties may commence litigation to resolve the dispute in any Texas state court of competent jurisdiction, or in the United States District Court for the Western District of Texas to the extent said Court shall have jurisdiction over the matter.


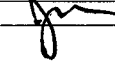
### 24.1 Surrender of Premises.

When Lessee moves out, Lessee shall surrender Lessee's office space in the same condition as on the date of lease commencement by Lessee (as changed or improved from time to time in accordance with this Agreement), less ordinary wear and tear. Removal of property from the leased premises is subject to paragraph 14.1. Upon surrender, Lessee shall provide Lessor with all of Lessee's keys, access codes and cards to the Leased Premises and the combination to all safes and vaults, if any in the Leased Premises.

### 25.1 Holding Over.

If Lessee remains in possession of the leased premises after the expiration of the lease (including valid lease extensions), then (i) Lessee shall be deemed to be occupying the leased premises as a tenant-at-sufferance on a daily basis, subject to all obligations of the lease, (ii) Lessee shall pay rent for the entire holdover period at the rate of 125% of the then-current rental rate under this lease, (iii) Lessee shall be subject to all other remedies of Lessor as provided in paragraph 19.1, and (iv) Lessee shall, to the extent permitted by law and without waiving any limitations on liability or immunity from suit or liability under applicable laws or the Texas Constitution, indemnify Lessor and/or prospective tenants for damages, including lost rentals, storage expenses, and attorney's fees. Holdover rents shall be immediately due on a daily basis and delinquent without notice or demand; and the prior written notice and

Building name: 401C Broadway Street  
Lessor's Name: Hays County, Texas  
Lessee's Name: City of San Marcos, Texas, administering the  
Women, Infants, and Children ("WIC") Program of San Marcos

Lessor initials:   
Lessee initials: 

waiting period requirements of this lease shall not be necessary in order for Lessor to exercise remedies thereunder. By written agreement of the parties, Lessee may avoid being subjected to the above terms and penalties by extending the lease term for a period of one month (and for as many one-month periods thereafter as agreed to by the parties) at a minimum rate of 125% of the then-current rental rate under this lease.

#### **26.1 Signs and Building Name.**

Except for standard suite signage and building directory listings, there shall be no signs, symbols, or identifying marks on or in the building, halls, elevators, staircases, entrances, parking areas, landscape areas, doors, walls, or windows without prior written approval of Lessor. All signs or lettering shall conform to the sign and lettering criteria established by Lessor. Unless otherwise agreed by the parties, suite signage and building directory changes shall be done exclusively by Lessor and at Lessee's expense. Lessor may remove all unapproved signs without prior notice to Lessee and at Lessee's expense.

#### **27.1 Notices.**

Whenever written notice is required or permitted under this lease, such notice shall be in writing and shall be either (i) hand delivered personally to the party being notified, (ii) hand delivered to or inside such party's mailing address, (iii) delivered by fax provided there is a fax transmittal confirmation, or (iv) delivered at such party's mailing address by overnight commercial courier or by certified mail, return receipt requested. The mailing address of Lessor shall be the address to which Lessee normally mails or delivers the monthly rent unless Lessor notifies Lessee of a different address in writing. The mailing address of Lessee shall be Lessee's office space under this lease unless Lessee notifies Lessor of a different address in writing. Notice by noncertified mail is sufficient if actually received by the addressee or an employee or agent of addressee. The term "notice" shall be inclusive of notices, billings, requests, and demands.

#### **28.1 Successors.**

This lease shall bind and inure to the benefit of the parties, any guarantors of this lease, and their respective successors and assigns.

#### **29.1 Building Operating Expense.**

Unless otherwise agreed by the parties in writing, Lessor shall not charge Lessee for Building Operating Expenses, except those expenses defined in Section 7.2 and Section 8.2 of this Agreement. Valid charges for Building Operating Expenses shall be invoiced pursuant to Section 3.1, and shall be provided to Lessee in writing. Lessee shall include payment of any outstanding Building Operating Expenses in its next regular rent payment.

#### **30.1 Representations and Warranties by Lessor.**

Lessor warrants that Lessor is the sole owner of the land and improvements comprising the Lease Premises and that Lessor has full right to enter into this lease. Lessor's duties and warranties are limited to those expressly stated in this lease and shall not include any implied duties or implied warranties, now or in the future. No representations or warranties have been made by Lessor other than those expressly contained in this lease.


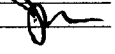
#### **31.1 Place of Performance.**

Unless otherwise expressly stated in this lease, all obligations under this lease, including payment of rent and other sums due, shall be performed in the county where the office building is located, at the address designated from time to time by Lessor.

#### **32.1 Miscellaneous.**

- (a) This lease contains the entire agreement of the parties. **NO OTHER WRITTEN OR ORAL PROMISES OR REPRESENTATIONS HAVE BEEN MADE, AND NONE SHALL BE BINDING.** This lease supersedes and replaces any previous lease between the parties on Lessee's office space, including any renewals or extensions thereunder. Except for reasonable changes in written rules, this lease shall not be amended or changed except by written instrument, signed by both Lessor and Lessee. **LESSOR'S AGENTS DO NOT AND WILL NOT HAVE AUTHORITY TO (1) MAKE EXCEPTIONS, CHANGES OR AMENDMENTS TO THIS LEASE, OR FACTUAL REPRESENTATIONS NOT EXPRESSLY CONTAINED IN THIS LEASE, (2) WAIVE ANY RIGHT, REQUIREMENT, OR PROVISION OF THIS LEASE, OR (3) RELEASE LESSEE FROM ALL OR PART OF THIS**

Building name: 401C Broadway Street  
Lessor's Name: Hays County, Texas  
Lessee's Name: City of San Marcos, Texas, administering the  
Women, Infants, and Children ("WIC") Program of San Marcos

Lessor initials:   
Lessee initials: 

**LEASE, UNLESS SUCH ACTION IS IN WRITING AND SIGNED BY BOTH PARTIES TO THIS LEASE.** Multiple lessees shall be jointly and severally liable under this lease. Notices, requests, or agreements to, from, or with one of multiple lessees shall be deemed to be to, from, or with all such Lessees. Under no circumstances shall Lessor or Lessee be considered an agent of the other. The lease shall not be construed against either party more or less favorably by reason of who drafted the lease or changes in the lease. Texas law applies. If any date of performance or exercise of a right ends on a Saturday, Sunday, or state holiday, such date shall be automatically extended through the next business day. Time is of the essence; and all performance dates, time schedules, and conditions precedent to exercising a right shall be strictly adhered to without delay except where otherwise expressly provided. Time for performance of non-monetary obligations of either party shall be reasonably extended to the extent delay is caused by force majeure (i.e. a cause such as riot, strikes, etc., beyond the control of the party obligated to perform). If any provision of this lease is invalid under present or future laws, the remainder of this lease shall not be affected.

- (b) Subject to Funding. The obligations under this Lease are contingent upon the annual appropriation of funds by the San Marcos City Council based on funding from the Texas Department of State Health Services for the purposes of this Lease. If the San Marcos City Council fails to appropriate funds for such purposes in any fiscal year during the term of this Lease, the Lease term will be adjusted to terminate concurrently with the end of the period for which funding has been appropriated. Notwithstanding any other provision in this Lease to the contrary, termination of the Lease under this paragraph does not constitute a default by Lessee under any provisions of this Lease and the penalties and remedies for default outlined in this Lease are not applicable.
- (c) Subject to State and Federal Funding Requirements. Notwithstanding anything to the contrary in this Lease, Landlord shall not assert or enforce a lien or security interest against any property of Lessee that is not permitted by applicable law or funding agreements with the State of Texas or United States of America related to the Lease Purpose. Moreover, any permitted lien or security interest shall be subordinate to any interest in property of the State of Texas or the United States of America arising by virtue of any funding agreements such entities may have with the Lessee. As Lessee is a governmental entity providing services funded with state and federal funds, Lessor agrees that it may not seize or deny access to any personal property, files, documents and any other possessions of Lessee or its officers, agents, employees or clients on or in the Leased Premises. In the event of a lock-out, Lessor agrees to allow Lessee all reasonable access during normal business hours to remove all such things enumerated in the previous sentence from the Leased Premises.

### 33.1 Exhibit List.

The exhibits attached to this lease are listed below. All exhibits are hereby incorporated in this Agreement by reference as if written fully herein.

Exhibit A	Floor Plan of Lessee's Office Space
Exhibit B	Hazardous Materials Statement

### 34.1 Authority to Sign.

The names and signatures of all parties are shown below; and all persons signing have been duly authorized to sign.

(Signatures are located on the following page)

Building name: 401C Broadway Street  
Lessor's Name: Hays County, Texas  
Lessee's Name: City of San Marcos, Texas, administering the  
Women, Infants, and Children ("WIC") Program of San Marcos

Lessor initials: \_\_\_\_\_  
Lessee initials: \_\_\_\_\_

**LESSOR**

CITY OF SAN MARCOS  
A MUNICIPAL CORPORATION  
Printed name of company or firm (if applicable)

JAMES R. NUSE, P.E.,  
Printed name of person signing

  
Signature

City Manager  
Title of person signing (if applicable)

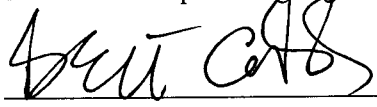
630 East Hopkins, San Marcos, Texas 78666  
Lessor Address

8/24/12  
Date signed (Please initial all pages and exhibits)

**LESSEE**

HAYS COUNTY  
A POLITICAL SUBDIVISION OF THE STATE OF TEXAS  
Printed name of company or firm (if applicable)

BERT COBB, M.D.  
Printed name of person signing

  
Signature

County Judge  
Title of person signing (if applicable)

111 E. San Antonio, San Marcos, Texas 78666  
Lessee Address

8/14/12  
Date signed (Please initial all pages and exhibits)

Attest:   
County Clerk



Building name: 401C Broadway Street  
Lessor's Name: Hays County, Texas  
Lessee's Name: City of San Marcos, Texas, administering the  
Women, Infants, and Children ("WIC") Program of San Marcos

Lessor initials: Bc  
Lessee initials: jc

EXHIBIT A  
(two pages)

**Floor Plan of Lessee's Office Space**  
(see paragraph 1.2 of lease)

Building Name: 401C Broadway Street

Approximate Usable SF: 3,200

Approximate Rentable SF: 3,200

The parties agree that the floor plan outlined in bold or hashmarked below is a true and correct diagram of Lessee's office space referred to in paragraph 1.2.

(SEE THE FOLLOWING PAGE)

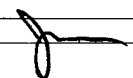
Building name: 401C Broadway Stree

Lessor's Name: Hays County, Texas

Lessee's name: City of San Marcos, Texas, administering the  
Women, Infants, and Children ("WIC") Program of San Marcos

Lessor initials: \_\_\_\_\_

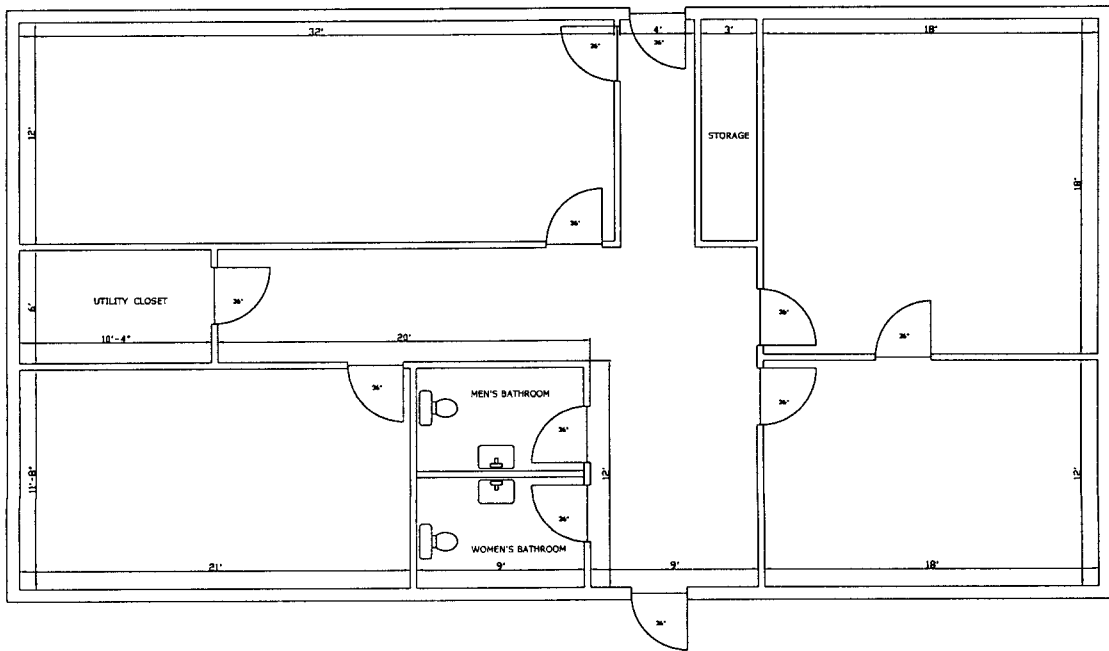
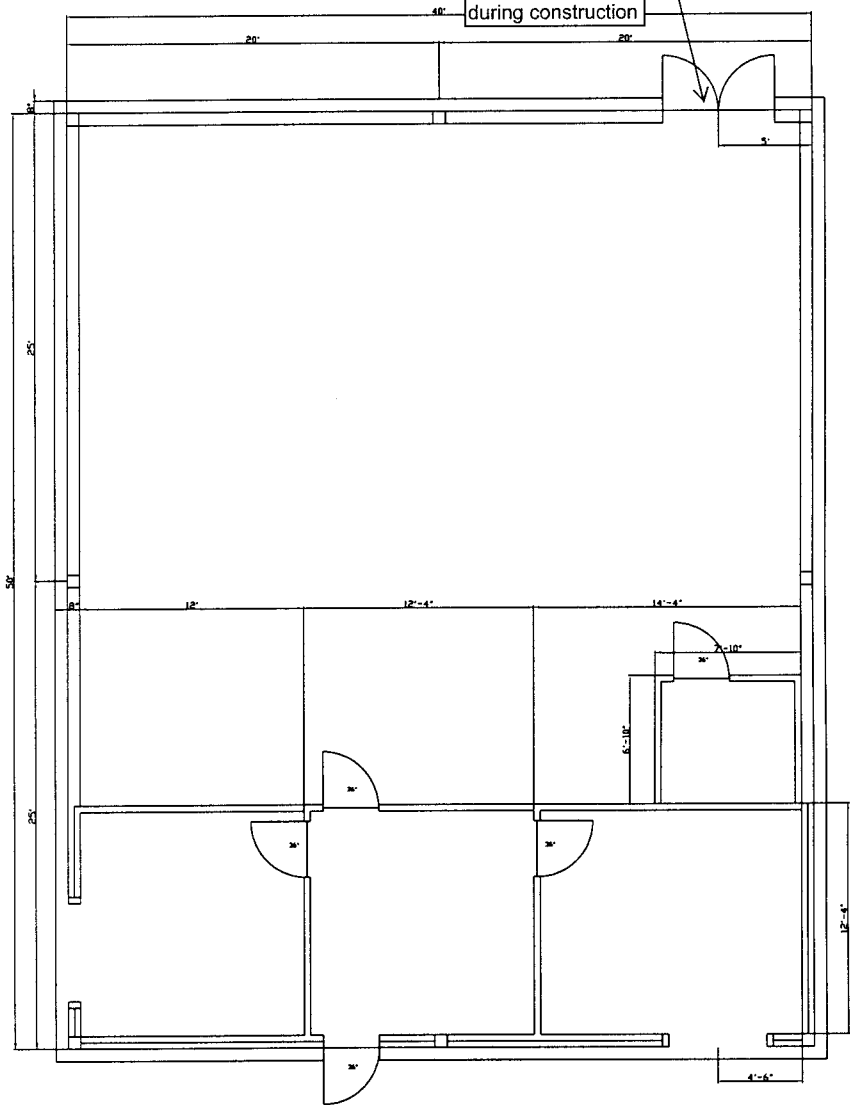
Lessee initials: \_\_\_\_\_



# HAYS CO. ELECTIONS

This drawing was prepared using dimensions and features represented in the construction drawings. Some features may have been installed slightly different during construction.

This door was installed in the center of the wall during construction



**Hazardous Materials Statement**

Various materials utilized in the construction of any improvements to the property or in the use thereof, past or present, may contain materials that have been or may in the future be determined to be hazardous. For example, some electrical transformers and other electrical components can contain PCBs, and asbestos may have been used in a wide variety of building components such as fire-proofing, air duct insulation, acoustical tiles, spray-on acoustical materials, linoleum, floor tiles and plaster. Such substances may be present on or in soils, underground water, building components or other portions of the leased premises in areas that may or may not be accessible or noticeable.

Current federal, state and local laws and regulations may require the clean-up of such hazardous or undesirable materials.

Lessor, real estate brokers, and leasing agents in this transaction have no expertise with respect to hazardous materials and have not made, nor will any of their statements constitute representations, either express or implied, regarding the existence or nonexistence of hazardous materials in or on the leased premises.

Building name: 401C Broadway Street  
Lessor's Name: Hays County, Texas  
Lessee's Name: City of San Marcos, Texas, administering the  
Women, Infants, and Children ("WIC") Program of San Marcos

Lessor initials: PC  
Lessee initials: gm