

**PROFESSIONAL SERVICES CONTRACT  
FOR THE PROVISION OF NUTRITION SERVICES TO  
THE CITY OF SAN ANTONIO HEAD START PROGRAM WITH  
NUTRITION THERAPY ASSOCIATES, INC.**

This contract (“CONTRACT”) is made and entered into by and between the CITY OF SAN ANTONIO, a Texas municipal corporation (“CITY”), acting by and through its Director (“Director”) of the Department of Human Services pursuant to Ordinance No. \_\_\_\_\_ dated \_\_\_\_\_, and Nutrition Therapy Associates, Inc. (“CONSULTANT”), (together, the “Parties”) for the City’s Head Start Program, which includes the Head Start Pre-K (Head Start), Early Head Start – Child Care Partnership (“EHS-CCP”), and Early Head Start (EHS) programs.

The Parties agree, and by the execution of this CONTRACT are bound, to its mutual obligations and to the performance and accomplishment of the tasks described.

**I. TERM**

- 1.1 This CONTRACT will commence on July 1, 2023 and terminate on July 31, 2028 unless earlier termination occurs pursuant to any other provision in this CONTRACT, contingent upon the satisfactory performance of CONSULTANT, as determined solely by Director.
- 1.2 If funding for the entire CONTRACT is not appropriated at the time this CONTRACT is entered into, CITY retains the right to terminate this CONTRACT at the expiration of each of City’s annual budget periods.
- 1.3 This CONTRACT supersedes prior conflicting or inconsistent agreements with regard to either the Head Start or Early Head Start programs, and all references to the Scopes of Work or budgets will mean the Scope of Work and budget in this CONTRACT and its amendments. All prior contracts or agreements are hereby terminated as of the commencement date of this CONTRACT.

**II. SCOPE OF SERVICES**

- 2.1 CONSULTANT agrees to provide the services described below each budget year, either in-person, virtually, and/or pre-recorded, as applicable and as requested by the City, for both center and home-based options, in exchange for the compensation described in Article III, Compensation to Consultant.

**A. Head Start**

- 1. Meet all Head Start and Education Service Provider requirements, including requirements for background checks and training.
- 2. Provide ongoing consultation to parents, Education Service Provider Staff, and CITY staff for any nutrition related items.
- 3. Provide the following ongoing training to include food demonstrations and tasting in English and Spanish as directed by the CITY at mutually agreeable dates and times:
  - a) Teacher and staff nutrition education sessions;
  - b) Parent nutrition education sessions; and
  - c) Head Start Parent Conference presentation.
- 4. Provide one-on-one nutrition related counseling sessions for families identified by the CITY

**B. EHS & EHS-CCP**

5. Meet all USDA / CACFP guidelines, Head Start Act and Head Start Performance Standards, and Child Care Licensing guidelines as related to meals for children, including requirements for background checks and training.
6. Provide ongoing consultation to parents, Child Care Service Providers, and CITY staff for any nutrition related items.
7. Provide the following ongoing training to include food demonstrations and tasting in English and Spanish as directed by the CITY at mutually agreeable dates and times:
  - i) Teacher and staff nutrition education sessions;
  - ii) Parent nutrition education session to include food demonstrations and tasting; and
  - iii) Head Start Parent Conference presentation, when requested by the City.
8. Provide one-on-one nutrition-related counseling sessions for children and teachers identified by the CITY.
9. Toolbox resources for home-based staff to use during home visits. Resources may include items such as nutrition-based games, recipe cards, information on nutritional milestones based on age.
10. Provide one-on-one nutrition related classroom sessions for children & teachers.
11. Develop resource flyers or activities to promote healthy habits including nutritious recipes

**C. EHS-CCP will additionally provide:**

12. Review and assist in the development of Child Care Service Provider menus to ensure the provision of safe, age-appropriate, highly-nutritious foods with low levels of fat, sugar, and salt.
13. Provide technical assistance to Child Care Service Providers to make accommodations to menus for children with special diets, including children with a disability or religious beliefs.
14. Mentor assigned cook(s) and help to facilitate the implementation of the approved menus

2.2 All work performed by CONSULTANT will be performed to the satisfaction of Director. The determination made by Director will be final, binding and conclusive on all Parties hereto. CITY will be under no obligation to pay for any work performed by CONSULTANT, which is not satisfactory to Director. CITY will have the right to terminate this CONTRACT, in accordance with Article XIV. Termination, in whole or in part, should CONSULTANT's work not be satisfactory to Director; however, CITY has no obligation to terminate and may withhold payment for any unsatisfactory work, as stated herein, even should City elect not to terminate.

**III. COMPENSATION TO CONSULTANT**

3.1 In consideration of CONSULTANT's performance in a satisfactory and efficient manner, as determined solely by Director, of all services and activities set forth in this CONTRACT, CONSULTANT will be paid an annual amount not to exceed \$50,000.00 at an hourly rate of \$80.00 per hour, up to:

- **\$15,500.00** (the "Federal Share") for the first seven (7) months of this CONTRACT (July 1, 2023 through January 31, 2024);
- **\$50,000.00** (the "Federal Share") for each full budget year (February 1 through January 31) thereafter; and
- **\$34,500.00** (the "Federal Share") for the remaining six (6) months of this CONTRACT (February 1, 2028 through July 31, 2028).

Federal Share by program. CONSULTANT further understands the City may revise the following provisions or amounts between the following programs, and that the total amounts are not to exceed:

- A) For Head Start: **\$13,000.00** for the first seven months of this CONTRACT, **\$35,000.00** for each full budget year thereafter, and **\$12,000.00** for the remaining six months of this CONTRACT. These amounts include \$500.00 that may be used for professional development and education regarding early childhood nutrition, and \$3,500.00 for training supplies.
- B) For EHS-CCP: **\$1,500.00** for the first seven months of this CONTRACT, **\$10,000.00** for each full budget year thereafter; and **\$1,500.00** for the remaining six months of this CONTRACT.
- C) For EHS: **\$1,000.00** for the first seven months of this CONTRACT, **\$5,000.00** for each full budget year thereafter, and **\$1,500.00** for the remaining six months of this CONTRACT.

Driving costs. In consideration of CONSULTANT's driving costs directly between City locations for the services and activities set forth in Attachment A, CITY will reimburse CONSULTANT at the current government reimbursement rate. Costs are to be included in the amount set forth in section 3.1 above –

- 3.2 Non-Federal Share. Further, CONSULTANT's Program Budget is comprised of the Federal Share and the Non-Federal Share. The Federal Share shall be no more than 80% of the total Program Budget. Should CONSULTANT fail to raise all of the non-Federal Share funds (20% of the total Program Budget, or
- **\$3,250.00** for Head Start, **\$375.00** for EHS-CCP, and **\$250.00** for EHS for the first seven (7) months of this CONTRACT (July 1, 2023 through January 31, 2024);
  - **\$8,750.00** for Head Start, **\$2,500.00** for EHS-CCP, and **\$1,250.00** for EHS-CCP for each full budget year thereafter; and
  - **\$3,000.00** for Head Start, **\$375.00** for EHS-CCP, and **\$250.00** for EHS, and for the remaining six (6) months of this CONTRACT)

that it is required to raise for the operation of its program, CITY reserves the right to limit its reimbursements to CONSULTANT proportionately. For instance, if CONSULTANT succeeds in raising only fifty percent (50%) of its required non-Federal Share funds, CITY may limit its reimbursements to CONSULTANT to fifty percent (50%) of CITY's total obligation to CONSULTANT. CONSULTANT may provide additional non-Federal share funds if CONSULTANT, in its discretion, determines such funds are available. To meet the requirements of this CONTRACT, all claimed non-Federal Share must meet the requirements of 45 C.F.R. § 75.306, as applicable.

- 3.3 CONSULTANT must submit monthly invoices to CITY, which CITY will pay within thirty (30) days of receipt and approval by Director. Invoices must be submitted to: City of San Antonio, Department of Human Services, Accounts Payable, P.O. Box 839976, San Antonio, TX 78283-3976.
- 3.3 The Parties agree that all compensable expenses of CONSULTANT have been provided for in the total payment to CONSULTANT as specified in Section 3.1 above. No additional fees or expenses of CONSULTANT will be charged by CONSULTANT nor be payable by CITY, without prior approval and written agreement of the Parties.
- 3.4 Final payment due under the CONTRACT will not be paid until the final work product and services have been received, performed and are approved by CITY. CITY will not be liable for any payment under this CONTRACT for services which are unsatisfactory or which have not been approved by CITY.
- 3.5 CITY will not be obligated or liable under the CONTRACT to any party, other than CONSULTANT, including any subcontractors, for payment of any monies for provision of any goods or services.
- 3.6 If this CONTRACT is partially or wholly grant funded, and reduced funds are awarded to the CITY, the budget for this CONTRACT may be adjusted to correspond to the actual award received by the CITY.

#### **IV. INDEPENDENT CONTRACTOR**

- 4.1 CONSULTANT understands and agrees that CONSULTANT is an independent contractor, and not an officer, agent, servant or employee of CITY, and that CONSULTANT is responsible for the acts or omissions of its officers, agents, employees, contractors, subcontractors and consultants, and that the CITY will in no way be responsible therefor. Nothing contained herein will be deemed or construed by the Parties hereto or by any third party as creating the relationship of employer-employee, principal-agent, partners, joint venture, or any other similar such relationship, between the Parties hereto. CONSULTANT understands and agrees that the CITY will not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the CONSULTANT under this CONTRACT and that the CONSULTANT has no authority to bind the CITY.

#### **V. CONFIDENTIALITY**

- 5.1 No reports, information, designs, data nor any other documentation developed by, given to, prepared by, or assembled by CONSULTANT under this CONTRACT will be disclosed or made available to any individual or organization by CONSULTANT without the express prior written approval of CITY. In the event CONSULTANT receives a request to disclose or produce documents, CONSULTANT will inform the CITY immediately for the purpose of receiving direction regarding the manner of processing.
- 5.2 CONSULTANT will comply with laws, regulations and rules pertaining to confidentiality and will establish a method to secure the confidentiality of documents and information that CONSULTANT may have access to, in accordance with the applicable federal, state, and local laws, rules and regulations. This provision will not be construed as limiting CITY's right of access to records or other information under this CONTRACT.

#### **VI. OWNERSHIP OF DOCUMENTS**

- 6.1 Any and all writings, documents or information ("documents") produced by CONSULTANT or within CONSULTANT's custody pursuant to the provisions of this CONTRACT are the exclusive property of CITY; and no such documents will be the subject of any copyright or proprietary claim by CONSULTANT.
- 6.2 CONSULTANT understands and acknowledges that as the exclusive owner of any and all such documents, CITY has the right to use all such documents as CITY desires, without restriction or further compensation to CONSULTANT. CONSULTANT will deliver, at CONSULTANT's sole cost and expense, all CONTRACT-related documents and reports to the CITY in accordance with the dates established under this CONTRACT, and in a timely and expeditious manner, and if a delivery date is not specified, then upon termination of the CONTRACT.
- 6.3 CONSULTANT will notify CITY immediately of any requests for information from a third party which pertain to documents obtained and/or generated pursuant to this CONTRACT. CONSULTANT understands and agrees that CITY will process and handle all such requests.

#### **VII. RIGHT OF REVIEW AND RECORDS RETENTION**

- 7.1 CONSULTANT and its subcontractors, if any, will properly, accurately and completely maintain all documents, and will make such materials available to the CITY at their respective offices, at all reasonable times and as often as CITY may deem necessary during the CONTRACT period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by CITY and any of its authorized representatives.
- 7.2 CONSULTANT will retain any and all documents produced as a result of services provided hereunder for a period of four (4) years ("retention period") from the date of termination of the CONTRACT. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, CONSULTANT will retain the records until the resolution of such litigation or other such questions. CONSULTANT acknowledges and agrees that CITY will have access to any and all such documents at any and all times, as deemed necessary by CITY, during said retention

period. CITY may, at its election, require CONSULTANT to return the documents to CITY at CONSULTANT's expense prior to or at the conclusion of the retention period. In such event, CONSULTANT may retain a copy of the documents.

## VIII. LICENSES AND CERTIFICATIONS

- 8.1 CONSULTANT warrants and certifies that CONSULTANT and any other person designated by it to provide services hereunder has the requisite training, license and/or certification to provide said services and that CONSULTANT meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

## IX. COMPLIANCE

- 9.1 This CONTRACT is funded wholly or in part by the U.S. Department of Health and Human Services through the Head Start grant (CFDA # 93.600). CONSULTANT will provide and perform all services under this CONTRACT in compliance with all applicable federal, state, local laws, rules and regulations. Failure to comply with applicable laws and regulations could subject the CONSULTANT to suspension of payments, termination of CONTRACT, and debarment and suspension actions. In the event that any disagreement or dispute should arise between the Parties hereto pertaining to the interpretation or meaning of any part of this CONTRACT or its governing rules, regulations, laws, codes or ordinances, CITY, as the party ultimately responsible for all matters of compliance with City of San Antonio and applicable grant rules and regulations, will have the final authority to render or secure an interpretation.
- 9.2 The CONSULTANT certifies that it will provide a drug-free workplace in compliance with the Drug-Free Workplace Act of 1988 and the Drug-Free Workplace Rules established by the Texas Worker's Compensation Commission effective April 17, 1991.
- 9.3 As a party to this CONTRACT, CONSULTANT understands and agrees to comply with the *Non-Discrimination Policy* of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, will not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein. Also, CONSULTANT certifies that it will comply fully with the following nondiscrimination and equal opportunity provisions:
- a. Titles VI and VII of the Civil Rights Act of 1964, as amended;
  - b. Section 504 of the Rehabilitation Act of 1973, as amended;
  - c. The Age Discrimination Act of 1975, as amended;
  - d. Title IX of the Education Amendments of 1972, as amended; and
  - e. All applicable regulations implementing the foregoing laws.

## X. CONFLICT OF INTEREST

- 10.1 The Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as defined in Section 2-52 of the City's Ethics Code, from having a financial interest in any contract with City. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: (i) a City officer or employee; (ii) his parent, child, sibling, spouse or other family member within the first degree of consanguinity or affinity; (iii) an entity in which the officer or employee, or his parent, child or spouse owns (a) 10% or more of the voting stock or shares of the entity, or (b) 10% or more of the fair market value of the entity; or (iv) an entity in which any individual or entity listed above is a subcontractor on a City contract, a partner or a parent or subsidiary entity.
- 10.2 CONSULTANT warrants and certifies, and this CONTRACT is made in reliance thereon, that (i) by contracting with the City, CONSULTANT does not cause a City employee or officer to have a prohibited financial interest in the CONTRACT; and that (ii) it, its officers, employees and agents performing on this

CONTRACT are neither a City officer nor an employee as defined by Section 2-52 (e) of the City’s Ethics Code. CONSULTANT further warrants and certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City’s Ethics Code.

10.3 CONSULTANT acknowledges that City’s reliance on the above warranties and certifications is reasonable.

## XI. INSURANCE

11.1 No later than 30 days before the scheduled event, CONSULTANT must provide a completed Certificate(s) of Insurance to CITY’s XXX Department. The certificate must be:

- clearly labeled with the legal name of the event in the Description of Operations block;
- completed by an agent and signed by a person authorized by the insurer to bind coverage on its behalf (CITY will not accept Memorandum of Insurance or Binders as proof of insurance);
- properly endorsed and have the agent’s signature, and phone number.

11.2 Certificates may be mailed or sent via email, directly from the insurer’s authorized representative. CITY shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by CITY’S XXXX Department. No officer or employee, other than CITY’S Risk Manager, shall have authority to waive this requirement.

11.3 If the City does not receive copies of insurance endorsement, then by executing this Agreement, CONSULTANT certifies and represents that its endorsements do not materially alter or diminish the insurance coverage for the Event.

11.4 The City’s Risk Manager reserves the right to modify the insurance coverages, their limits, and deductibles prior to the scheduled event or during the effective period of this Agreement based on changes in statutory law, court decisions, and changes in the insurance market which presents an increased risk exposure.

11.5 CONSULTANT shall obtain and maintain in full force and effect for the duration of this Agreement, at CONSULTANT’S sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M. Best’s rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below. If the CONSULTANT claims to be self-insured, they must provide a copy of their declaration page so the CITY can review their deductibles:

<u>TYPE</u>	<u>AMOUNTS</u>
*1. Workers' Compensation *2. Employers' Liability	Statutory \$500,000/\$500,000/\$500,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal / Advertising Injury d. Sexual Abuse / Molestation** e. Contractual Liability f. Independent Contractors*	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$500,000 per occurrence; \$1,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$250,000 per occurrence

5. Professional Liability – for loss that may arise out of an error of mission the professional has in performance of duties	\$500,000 per claim
<b>** Required for projects involving services to children</b>	
<b>*If Applicable</b>	

11.6 CONSULTANT must require, by written contract, that all subcontractors providing goods or services under this Agreement obtain the same insurance coverages required of CONSULTANT and provide a certificate of insurance and endorsement that names CONSULTANT and CITY as additional insureds. Respondent shall provide CITY with subcontractor certificates and endorsements before the subcontractor starts work.

11.7 If a loss results in litigation, then the CITY is entitled, upon request and without expense to the City, to receive copies of the policies, declaration page and all endorsements. CONSULTANT must comply with such requests within 10 days by submitting the requested insurance documents to the CITY at the following address:

City of San Antonio  
Department of Human Services  
100 W. Houston St, San Antonio, TX 78205

11.8 CONSULTANT’s insurance policies must contain or be endorsed to contain the following provisions:

- Name CITY and its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with CITY. The endorsement requirement is not applicable for workers’ compensation and professional liability policies.
- Endorsement that the “other insurance” clause shall not apply to CITY where CITY is an additional insured shown on the policy. CITY’s insurance is not applicable in the event of a claim.
- CONSULTANT shall submit a waiver of subrogation to include, workers’ compensation, employers’ liability, general liability and auto liability policies in favor of CITY; and
- Provide 30 days advance written notice directly to CITY of any suspension, cancellation, non-renewal or materials change in coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.

11.9 Within five (5) calendar days of a suspension, cancellation, material change in coverage, or non-renewal of coverage, CONSULTANT shall provide a replacement Certificate of Insurance and applicable endorsements to CITY. CITY shall have the option to suspend CONSULTANT’S performance should there be a lapse in coverage at any time during this Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

11.10 In addition to any other remedies CITY may have upon CONSULTANT’S failure to provide and maintain any insurance or policy endorsements to the extent and within the time required, CITY may order CONSULTANT to stop work and/or withhold any payment(s) which become due to CONSULTANT under this Agreement until CONSULTANT demonstrates compliance with requirements.

11.11 Nothing contained in this Agreement shall be construed as limiting the extent to which CONSULTANT may be held responsible for payments of damages to persons or property resulting from CONSULTANT’S or its subcontractors’ performance of the work covered under this Agreement.

11.12 CONSULTANT’S insurance shall be deemed primary and non-contributory with respect to any insurance or self - insurance carried by City for liability arising out of operations under this Agreement.

11.13 The insurance required is in addition to and separate from any other obligation contained in this Agreement and no claim or action by or on behalf of City shall be limited to insurance coverage provided.

- 11.14 CONSULTANT and any subcontractor are responsible for all damage to their own equipment and/or property result from their own negligence.

## XII. INDEMNITY

- 12.1 **CONSULTANT covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and 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 CONSULTANT's activities under this CONTRACT including any acts or omissions of CONSULTANT, any agent, officer, director, representative, employee, consultant or subcontractor of CONSULTANT, and their respective officers, agents, employees, directors and representatives while in the exercise of the rights or performance of the duties under this CONTRACT. The indemnity provided for in this paragraph will not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONSULTANT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY WILL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**
- 12.2 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. CONSULTANT will advise the CITY in writing within 24 hours of any claim or demand against the CITY or CONSULTANT known to CONSULTANT related to or arising out of CONSULTANT's activities under this CONTRACT and will see to the investigation and defense of such claim or demand at CONSULTANT's cost. The CITY will have the right, at its option and at its own expense, to participate in such defense without relieving CONSULTANT of any of its obligations under this paragraph.
- 12.3 Defense Counsel - CITY will have the right to select or to approve defense counsel to be retained by CONSULTANT in fulfilling its obligation hereunder to defend and indemnify CITY, unless such right is expressly waived by CITY in writing. CONSULTANT will retain CITY approved defense counsel within seven (7) business days of CITY's written notice that CITY is invoking its right to indemnification under this CONTRACT. If CONSULTANT fails to retain counsel within such time period, CITY will have the right to retain defense counsel on its own behalf, and CONSULTANT will be liable for all costs incurred by CITY. CITY will also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.
- 12.4 Employee Litigation – In any and all claims against any party indemnified hereunder by any employee of CONSULTANT, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided will not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for CONSULTANT or any subcontractor under worker's compensation or other employee benefit acts.

## VIII. SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY

- 13.1 The CITY has adopted a Small Business Economic Development Advocacy Ordinance (Ordinance No. 2016-05-19-0367 and as amended, also referred to as "SBEDA" or "the SBEDA Program"), which is posted on the City's Economic Development Department (EDD) website page and is also available in hard copy format upon request to the CITY. The SBEDA Ordinance Compliance Provisions contained in this section of the CONTRACT and by the requirements outlined in the SBEDA Program for this CONTRACT, attached hereto

and incorporated herein for all purposes as **Attachment B**, are governed by the terms of the SBEDA Ordinance, as well as by the terms of the SBEDA Ordinance Policy & Procedure Manual established by the CITY pursuant to the Ordinance, and any subsequent amendments to the referenced SBEDA Ordinance and SBEDA Policy & Procedure Manual that are effective as of the date of the execution of this CONTRACT.

#### XIV. TERMINATION

- 14.1 For purposes of this CONTRACT, “termination” of this CONTRACT will mean termination by expiration of the CONTRACT term or earlier termination pursuant to any of the provisions in this CONTRACT.
- 14.2 **TERMINATION BY NOTICE:** The CONTRACT may be terminated by either party upon written notice, provided such notice specifies an effective date of termination, which will be not less than thirty (30) days from the date such notice is sent. If the notice does not specify a date of termination, the effective date of termination will be thirty-five (35) days after the date the notice is sent. All files are the property of the CITY and, at the CITY’S request, will be delivered at no cost to the CITY or its designated recipient at the effective date of termination.
- 14.3 **TERMINATION FOR CAUSE:** If either party defaults in the performance of any of the terms or conditions of this CONTRACT, the non-defaulting party will deliver to the defaulting party written notice thereof specifying the matters of default. The defaulting party will have ten (10) days after its receipt of the written notice to cure such default. If the defaulting party fails to cure the default within such ten (10) day period, the non-defaulting party may elect to terminate this CONTRACT, in whole or in part, upon written notice, as of the date provided in the notice.
- 14.4 **TERMINATION BY LAW:** If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein or if any law is interpreted to prohibit such performance, and the CONTRACT may not be continued by severance of the prohibited duties, this CONTRACT will automatically terminate as of the effective date of such prohibition.
- 14.5 **NON-APPROPRIATION:** In the event that through action or no action initiated by the City of San Antonio, the CITY’s legislative body does not appropriate funds for the continuation of this CONTRACT and has no funds to do so from other sources, this CONTRACT may be terminated. To effect this termination, the CITY will, thirty (30) days prior to the period for which funds are not appropriated, send the CONSULTANT written notice stating that the City of San Antonio failed to appropriate funds.
- 14.6 **EFFECT OF TERMINATION:** Upon the effective date of expiration or termination of this CONTRACT CONSULTANT will cease all operations of work being performed by CONSULTANT or any of its approved subcontractors pursuant to this CONTRACT. The period between notice of termination and the effective date of termination will be used to effect an orderly transfer of records and documents and funds, if any, from the CONSULTANT to the CITY or to such person(s) as the CITY may designate, if so requested by CITY; otherwise, the documents will be retained by CONSULTANT in accordance with Article VII, Right of Review and Records Retention. Any records or documents transfer will be completed within fifteen (15) days of the termination date. Any such transfer of records or funds will be completed at the CONSULTANT’S sole cost and expense.
- 14.7 Within thirty (30) days of the effective date of termination (unless an extension is authorized in writing by the CITY), the CONSULTANT will submit to the CITY, its claim, in detail, for the monies owed by the CITY for services performed under this CONTRACT through the effective date of termination. Failure by CONSULTANT to submit its claims within said thirty (30) days will negate any liability on the part of CITY and constitute a waiver by CONSULTANT of any and all right or claims to collect funds that CONSULTANT may rightfully be otherwise entitled to for services performed pursuant to this CONTRACT.
- 14.8 Upon termination of this CONTRACT, the CITY may immediately commence an audit of the CONSULTANT’S books, accounts, and records. Within thirty (30) days after being notified by the CITY of the results of said audit, the CONSULTANT will pay the CITY any amount shown by said audit to be owed the CITY.

- 14.9 Termination not sole remedy. In no event will CITY's action of terminating this CONTRACT, whether for cause or otherwise, be deemed an election of CITY's remedies, nor will such termination limit, in any way, at law or at equity, CITY's right to seek damages from or otherwise pursue CONSULTANT for any default hereunder or other action.

#### **XV. AMENDMENT**

- 15.1 Except where the terms of this CONTRACT expressly provide otherwise, any amendment to this CONTRACT will not be binding on the Parties unless such amendment be in writing, reviewed by the City Attorney's Office, executed by both CITY and CONSULTANT, and dated subsequent to the execution date of this CONTRACT.
- 15.2 It is understood and agreed by Parties to this CONTRACT, that changes in local, state and federal rules, regulations or laws applicable hereto, may occur during the term of this CONTRACT and that any such changes will be automatically incorporated into this CONTRACT without written amendment hereto, and will become a part hereof as of the effective date of the rule, regulation or law.

#### **XVI. NOTICE**

- 16.1 Any notice required, permitted or appropriate under this CONTRACT will be deemed sufficient, if in writing, and to have been duly given if and when delivered personally, with receipt acknowledged, or upon receipt if sent certified mail, return receipt requested, postage prepaid, to CITY or CONSULTANT at the respective address set forth below or to any other address of which written notice of change is given:

**CITY**

Department of Human Services  
Attn: Director  
100 W. Houston St., 9th Floor  
San Antonio, Texas 78205

**CONSULTANT**

Nutrition Therapy Associates, Inc.  
Attn: Christina Frantz  
8407 Monument Oak  
Boerne, Texas 78015

#### **XVII. LEGAL AUTHORITY**

- 17.1 The person signing on behalf of CONSULTANT represents and warrants and certifies that he has full legal authority to execute this CONTRACT on behalf of CONSULTANT and has authority to bind CONSULTANT to all the terms, conditions, provisions and obligations contained herein.

#### **XXVIII. TEXAS GOVERNMENT CODE PROHIBITIONS**

- 18.1 Prohibition on contracts with companies boycotting Israel. Texas Government Code §2270.002 provides that a governmental entity may not enter into a contract with a company for goods/services, unless the contract contains a written verification from the company that it:
- (1) does not boycott Israel; and
  - (2) will not boycott Israel during the term of the contract.

"Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

"Company", for the purposes of this Article, means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

18.2 Prohibition on contracts with companies that discriminate against firearm and ammunitions industries. Texas Government Code §2274 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it:

- (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and
- (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association.

"Discriminate against a firearm entity or firearm trade association": means, with respect to the entity or association, to:

- (1) refuse to engage in the trade of any goods or services with the entity or association based solely on its status as a firearm entity or firearm trade association;
- (2) refrain from continuing an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; or
- (3) terminate an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association.

18.3 Prohibition on contracts with companies that boycott energy companies. Texas Government Code §2274 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it:

- (1) does not boycott energy companies and
- (2) will not boycott energy companies;

"Boycott energy company" means, without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company: (A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or (B) does business with a company described in (A).

18.4 Prohibition on Contracts with companies engaged in business with Iran, Sudan, or foreign terrorist organizations. Texas Government Code §2252.152 provides that a governmental entity may not enter into a governmental contract with a company that is identified on a list prepared and maintained under Texas Government Code §§2270.0201 or 2252.153. CONSULTANT hereby certifies that it is not identified on such a list and that it will notify CITY should it be placed on such a list while under contract with CITY. CITY hereby relies on CONSULTANT's certification. If found to be false, or if CONSULTANT is identified on such list during the course of its contract with City, City may terminate this CONTRACT for material

18.5 By executing contract documents with the City of San Antonio, CONSULTANT hereby certifies that it does not and will not engage in any of the prohibitions in this Article during the term of the CONTRACT. City hereby relies on CONSULTANT's certification(s). If found to be false, City may terminate the CONTRACT for material breach

## **XIX. SUBCONTRACTING AND ASSIGNING INTEREST**

19.1 CONSULTANT will perform all necessary work or will supply qualified personnel as maybe necessary to complete the work to be performed under this CONTRACT. CONSULTANT will obtain prior written approval from CITY before assigning or subcontracting any responsibilities under this CONTRACT. The violation of this provision by CONSULTANT will not release CONSULTANT from any obligation under the terms of this CONTRACT, nor will it relieve or release CONSULTANT from the payment of any damages to CITY which CITY sustains as a result of such violation.

19.2 Any services approved for subcontracting hereunder will be subcontracted only by written contract and, unless specific waiver is granted in writing by the CITY, will be subject by its terms to each and every provision of this CONTRACT. Compliance by subcontractors with this CONTRACT will be the

responsibility of CONSULTANT. CITY will in no event be obligated to any third party, including any subcontractor of CONSULTANT, for performance of services or payment of fees.

## **XX. PARTIES BOUND**

- 20.1 This CONTRACT will be binding upon and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, successors and their assigns, however, CONSULTANT may not assign this CONTRACT without prior written consent of CITY in accordance with Article XIX, Subcontracting and Assigning Interest.

## **XXI. NON-WAIVER**

- 21.1 Unless otherwise specifically provided for in this CONTRACT, a waiver by either party of a breach of any of the terms, conditions, covenants or guarantees of this CONTRACT will not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this CONTRACT will be deemed to have been made or will be effective unless expressed in writing and signed by the party to be charged. No act or omission by a party will in any manner impair or prejudice any right, power, privilege, or remedy available to that party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

## **XXII. VENUE AND GOVERNING LAW**

- 22.1 **ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS. THIS CONTRACT WILL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. VENUE FOR ANY LEGAL ACTION, CLAIM OR DISPUTE ARISING DIRECTLY OR INDIRECTLY AS A RESULT OF THIS CONTRACT WILL BE IN BEXAR COUNTY, TEXAS.**
- 22.2 The Parties expressly agree that, in the event of litigation, each party waives its right to payment of attorneys' fees.

## **XXIII. SEVERABILITY**

- 23.1 If any clause or provision of this CONTRACT is held invalid, illegal or unenforceable under present or future laws during the term of this CONTRACT, including any extension, it is the intention of the Parties hereto that the remainder of the CONTRACT will not be affected thereby, and that in lieu of each clause or provision of the CONTRACT that is held invalid, illegal or unenforceable, a new clause or provision be added, as similar in terms and content, to be legal, valid, and enforceable under the CONTRACT.

## **XXV. PROHIBITED CONTRIBUTIONS**

- 25.1 CONSULTANT acknowledges that City Code Section 2-309 provides that any person acting as a legal signatory for a proposed contractual relationship that applies for a "high-profile" discretionary contract, as defined by the City of San Antonio Contracting Policy and Process Manual, may not make a campaign contribution to any councilmember or candidate at any time from the time the person submits the response to the Request for Proposal (RFP) or Request for Qualifications (RFQ) until 30 calendar days following the contract award. CONSULTANT understands that if the legal signatory entering the contract has made such a contribution, the city may not award the contract to that contributor or to that contributor's business entity. Any legal signatory for a proposed high-profile contract must be identified within the response to the RFP or RFQ, if the identity of the signatory will be different from the individual submitting the response.
- 25.2 CONSULTANT acknowledges that the City has identified this CONTRACT as high profile.
- 25.3 CONSULTANT warrants and certifies, and this Agreement is made in reliance thereon, that the individual signing this CONTRACT has not made any contributions in violation of City Code Section 2-309 and will

not do so for 30 calendar days following the award of this CONTRACT. Should the signor of this CONTRACT violate this provision, the City Council may, in its discretion, declare this CONTRACT void.

**XXVI. ENTIRE AGREEMENT**

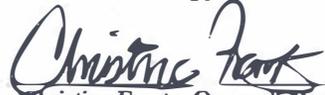
26.1 Each of the Attachments listed below is an essential part of the CONTRACT, which governs the rights and duties of the Parties. This CONTRACT, together with its authorizing ordinance, exhibits and attachments, if any, embodies the final and entire agreement of the Parties hereto, superseding all oral or written previous and contemporary agreements between the Parties and relating to matters in this CONTRACT. No other agreements, oral or otherwise regarding the matters of this CONTRACT will be deemed to exist or to bind the Parties unless same be executed in accordance with Article XV, Amendment.

**EXECUTED** as of the date of the last party to sign below.

**CITY**  
City of San Antonio, Texas

**CONSULTANT**  
Nutrition Therapy Associates, Inc.

\_\_\_\_\_  
Melody Woosley, Director  
Department of Human Services

  
\_\_\_\_\_  
Christina Frantz, Owner & President

\_\_\_\_\_  
Date

5-16-2023  
Date

APPROVED AS TO FORM:

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

**ATTACHMENTS:**

Attachment A – SBEDA Program

Attachment B – CONSULTANT's Proposal to City's Request for Qualifications for Nutritional Educational Services for the Head Start Program

Attachment C – HIPAA Business Associate Agreement

## Attachment A

### SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (SBEDA) PROGRAM Nutrition Services for Head Start & Early Head Start

#### I. SBEDA Program

The CITY has adopted a Small Business Economic Development Advocacy Ordinance (Ordinance No. 2016-05-19-0367 and as amended, also referred to as “SBEDA” or “the SBEDA Program”), which is posted on the City’s Economic Development Department (EDD) website page and is also available in hard copy format upon request to the CITY. The SBEDA Ordinance Compliance Provisions contained in this section of the Agreement are governed by the terms of the SBEDA Ordinance, as well as by the terms of the SBEDA Ordinance Policy & Procedure Manual established by the CITY pursuant to this Ordinance, and any subsequent amendments to this referenced SBEDA Ordinance and SBEDA Policy & Procedure Manual that are effective as of the date of the execution of this Agreement. Unless defined in a contrary manner herein, terms used in this section of the Agreement shall be subject to the same expanded definitions and meanings as given those terms in the SBEDA Ordinance and as further interpreted in the SBEDA Policy & Procedure Manual.

#### II. SBEDA Program Compliance – Affirmative Procurement Initiatives

The CITY has applied the following contract-specific Affirmative Procurement Initiatives (API) to this contract. CONSULTANT (hereinafter “CONSULTANT” or “CONTRACTOR”) hereby acknowledges and agrees that the selected API requirement shall also be extended to any change order or subsequent contract modification and, absent SBO’s granting of a waiver, that its full compliance with the following API terms and conditions are necessary to attain satisfactory performance under this Agreement:

**Please note** that failure to meet the subcontracting API requirements (when applicable) will deem the response non-responsive. To be SBEDA eligible a Prime or Subcontractor must be certified as a Small Business Enterprise (SBE) through the South Central Texas Regional Certification Agency AND must be headquartered or have a significant business presence in the San Antonio Metropolitan Statistical Area. The guidelines and steps to be certified by SCTRCA are available at: <https://sctrca.org/get-certified/>

**SBE Prime Contract Program.** In accordance with the SBEDA Ordinance, Section III. D. 5. (a), this contract is being awarded pursuant to the SBE Prime Contract Program, and as such, RESPONDENT affirms that if it is presently certified as an SBE (see *Small Business Enterprise* definition), RESPONDENT agrees not to subcontract more than 49% of the contract value to a non-SBE firm.

**M/WBE Prime Contract Program.** In accordance with the SBEDA Ordinance, Section III. D. 6. (d), this contract is being awarded pursuant to the M/WBE Prime Contract Program and as such, RESPONDENT affirms that if it is presently certified as an M/WBE (see *Minority/Women Business Enterprise* definition), RESPONDENT agrees not to subcontract more than 49% of the contract value to a non-M/WBE firm.

The Subcontractor/Supplier Utilization Plan which CONTRACTOR submitted to City with its response for this contract and that contains the names of the certified SBE, M/WBE and AABE Subcontractors to be used by CONTRACTOR on this contract, the respective percentages of the total prime contract dollar value to be awarded and performed by each SBE, M/WBE and AABE Subcontractor, and documentation including a description of each SBE, M/WBE and AABE Subcontractor’s scope of work and confirmation of each SBE, M/WBE and AABE Subcontractor’s commitment to perform such scope of work for an agreed upon dollar amount is hereby attached and incorporated by reference into the material terms of this Agreement.

In the absence of a waiver granted by the SBO, failure of a Prime CONTRACTOR to attain this SBE, M/WBE and AABE subcontracting goal as required in the solicitation shall render its response non-Responsive. Also, in the absence of a waiver granted by the SBO, failure of a Prime CONTRACTOR to attain a subcontracting goal for SBE, M/WBE and AABE participation in the performance of its contract or otherwise comply with the provisions of this API shall be considered a material breach of contract, grounds for termination of that contract with the City and shall

be subject to any penalties and sanctions available under the terms of the SBEDA Ordinance, its contract with the City or by law.

**Subcontractor Diversity:** The City of San Antonio strongly encourages each bidder to be as inclusive as possible, and to reach out to all segments of the M/WBE community in its efforts to exercise good faith. While the relative availability of ready, willing, and able firms within various ethnic and gender categories will vary significantly from contract to contract based upon the particular trades that are involved, overall in the San Antonio **Professional Services** industry, as reflected in the City's Centralized Vendor Registration system for the month of October 2022, African-American owned firms represent approximately 2.45% of available subcontractors, Hispanic-American firms represent approximately 8.52%, Asian-American firms represent approximately 0.65%, Native American firms represent approximately 0.14%, and Women-owned firms represent approximately 4.21% of available **Professional Services** subcontractors.

### III. Solicitation Response and Contract Requirements and Commitment

Respondent understands and agrees that the following provisions shall be requirements of this solicitation and the resulting contract, if awarded, and by submitting its Response, Respondent commits to comply with these requirements.

**Waiver Request** - A Respondent may request, for good cause, a full or partial Waiver of a **specified subcontracting goal** included in this solicitation by submitting the *Subcontracting Goal- Waiver Request* form (available at <http://www.sanantonio.gov/SBO/Forms.aspx>) with its solicitation response. The Respondent's Waiver request must fully document Subcontractor unavailability despite the Respondent's good faith efforts to comply with the goal. Such documentation shall include all good faith efforts made by Respondent including, but not limited to, which Subcontractors were contacted (with phone numbers, e-mail addresses and mailing addresses, as applicable) and the method of contact. **Late Waiver requests will not be considered.** More information on the good faith effort criteria is available within the Subcontracting Goal – Waiver Request Evaluation Criteria at <http://www.sanantonio.gov/SBO/Forms.aspx>.

**Exception Request** - A Respondent may, for good cause, request an Exception to the application of the SBEDA Program if the Respondent submits the *Exception to SBEDA Program Requirements Request* form (available at <http://www.sanantonio.gov/SBO/Forms.aspx>) with its solicitation response. The Respondent's Exception request must fully document why: (1) the value of the contract is below the \$50,000 threshold for application of the SBEDA Program; or (2) no commercially-useful subcontracting opportunities exist within the contract scope of work; or (3) the type of contract is outside of the scope of the SBEDA Ordinance. **Late Exception Requests will not be considered.**

### IV. SBEDA Program Compliance – General Provisions

As CONTRACTOR acknowledges that the terms of the CITY's SBEDA Ordinance, as amended, together with all requirements, guidelines, and procedures set forth in the CITY's SBEDA Policy & Procedure Manual are in furtherance of the CITY's efforts at economic inclusion and, moreover, that such terms are part of CONTRACTOR's scope of work as referenced in the CITY's formal solicitation that formed the basis for contract award and subsequent execution of this Agreement, these SBEDA Ordinance requirements, guidelines and procedures are hereby incorporated by reference into this Agreement, and are considered by the Parties to this Agreement to be material terms. CONTRACTOR voluntarily agrees to fully comply with these SBEDA program terms as a condition for being awarded this contract by the CITY. Without limitation, CONTRACTOR further agrees to the following terms as part of its contract compliance responsibilities under the SBEDA Program:

1. CONTRACTOR shall cooperate fully with the Small Business Office and other CITY departments in their data collection and monitoring efforts regarding CONTRACTOR's utilization and payment of Subcontractors, S/M/WBE firms, and HUBZone firms, as applicable, for their performance of Commercially Useful Functions on this contract including, but not limited to, the timely submission of completed forms and/or documentation

promulgated by SBO, through the Originating Department, pursuant to the SBEDA Policy & Procedure Manual, timely entry of data into monitoring systems, and ensuring the timely compliance of its subcontractors with this term;

2. CONTRACTOR shall cooperate fully with any CITY or SBO investigation (and shall also respond truthfully and promptly to any CITY or SBO inquiry) regarding possible non-compliance with SBEDA requirements on the part of CONTRACTOR or its subcontractors or suppliers;
3. CONTRACTOR shall permit the SBO, upon reasonable notice, to undertake inspections as necessary including, but not limited to, contract-related correspondence, records, documents, payroll records, daily logs, invoices, bills, cancelled checks, and work product, and to interview Subcontractors and workers to determine whether there has been a violation of the terms of this Agreement;
4. CONTRACTOR shall notify the SBO, in writing on the Change to Utilization Plan form, through the Originating Department, of any proposed changes to CONTRACTOR's Subcontractor / Supplier Utilization Plan for this contract, with an explanation of the necessity for such proposed changes, including documentation of Good Faith Efforts made by CONTRACTOR to replace the Subcontractor / Supplier in accordance with the applicable Affirmative Procurement Initiative. All proposed changes to the Subcontractor / Supplier Utilization Plan including, but not limited to, proposed self-performance of work by CONTRACTOR of work previously designated for performance by Subcontractor or supplier, substitutions of new Subcontractors, terminations of previously designated Subcontractors, or reductions in the scope of work and value of work awarded to Subcontractors or suppliers, shall be subject to advanced written approval by the Originating Department and the SBO.
5. CONTRACTOR shall immediately notify the Originating Department and SBO of any transfer or assignment of its contract with the CITY, as well as any transfer or change in its ownership or business structure.
6. CONTRACTOR shall retain all records of its Subcontractor payments for this contract for a minimum of four years or as required by state law, following the conclusion of this contract or, in the event of litigation concerning this contract, for a minimum of four years or as required by state law following the final determination of litigation, whichever is later.
7. In instances wherein the SBO determines that a Commercially Useful Function is not actually being performed by the applicable S/M/WBE or HUBZone firms listed in a CONTRACTOR's Subcontractor / Supplier Utilization Plan, the CONTRACTOR shall not be given credit for the participation of its S/M/WBE or HUBZone Subcontractor(s) or joint venture partner(s) toward attainment of S/M/WBE or HUBZone firm utilization goals, and the CONTRACTOR and its listed S/M/WBE firms or HUBZone firms may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.
8. CONTRACTOR acknowledges that the CITY will not execute a contract or issue a Notice to proceed for this project until the CONTRACTOR for this project have registered and/or maintained active status in the CITY's Centralized Vendor Registration System (CVR), and CONTRACTOR has represented to CITY which primary commodity codes each Subcontractor will be performing under for this contract. CITY recommends all Subcontractors to be registered in the CVR.

For more information please see link: <http://www.sanantonio.gov/SBO/Compliance>

#### V. Violations, Sanctions and Penalties

In addition to the above terms, CONTRACTOR acknowledges and agrees that it is a violation of the SBEDA Ordinance and a material breach of this Agreement to:

1. Fraudulently obtain, retain, or attempt to obtain, or aid another in fraudulently obtaining, retaining, or attempting to obtain or retain Certification status as an SBE, MBE, WBE, M/WBE, HUBZone firm, Emerging M/WBE, or ESBE for purposes of benefitting from the SBEDA Ordinance;

2. Willfully falsify, conceal or cover up by a trick, scheme or device, a material fact or make any false, fictitious or fraudulent statements or representations, or make use of any false writing or document, knowing the same to contain any false, fictitious or fraudulent statement or entry pursuant to the terms of the SBEDA Ordinance;
3. Willfully obstruct, impede or attempt to obstruct or impede any authorized official or employee who is investigating the qualifications of a business entity which has requested Certification as an S/M/WBE or HUBZone firm;
4. Fraudulently obtain, attempt to obtain or aid another person fraudulently obtaining or attempting to obtain public monies to which the person is not entitled under the terms of the SBEDA Ordinance; and
5. Make false statements to any entity that any other entity is, or is not, certified as an S/M/WBE for purposes of the SBEDA Ordinance.

Any person who violates the provisions of this section shall be subject to the provisions of Section III. E. 13. of the SBEDA Ordinance and any other penalties, sanctions and remedies available under law including, but not limited to:

1. Suspension of contract
2. Withholding of funds
3. Rescission of contract based upon a material breach of contract pertaining to S/M/WBE Program compliance
4. Refusal to accept a response or proposal
5. Disqualification of CONSULTANT or other business firm from eligibility for providing goods or services to the City for a period not to exceed two years (upon City Council approval).

#### VI. Commercial Nondiscrimination Policy Compliance

As a condition of entering into this Agreement, the CONTRACTOR represents and warrants that it has complied with throughout the course of this solicitation and contract award process, and will continue to comply with, the CITY's Commercial Nondiscrimination Policy, as described under Section III. C. 1. of the SBEDA Ordinance. As part of such compliance, CONTRACTOR shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation or, on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring or commercial treatment of Subcontractors, vendors, suppliers, or commercial customers, nor shall the company retaliate against any person for reporting instances of such discrimination. The company shall provide equal opportunity for Subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the CITY's Relevant Marketplace. The company understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of the company from participating in CITY contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. CONTRACTOR's certification of its compliance with this Commercial Nondiscrimination Policy as submitted to the CITY pursuant to the solicitation for this contract is hereby incorporated into the material terms of this Agreement. CONTRACTOR shall incorporate this clause into each of its Subcontractor and supplier agreements entered into pursuant to CITY contracts.

#### VII. Prompt Payment

Upon execution of this contract by CONTRACTOR, CONTRACTOR shall be required to submit to CITY accurate progress payment information with each invoice regarding each of its Subcontractors, including HUBZone Subcontractors, to ensure that the CONTRACTOR's reported subcontract participation is accurate. CONTRACTOR shall pay its Subcontractors in compliance with Chapter 2251, Texas Government Code (the "Prompt Payment Act") within ten days of receipt of payment from CITY. In the event of CONTRACTOR's noncompliance with these prompt payment provisions, no final retainage on the Prime Contract shall be released to CONTRACTOR, and no new CITY contracts shall be issued to the CONTRACTOR until the CITY's audit of previous subcontract payments is complete and payments are verified to be in accordance with the specifications of the contract.

## VIII. Definitions

**Affirmative Procurement Initiatives (API)** – Refers to various S/M/WBE Program tools and Solicitation Incentives that are used to encourage greater prime and subcontract participation by S/M/WBE firms, including bonding assistance, evaluation preferences, subcontracting goals and joint venture incentives. (For full descriptions of these and other S/M/WBE Program tools, see Section III.D of Attachment A to the SBEDA Ordinance). To be eligible for the benefits of race- and gender-conscious APIs as provided in the SBEDA Ordinance, M/WBE firms must also satisfy the size standards for being a Small Business Enterprise or SBE as defined herein.

**Annual Aspirational Goal** – a non-mandatory annual aspirational percentage goal for overall M/WBE Prime and subcontract participation in City of San Antonio contracts is established each year for Construction, Architectural & Engineering, Professional Services, Other Services, and Goods & Supplies contract Industry Categories. This Annual Aspirational Goal is to be set (and thereafter adjusted) by the Goal Setting Committee (GSC) based upon the M/WBE availability by industry in accordance with the City’s 2015 Disparity Study findings, along with relative M/WBE availability data to be collected by the City through its CVR system, and the utilization of M/WBEs. Any adjusted Annual Aspirational Goals for a given industry should not exceed the Expected Availability for award dollar weights as found in the 2015 Disparity Study. Annual Aspirational Goals are not to be routinely applied to individual contracts, but are intended to serve as a benchmark against which to measure the overall effectiveness of the S/M/WBE Program on an annual basis, and to gauge the need for future adjustments to the degree of aggressiveness of remedies being applied under the Program. Percentage Goals for S/M/WBE participation may be established by the GSC on a contract-by-contract basis based upon similar data and analysis for the particular goods and services being purchased in a given contract.

**Award** – the final selection of a Respondent for a specified Prime Contract or subcontract dollar amount. Contract awards are made by the City to Prime Contractors or vendors and by Prime Contractors or vendors to Subcontractor or sub-vendors, usually pursuant to a solicitation process. (Contract awards are distinguished from contract payments, the first, only reflect the anticipated dollar amounts the second, reflect actual dollar amounts that are paid to a contractor under an awarded contract).

**Best Value Contracting** – a purchasing solicitation process through which the Originating Department may evaluate factors other than price. Evaluation criteria for selection may include a Respondent’s previous experience and quality of product or services procured, and other factors identified in the applicable statute.

**Centralized Vendor Registration System (CVR)** – a mandatory electronic system of hardware and software programs by which the City recommends all prospective Respondents and Subcontractors that are ready, willing and able to sell goods or services to the City to register. All businesses awarded a City contract shall be required to register in the CVR. The CVR system assigns a unique identifier to each registrant that is then required for the purpose of submitting solicitation responses and invoices, and for receiving payments from the City. The CVR-assigned identifiers are also used by the Goal Setting Committee for measuring relative availability and tracking utilization of SBE and M/WBE firms by Industry or commodity codes, and for establishing Annual Aspirational Goals and Contract-by-Contract Subcontracting Goals.

**Certification** – the process by which the Small Business Office (SBO) staff determines a firm to be a bona-fide small, minority-, women-owned, or emerging small business enterprise. Emerging Small Business Enterprises (ESBEs) are automatically eligible for Certification as SBEs. Any firm may apply for multiple Certifications that cover each and every status category (e.g., SBE, ESBE, MBE, or WBE) for which it is able to satisfy eligibility standards. The SBO staff may contract these certification services to a regional Certification agency or other entity. For purposes of Certification, the City may accept any firm that is certified by local government entities and other organizations identified herein that have adopted Certification standards and procedures similar to those followed by the SBO, provided the prospective firm satisfies the eligibility requirements set forth in the Ordinance No. 2016-05-19-0367 Section III.E.6.

**City** – refers to the City of San Antonio, Texas.

**Commercially Useful Function** – an S/M/WBE firm performs a Commercially Useful Function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, staffing, managing and supervising the work involved. To perform a Commercially Useful Function, the S/M/WBE firm must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quantity and quality, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether an S/M/WBE firm is performing a Commercially Useful Function, an evaluation must be performed of the amount of work subcontracted, normal industry practices, whether the amount the S/M/WBE firm is to be paid under the contract is commensurate with the work it is actually performing and the S/M/WBE credit claimed for its performance of the work, and other relevant factors. Specifically, an S/M/WBE firm does not perform a Commercially Useful Function if its role is limited to that of an extra participant in a transaction, contract or project through which funds are passed in order to obtain the appearance of meaningful and useful S/M/WBE participation, when in similar transactions in which S/M/WBE firms do not participate, there is no such role performed.

**Control** – the authority of a person or business owner to sign responses to solicitations and contracts, make price negotiation decisions, sell or liquidate the business and have the primary authority to direct the day-to-day management and operation of a business enterprise without interference from others.

**Economic Inclusion** – efforts to promote and maximize commercial transactions within, between and among all segments of the business population, regardless of race or gender, within the Relevant Marketplace.

**Emerging SBE (ESBE)** – a certified SBE corporation, partnership, sole proprietorship or other legal entity for the purpose of making a profit, which is independently owned and operated by Individuals legally residing in, or that are citizens of, the United States or its territories whose annual revenues and number of employees are no greater than 25% of the small business size standards for its industry as established by the U.S. Small Business Administration, and meets the Significant Business Presence requirements as defined herein.

**Emerging M/WBE** – a certified M/WBE firm whose annual revenues and number of employees are no greater than 25% of the small business size standards for its industry as established by the U.S. Small Business Administration, and meets the Significant Business Presence requirements as defined herein.

**Evaluation Preference** – an API that may be applied by the Goal Setting Committee to Construction, Architectural & Engineering, Professional Services, Other Services, and Goods and Supplies contracts that are to be awarded on a basis that includes factors other than lowest price, and wherein responses that are submitted to the City by S/M/WBE firms may be awarded additional Points in the evaluation process in the scoring and ranking of their proposals against those submitted by other prime Respondents.

**Formal Solicitation** – an invitation for bids, request for proposals, request for qualifications or other solicitation document issued by a City department for a contract that requires City Council approval, in accordance with the procurement rules adopted by the City Manager or designee through a memorandum issued by the City Manager or designee, an Administrative Directive or a procurement manual issued under the authority of the City Manager or designee, and/or pursuant to statutory requirements.

**Goal Setting Committee (GSC)** – a committee, or series of committees, appointed and chaired by the City Manager or designee from the Executive Team that includes, at a minimum, the EDD Director or designee, and the Director of Finance or Director of Transportation and Capital Improvements (TCI) or their designees, the Director or designee of the Originating Department (if the Originating Department is neither Finance nor TCI,) all without duplication of designees and two citizens appointed by City Council who are eligible to vote during the goal setting committee on contracts valued at \$3,000,000 and above. The City Manager or designee may also appoint two ex-officio members of the Small Business Advocacy Committee to serve on any GSC purely in an advisory and non-voting capacity. The GSC establishes S/M/WBE Program Goals for the City of San Antonio (e.g., Annual Aspirational Goals, Contract-by-Contract Subcontracting Goals, and determining which M/WBE segments are eligible for Segmented Subcontracting Goals annually) based upon Industry Categories, vendor availability, project-specific characteristics, and M/WBE utilization. The GSC also makes determinations about which Affirmative Procurement Initiatives (APIs) are to be applied to specific contracts based upon various criteria.

**Good Faith Efforts** – documentation of the Respondent’s intent to comply with S/M/WBE Program Goals and procedures including, but not limited to, the following: (1) documentation as stated in the solicitation reflecting the Respondent’s commitment to comply with SBE or M/WBE Program Goals as established by the GSC for a particular contract; or (2) documentation of efforts made toward achieving the SBE or M/WBE Program Goals (e.g., solicitations of bids/proposals/qualification statements from all qualified SBE or M/WBE firms listed in the Small Business Office’s directory of certified SBE or M/WBE firms; correspondence from qualified SBE or M/WBE firms documenting their unavailability to perform SBE or M/WBE contracts; documentation of efforts to subdivide work into smaller quantities for subcontracting purposes to enhance opportunities for SBE or M/WBE firms; documentation of a Prime Contractor’s posting of a bond covering the work of SBE or M/WBE Subcontractors; documentation of efforts to assist SBE or M/WBE firms with obtaining financing, bonding or insurance required by the Respondent; and documentation of consultations with trade associations and CONTRACTORS that represent the interests of SBE and/or M/WBEs in order to identify qualified and available SBE or M/WBE Subcontractors.)

**HUBZone Firm** – a business that has been certified by U.S. Small Business Administration for participation in the federal HUBZone Program, as established under the 1997 Small Business Reauthorization Act. To qualify as a HUBZone firm, a small business must meet the following criteria: (1) it must be owned and Controlled by U.S. citizens; (2) at least 35 percent of its employees must reside in a HUBZone; and (3) its Principal Place of Business must be located in a HUBZone within the San Antonio Metropolitan Statistical Area. [See 13 C.F.R. 126.200 (1999).]

**Independently Owned and Operated** – ownership of an SBE firm must be direct, independent and by Individuals only. Ownership of an M/WBE firm may be by Individuals and/or by other businesses provided the ownership interests in the M/WBE firm can satisfy the M/WBE eligibility requirements for ownership and Control as specified herein in Section III.E.6. The M/WBE firm must also be Independently Owned and Operated in the sense that it cannot be the subsidiary of another firm that does not itself (and in combination with the certified M/WBE firm) satisfy the eligibility requirements for M/WBE Certification.

**Individual** – an adult that is of legal majority age.

**Industry Categories** – procurement groupings for the City of San Antonio inclusive of Construction, Architectural & Engineering, Professional Services, Other Services, and Goods & Supplies (i.e., manufacturing, wholesale and retail distribution of commodities). This term may sometimes be referred to as “business categories.”

**Joint Venture Incentives** – an API that provides inducements for non-SBE and non-M/WBE firms to collaborate with SBE or M/WBE partners in responses to solicitations and performing a Prime Contract to supply goods to, or to perform on behalf of, the City. Joint ventures are manifested by written agreements between two or more Independently Owned and Controlled business firms to form a third business entity solely for purposes of undertaking distinct roles and responsibilities in the completion of a given contract. Under this business arrangement, each joint venture partner shares in the management of the joint venture and also shares in the profits or losses of the joint venture enterprise commensurately with its contribution to the venture. Incentives under this API may include Evaluation Preferences that are tied to the percentage of SBE or M/WBE participation in the joint venture, expedited issuance of building permits and extra contract option years in certain Other Services and Goods & Supplies contracts.

**Minority/Women Business Enterprise (M/WBE)** – firm that is certified as either a Minority Business Enterprise or as a Women Business Enterprise, and which is at least fifty-one percent (51%) owned, managed and Controlled by one or more Minority Group Members and/or women, and that is ready, willing and able to sell goods or services that are purchased by the City of San Antonio.

**M/WBE Directory** – a listing of M/WBEs that have been certified for participation in the City’s M/WBE Program APIs.

**M/WBE Subcontracting Program** – an API in which Prime Contractors or vendors are required to make Good Faith Efforts to subcontract a specified percentage of the value of prime contract dollars to certified M/WBE firms. Such subcontracting goals may be set and applied by the GSC on a contract-by-contract basis to those types of contracts that provide subcontract opportunities for performing Commercially Useful Functions wherein:

- (1) There have been ongoing disparities in the utilization of available M/WBE Subcontractors; or
- (2) Race-Neutral efforts have failed to eliminate persistent and significant disparities in the award of prime contracts to M/WBEs in a particular Industry Category or industry segment (e.g., Construction contracts, Professional Services contracts, and Architectural and Engineering contracts), and subcontract opportunities are limited outside of City contracts.

When specified by the GSC, the M/WBE Subcontracting Program may also be required to reflect Good Faith Efforts that a Prime Contractor or vendor has taken (or commits to taking in the case of solicitations that do not include a detailed scope of work or those in which price cannot be considered a factor in evaluation), toward attainment of subcontracting goals for M/WBE firms.

**M/WBE Evaluation Preference** – an API that the City may apply to requests for proposals or qualifications (RFPs or RFQs) on City Construction, Architectural & Engineering, Professional Services, Other Services, and Goods & Supplies contracts that are issued pursuant to a Best Value Contracting method or other methods of procurement wherein criteria other than lowest price are factored into the selection process. M/WBEs that submit responses for these kinds of solicitations are awarded additional Points in the scoring of their responses when evaluating and ranking their responses against those submitted by non-minority firms. Where specified in contract specifications as approved by the Goal Setting Committee, the M/WBE Evaluation Preference may be limited to Emerging M/WBE firms.

**Minority Business Enterprise (MBE)** – any legal entity, except a joint venture, that is organized to engage in for-profit transactions, which is certified as being at least fifty-one percent (51%) owned, managed and Controlled by one or more Minority Group Members, and that is ready, willing and able to sell goods or services that are purchased by the City. To qualify as an MBE, the enterprise shall meet the Significant Business Presence requirement as defined herein. Unless otherwise stated, the term “MBE” as used in the SBEDA Ordinance is not inclusive of women-owned business enterprises (WBEs).

**Minority Group Members** – African-Americans, Hispanic Americans, Asian Americans and Native Americans legally residing in, or that are citizens of, the United States or its territories, as defined below:

African-Americans: Persons with origins in any of the black racial groups of Africa.

Hispanic-Americans: Persons of Mexican, Puerto Rican, Cuban, Spanish or Central and South American origin.

Asian-Americans: Persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.

Native Americans: Persons having no less than 1/16<sup>th</sup> percentage origin in any of the Native American Tribes, as recognized by the U.S. Department of the Interior, Bureau of Indian Affairs and as demonstrated by possession of personal tribal role documents.

**Originating Department** – the City department or authorized representative of the City which issues solicitations or for which a solicitation is issued.

**Payment** – dollars actually paid to Prime Contractors and/or Subcontractors and vendors for City contracted goods and/or services.

**Points** – the quantitative assignment of value for specific evaluation criteria in the vendor selection process used in some Construction, Architectural & Engineering, Professional Services, Other Services, and Goods & Supplies contracts (e.g., up to 20 points out of a total of 100 points assigned for S/M/WBE participation as stated in response to a Request for Proposals).

**Prime Contractor** – the vendor or contractor to whom a purchase order or contract is issued by the City of San Antonio for purposes of providing goods or services for the City.

**Race-Conscious** – any business classification or API wherein the race or gender of business owners is taken into consideration (e.g., references to M/WBE programs and APIs that are listed herein under the heading of “Race-Conscious”). To be eligible for the benefits of race- and gender-conscious APIs as provided in this Ordinance, M/WBE firms must also satisfy the size standards for being a Small Business Enterprise or SBE as defined herein.

**Race-Neutral** – any business classification or API wherein the race or gender of business owners is not taken into consideration (e.g., references to SBE programs and APIs that are listed herein under the heading of “Race-Neutral”).

**Relevant Marketplace** – the geographic market area affecting the S/M/WBE Program as determined for purposes of collecting data for the 2015 Disparity Study, and for determining eligibility for participation under various programs established by the SBEDA Ordinance, is defined as the San Antonio Metropolitan Statistical Area (SAMSA), currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson.

**Respondent** – a vendor submitting a bid, statement of qualifications, or proposal in response to a solicitation issued by the City.

**Responsible** – a firm which is capable in all respects to fully perform the contract requirements and has the integrity and reliability which will assure good faith performance of contract specifications.

**Responsive** – a firm’s submittal (bid, response or proposal) conforms in all material respects to the solicitation (Invitation for Bid, Request for Qualifications, or Request for Proposal) and shall include compliance with S/M/WBE Program requirements.

**San Antonio Metropolitan Statistical Area (SAMSA)** – also known as the Relevant Marketplace, the geographic market area from which the City’s 2015 Disparity Study analyzed contract utilization and availability data for disparity (currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson).

**Segmented M/WBE Goals** – the application of multiple goals for M/WBE participation within Annual Aspirational Goals or for M/WBE Subcontracting Goals on an individual City contract wherein an overall combined M/WBE goal is accompanied by subsets of one or more smaller goals. Such segmented goals specifically target the participation of a particular segment of business enterprises owned and Controlled by WBEs or certain Minority Group Members (e.g., African-Americans or Hispanic-Americans) based upon relative availability and significantly greater patterns of underutilization and disparity within an industry as compared to other gender and Minority Group Member categories of M/WBEs. The application of Segmented M/WBE Goals is intended to ensure that those segments of M/WBEs that have been most significantly and persistently underutilized receive a fair measure of remedial assistance.

**SBE Directory** – a listing of small businesses that have been certified for participation in the City’s SBE Program APIs.

**Significant Business Presence** – to qualify for this Program, a S/M/WBE must be headquartered or have a *significant business presence* for at least one year within the Relevant Marketplace, defined as: an established place of business in one or more of the eight counties that make up the San Antonio Metropolitan Statistical Area (SAMSA), from which 20% of its full-time, part-time and contract employees are regularly based, and from which a substantial role in the S/M/WBE’s performance of a Commercially Useful Function is conducted. A location utilized solely as a post office box, mail drop or telephone message center or any combination thereof, with no other substantial work function, shall not be construed to constitute a significant business presence.

**Small Business Enterprise (SBE)** – a corporation, partnership, sole proprietorship or other legal entity for the purpose of making a profit, which is Independently Owned and Operated by Individuals legally residing in, or that are citizens of, the United States or its territories, and which meets the U.S. Small Business Administration (SBA) size standard for a small business in its particular industry(ies) and meets the Significant Business Presence requirements as defined herein.

**Small Business Office (SBO)** – the office within the Economic Development Department (EDD) of the City that is primarily responsible for general oversight and administration of the SBEDA Program.

**Small Minority Women Business Enterprise Program (S/M/WBE Program)** – the combination of SBE Program and M/WBE Program features contained in this Ordinance.

**Solicitation Incentives** – additional inducements or enhancements in the solicitation process that are designed to increase the chances for the selection of S/M/WBE firms in competition with other firms. Such inducements and enhancements may include such terms as additional contract option years, increased quantities in supply contracts, and evaluation preferences, where not prohibited by law. These solicitation incentives may be applied as appropriate to solicitations, contracts, and letter agreements for Construction, Architecture and Engineering services, Professional Services, Other Services, and Goods & Supplies contracts, including change orders and amendments.

**Subcontractor** – any vendor or contractor that is providing goods or services to a Prime Contractor in furtherance of the Prime Contractor’s performance under a contract or purchase order with the City. A copy of the binding agreement between the Prime Contractor and the Subcontractor shall be submitted prior to the City’s issuance of a notice to proceed.

**Suspension** – the temporary stoppage of an SBE or M/WBE firm’s beneficial participation in the City’s S/M/WBE Program for a finite period of time due to cumulative contract payments the S/M/WBE firm received during a fiscal year that exceed a certain dollar threshold as set forth in Section III.E.7, or pursuant to the Penalties and Sanctions set forth in Section III.E.13.

**Subcontractor/Supplier Utilization Plan** – a binding part of this contract agreement which states the CONTRACTOR’s commitment for the use of Joint Venture Partners and / or Subcontractors/Suppliers in the performance of this contract agreement, and states the name, scope of work, and dollar value of work to be performed by each of CONTRACTOR’s Joint Venture partners and Subcontractors/Suppliers in the course of the performance of this contract, specifying the S/M/WBE Certification category for each Joint Venture partner and Subcontractor/Supplier, as approved by the SBO Manager. Additions, deletions or modifications of the Joint Venture partner or Subcontractor/Supplier names, scopes of work, of dollar values of work to be performed requires an amendment to this agreement to be approved by the EDD Director or designee.

**Women Business Enterprises (WBEs)** - any legal entity, except a joint venture, that is organized to engage in for-profit transactions, that is certified for purposes of the SBEDA Ordinance as being at least fifty-one percent (51%) owned, managed and Controlled by one or more non-minority women Individuals that are lawfully residing in, or are citizens of, the United States or its territories, that is ready, willing and able to sell goods or services that are purchased by the City and that meets the Significant Business Presence requirements as defined herein. Unless otherwise stated, the term “WBE” as used in this Ordinance is not inclusive of MBEs.

**Attachment B**

**[INSERT CONSULTANT'S PROPOSAL TO CITY'S REQUES FOR QUALIFICATIONS FOR NUTRITIONAL EDUCATIONAL SERVICES FOR THE HEAD START PROGRAM HERE]**

## EXECUTIVE SUMMARY

Nutrition Therapy Associates, Inc. (NTA) has been serving the San Antonio/Hill Country areas since 1995 and continues to serve the community in a variety of ways. NTA is a private practice and nutrition consulting company consisting of a team of Registered Dietitians/Nutritionists working together to provide nutrition counseling and education to their clients and families. NTA contracts with both the pediatric (95%) and adult (5%) population. Our mission is to help individuals improve their health through optimal nutrition and physical fitness. NTA's motto: "You are what you eat, and if you eat well, you can live well!"

NTA has a demographic address residing in Bexar County and currently provides nutrition services for the City in Bexar County. Additionally, NTA contracts with other various agencies that are all located in the San Antonio Metropolitan Statistical Area (Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina, and Wilson Counties) and numerous counties north of Bexar County (Hays, Blanco, Kerr, Gillespie, Kimble, Menard, Mason, and Llano).

It is the goal of NTA to provide nutritional educational services to the Early Head Start (EHS), Early Head Start-Child Care Partnership Program (EHS-CCP) and Head Start (HS) Programs in the following manner. NTA dietitians/nutritionists will conduct nutrition assessments for growth, allergies, special dietary requirements and medical conditions that may lead to altered nutrition needs for children in the program. To perform these assessments, a dietitian/nutritionist will use recorded weight and height measurements to calculate the child's BMI/age and determine whether they are at risk for underweight/overweight/obesity. However, it is important to point out that with NTA's experience working with various agencies, not all staff are properly trained in obtaining correct anthropometrics of a child. Thus, this is an area that NTA feels can be improved upon with all agencies it works with in the community. To help with this matter, NTA would be available to hold specified trainings to all agency staff to teach them the proper technique in obtaining a weight and height, along with any pertinent questions that the staff should ask the child's caregiver in a routine screening. All of this information can then be passed onto NTA, and the dietitian/nutritionist will then develop a nutrition plan and provide education to families when a child is determined to be at risk. The dietitian/nutritionist will also evaluate important health criteria obtained by these programs, such as lead levels and hemoglobin/hematocrit levels. The dietitian/nutritionist will educate the families on complications that can occur for their child if these blood levels are abnormal.

Other tasks that may become necessary for the dietitian to complete are: analyzing EHS and HS program menus as needed, developing a special diet when needed, whether it be for medical or religion/cultural reasons, and provide the necessary parent/staff education regarding this special diet. NTA has dietitians/nutritionists that are educated with the most recent CACFP guidelines for menu reimbursement/requirements. All menus created for the programs will follow the CACFP criteria. NTA will provide a dietitian/nutritionist to conduct kitchen inspections when needed for the City sites and will assist with any necessary changes to meet health department standards. The dietitian/nutritionist will work closely with the cooking staff of these programs to educate them on cooking techniques that follow the CACFP guidelines. If needed, recipes will be altered by the dietitian/nutritionist and then passed on to the cooks to meet the CACFP criteria.

Dietitians/nutritionists are available to provide staff education in-services, parent group classes on nutritional topics of interest/relevance, and cooking demonstrations. These classes will allow/provide audience participation, taste testing, handouts/resources to take home, and

complete, detailed nutrition about the given topic on hand. Additionally, over the past two years, NTA has proven that when faced with a unique challenge, the dietitian/nutritionist can adapt their teaching methods to best accommodate the community. During peak high risk levels of COVID-19, all NTA services were converted to online help sessions and nutrition videos.

NTA dietitians/nutritionists are bilingual and culturally sensitive to the various populations around San Antonio. They are experienced in working with the residents of the San Antonio Metropolitan Statistical Area, as NTA has been servicing the area for over 22 years! It is our continued goal to form relationships/partnerships with the City of San Antonio and its community partners to improve the health and well being of the children/families in this area. Furthermore, NTA will continue to work closely with the City and its Early Head Start and Head Start Programs to seek opportunities to expand its relationships with public entities that can help expand these nutrition programs.

**RFP ATTACHMENT A, PART THREE**  
**PROPOSED PLAN**

**OPERATING PLAN:**

- Teacher Nutrition Education Sessions – NTA will conduct education sessions based on topics of interest expressed by staff and topics also deemed relevant by the dietitian/nutritionist, such as overall health and wellness and using nutrition as preventative medicine. These sessions will be conducted at any of the EHS and HS sites that express the need/desire for such a talk and will occur throughout the year. To prepare for these talks, the contract dietitian/nutritionist typically spends 4-5 hours researching and creating the presentation in both English and Spanish. Then once at the site, the dietitian/nutritionist can spend up to 3 hours for the overall presentation, which includes question and answer sessions at the end. Each teacher nutrition education session is conducted in English and Spanish. Example topics include:
  - Nutrition Education in the Classroom
  - Blood Pressure – Keep It in Check
  - Plant Based Foods, Yay or Nay
  - Incredible or Inedible (trending healthy recipes)
  - Anemia – Discussing Iron Levels
- Parent Nutrition Education Sessions - NTA will conduct education sessions based on topics of interest expressed by parents and topics also deemed relevant by the dietitian/nutritionist. NTA will often ask center Food Service Workers to ask parents what topics they are interested in learning more about. These talks are typically given at the EHS and HS sites during child drop-off or pick-up so it is convenient for the parent's schedule. To prepare for these talks, the contract dietitian/nutritionist typically spends 4-5 hours researching and creating the presentation in both English and Spanish. Then once at the site, the dietitian/nutritionist can spend 2-3 hours for the overall presentation, which includes question and answer sessions at the end. Example topics include:
  - Raising Healthy Children in the New Year
  - Heart Healthy Children
  - Fiesta – Fun, Colorful, Nutritious & Delicious Snacks!
  - Nutrition – Why It's Important to Head Start Children
- Food Demonstrations – On average over the past year, the contract dietitian/nutritionist has conducted 23-25 food demonstrations at EHS and HS sites combined. Often these food demos are requested based on past presentations NTA has given. These food demonstrations can occur around holiday time, National Nutrition Month, and monthly themes. Each food demonstration is conducted in English and Spanish, provides recipes in English and Spanish, and provides time for the audience taste testing. On average, the dietitian/nutritionist will spend 1-1.5hrs researching and creating a menu for the demo. They will then spend 1-1.5hrs shopping for the products needed. Lastly, they will spend 6-7hrs prepping/cooking the food samples for the demonstrations (time is all variable and dependent on the size of audience). Example topics include:
  - Healthy Spooky Treats
  - Surviving the Holidays
  - Healthy Heart
  - Tea Time with Tirza

➤ Spring Treats

Although it is “ideal” to do these food demos in person, NTA has adapted over the past couple of years due to the COVID-19 pandemic. When necessary, NTA has been able to provide food demos via WebEx telecommunication. NTA has also converted some food demos into “virtual cook-along sessions,” allowing the community audience to cook along with the dietitian/nutritionist.

- One-on-one Nutrition Counseling - NTA will provide 1:1 consultation sessions to involve the parent and/or child when applicable for any child that is at risk for underweight/overweight/obesity. These sessions can also occur for a child who requires a specialty diet. Typical initial assessments can last 1-1.5hrs. During this time, the dietitian/nutritionist will review anthropometric measurements with the parents, areas of nutrition concern, help develop a healthy meal plan, and help establish both short-term and long-term nutrition goals for the child/family. It is ideal to have follow-up appointments with the families when able. These follow-up appointments typically last 45-60 minutes and are a time to learn of the family’s success stories and remaining struggles to help create the best nutrition environment for their child/family. The EHS and HS staff/directors of all sites should notify NTA when they have a family of concern that needs individual counseling.
- Parent Conference Presentations – The NTA dietitian/nutritionist has been involved in EHS-CCP and HS parent conferences. These presentations are presented in person, and due to the recent pandemic, they are also presented virtually. NTA will conduct research on a specified topic, develop a presentation for the assigned population, and present in a manner for audience involvement and learning. If applicable to the audience/conference, the dietitian will also provide food demonstrations during her presentation. Presentations will be made available in both English and Spanish.
- Yearly Menu Development – The contract dietitian/nutritionist is readily involved in creating and revising menus for the City programs. The menus used are typically seasonal (Fall/Winter & Spring/Summer) and run on a 4-week cycle. All menus follow the CACFP guidelines. As needed, specialty menus will also be created for medical and/or religious reasons. Time spent on menu development varies monthly, depending on the current monthly need. On average, if the dietitian/nutritionist is readily working on creating a new cycle of menus, they may spend up to 20hrs a month researching, completing, and testing new recipes for the menus. If they are making only simple changes to a menu for a particular reason, they may spend 2-6hrs per month on this task.
- Technical Assistance for Program Staff - NTA will conduct nutrition educational in-service classes on relevant subject matter for the program staff. Example topics include:
  - Nutrition Screening & Assessments
  - Nutrition for Overweight/Obesity Management
  - Nutrition for Underweight Status
  - Special Diets

Additionally, the dietitian/nutritionist will mentor the EHS cooks in healthy cooking techniques and CACFP meal patterns. When needed, the dietitian/nutritionist will join the cooks in the kitchen to review and cook a new/revised recipe to clarify any questions/concerns.

The dietitian/nutritionist will ensure the delivery of quality services to the program is in a timely and efficient manner. Typically, the dietitian/nutritionist will schedule their events/appointments

one month in advance. This will allow them to plan out the time they need to prepare for their presentation, counseling session, training, and/or food demo. The dietitian/nutritionist will also confirm any set dates/times with the person of contact at each site so that unnecessary travel is not spent if the event has to be rescheduled. The dietitian/nutritionist will stay in touch with their person of contact for each event until the event has been completed.

The current contract dietitian/nutritionist is bilingual and is able to provide all services in both English and Spanish. This includes presentations, food demonstrations, and all written materials. Included at the end of this section are examples of currently used Spanish parent education materials for the ongoing programs (**pages 59-65**).

NTA will abide by the rules of the Federal HIPPA Privacy guidelines protecting the privacy of all families at the Early Head Start and Head Start Programs. Personal information of a child/family will not be discussed except to those explicitly involved in the case. NTA will retain all client charts in an office setting.

Additionally, the dietitian/nutritionist will provide written reports on completed tasks to the City contact person and be involved in Health Service Advisory Committee meetings when applicable.

The following are some of the tools that can be used to market nutritional services for the Early Head Start and Head Start Program:

- Nutrition Therapy Associates, Inc. website ([nutritiontherapyassociates.com](http://nutritiontherapyassociates.com))
- Nutritional Education Handouts/Pamphlets left at various program sites
- Nutritionist/dietitian will promote program by talking with individual teachers at the EHS and HS sites.
- National Nutrition Month marketing – prepare posters/handouts to promote a healthy lifestyle of eating during the month of March
- Nutritionist/dietitian will be available to present at the City's Head Start Parent Conference (when applicable) to discuss the scope of services available for all families along with any other relevant topics.

With NTA's passion is to provide the highest quality of nutritional services to the community of San Antonio, it is the dietitian/nutritionist's goal to seek out all resources available for families to learn how to live a healthier lifestyle.

**RFP ATTACHMENT B**  
**PRICE SCHEDULE**

<b>PROPOSED ANNUAL PRICE – Head Start</b>	
	<b>Proposed Annual Price</b>
Year 1: Hourly rate \$80/hr (NTA: \$70/hr + In-Kind: \$10/hr) Travel cost at \$40/hr Supplies up to \$2500/yr	\$35,000 (all inclusive)
Year 2: Hourly rate \$80/hr (NTA: \$70/hr + In-Kind: \$10/hr) Travel cost at \$40/hr Supplies up to \$2500/yr	\$35,000 (all inclusive)
Year 3: Hourly rate \$80/hr (NTA: \$70/hr + In-Kind: \$10/hr) Travel cost at \$40/hr Supplies up to \$2500/yr	\$35,000 (all inclusive)
Year 4: Hourly rate \$80/hr (NTA: \$70/hr + In-Kind: \$10/hr) Travel cost at \$40/hr Supplies up to \$2500/yr	\$35,000 (all inclusive)
Year 5: Hourly rate \$80/hr (NTA: \$70/hr + In-Kind: \$10/hr) Travel cost at \$40/hr Supplies up to \$2500/yr	\$35,000 (all inclusive)
<b>PROPOSED ANNUAL PRICE – Early Head Start-Child Care Partnership</b>	
	<b>Proposed Annual Price</b>
Year 1: Hourly rate \$80/hr (NTA: \$70/hr + In-Kind: \$10/hr) Travel cost at \$40/hr Supplies up to \$750/yr	\$10,000 (all inclusive)
Year 2: Hourly rate \$80/hr (NTA: \$70/hr + In-Kind: \$10/hr) Travel cost at \$40/hr Supplies up to \$750/yr	\$10,000 (all inclusive)
Year 3: Hourly rate \$80/hr (NTA: \$70/hr + In-Kind: \$10/hr) Travel cost at \$40/hr Supplies up to \$750/yr	\$10,000 (all inclusive)
Year 4: Hourly rate \$80/hr (NTA: \$70/hr + In-Kind: \$10/hr) Travel cost at \$40/hr Supplies up to \$750/yr	\$10,000 (all inclusive)
Year 5: Hourly rate \$80/hr (NTA: \$70/hr + In-Kind: \$10/hr) Travel cost at \$40/hr Supplies up to \$750/yr	\$10,000 (all inclusive)

<b>PROPOSED ANNUAL PRICE – Early Head Start</b>	
	Proposed Annual Price
Year 1: Hourly rate \$80/hr (NTA: \$70/hr + In-Kind: \$10/hr) Travel cost at \$40/hr Supplies up to \$500/yr	\$5000 (all inclusive)
Year 2: Hourly rate \$80/hr (NTA: \$70/hr + In-Kind: \$10/hr) Travel cost at \$40/hr Supplies up to \$500/yr	\$5000 (all inclusive)
Year 3: Hourly rate \$80/hr (NTA: \$70/hr + In-Kind: \$10/hr) Travel cost at \$40/hr Supplies up to \$500/yr	\$5000 (all inclusive)
Year 4: Hourly rate \$80/hr (NTA: \$70/hr + In-Kind: \$10/hr) Travel cost at \$40/hr Supplies up to \$500/yr	\$5000 (all inclusive)
Year 5: Hourly rate \$80/hr (NTA: \$70/hr + In-Kind: \$10/hr) Travel cost at \$40/hr Supplies up to \$500/yr	\$5000 (all inclusive)

## **RFP ATTACHMENT A, PART TWO EXPERIENCE, BACKGROUND & QUALIFICATIONS**

1. Describe Respondent's experience relevant to the Scope of Services requested by the RFP. List and describe relevant projects of similar size and scope performed over the past four years. Identify associated results or impacts of the project/work performed.
2. Describe Respondent's specific experience with Head Start (children 0 to 5 years of age) or children six weeks to five years old, and public entity clients, especially large municipalities. If Respondent has provided services for the EHS and HS in the past, identify the name of the project and for which programs Respondent provided those services

Nutrition Therapy Associates, Inc. (NTA) is composed of a team of dietitians/nutritionists that have been serving the San Antonio/Hill Country areas since 1995. We are a group of Registered and Licensed Dietitians/Nutritionists that provide nutrition counseling and consulting services for adults and children throughout south-central Texas. Our mission is to help individuals improve their health through optimal nutrition and physical fitness. We can help the City with a variety of concerns including weight management, diabetes, cholesterol management, food allergies, food insecurity, specialty diets, or simply healthy eating. We currently contract with both pediatric (95%) and adult (5%) populations. Quality assurance for food service operations are also a part of our routine services, including menu development and review, kitchen inspections, and process improvement strategies.

Over the years, NTA has provided contract services to multiple companies and organizations. Our current clients include:

- City of San Antonio (HS, EHS-CCP, EHS)
- Center for Life Resources (ECI)
- Camino Real Community MHMR Center (ECI, IDD & SNAP-Ed Program)
- Any Baby Can – Austin (ECI)
- Parent/Child Incorporated of San Antonio and Bexar County (EHS & HS)
- Advantage Care Services
- HomeLife & Community Services
- Heart to Home
- Adela's Angels

Our dietitians/nutritionists offer counseling and education in the following areas and others upon request:

- Pediatric Nutrition
- Dietary Analysis & Menu Planning
- Disease Prevention
- Metabolic Nutrition
- Nutrition in Special Needs Clients
- Wellness
- Weight Loss
- High Cholesterol

- Vegetarianism
- Food Allergies
- GI Disorders
- Kitchen Inspections
- Grocery Store Tours
- Pantry Makeovers
- Food Insecurity

Our dietitians/nutritionists are able to provide the above nutrition education with 1:1 consulting sessions, development of nutritional handouts/pamphlets, and providing group nutrition education classes for staff, parents and/or children. For example, NTA dietitians/nutritionists have provided “nutrition circle time” for a classroom of children to teach them the different food groups. NTA will also spend time in a classroom to do “meal observations” to determine the likes/dislikes of a particular meal and how it can be improved. NTA has proven that with parent:dietitian/nutritionist interaction, parents become more involved in their child’s nutritional health.

NTA has provided services for the City of San Antonio since February 2012. The projects involved were the Nutritional Educational Services for the Head Start Program for the Department of Human Services (February 2012-present) and Nutritional Educational Services for the Early Head Start Program (December 2015-present). The direct individual involved on these projects is both cultural sensitive to the various populations of San Antonio and is bilingual. She conducts all of her nutrition education in either English or Spanish to the families involved, being sure to also translate all nutrition handouts and presentations in Spanish. Since 2012, NTA has been involved in multiple talks/conferences for large audiences, such as: Head Start Parent Conference at The Witte Museum (April 2015), Head Start Teacher Pre-service Conference at Henry B. Gonzales Convention Center (August 2015), Jose A. Cardenas ECC (May 2016), and Head Start Parent Conference at San Antonio Food Bank (April 2017). These presentations all had audiences ranging from 50 to 200 people. Audiences for nutrition sessions have grown due to parents, district staff, and food service workers recognizing NTA’s name and/or have attended previous sessions. All sessions provided help participants embrace nutrition issues in a comfortable environment with realistic and attainable nutrition goals.

Most recently, over the past 4 years, NTA has provided/created the following unique presentations and projects for the City of San Antonio:

- Virtual presentation to CoSA staff – April 2020
  - Topic: “Tips on Maintaining a Balanced Immune System in the Time of COVID-19”
  - Results: positive feedback via phone calls & texts; large number of nutrition referrals needing nutrition services
- Virtual Parent Engagement – Tasty Thursday
  - Topic: Apple Nachos; Fruit Pizza; Put a Rainbow on Your Plate (food demos for EHS and EHS-CCP)
- Jose A. Cardenas ECC & Stafford ECC (EISD) Education Sessions
  - Topic: Food & Behaviors

- Layout: This was a 2-session training, followed by a 3<sup>rd</sup> session that consisted of a HEB tour. Approximately 15 families participated in these 3 sessions, and all 3 sessions were well received (see evaluations on **pages 23-25**).
- EISD Presentation
  - Topic: “Diabetes – Keeping Your Numbers in Check”
  - Results: significant lifestyle nutrition changes made such as: giving up sodas, switching to 100% whole grain products, incorporating protein and fiber foods into all meals/snacks to help keep blood sugars stable
- Edgewood Community Resource Fair – April 2022
  - Topic: Cucumber Lemon Mint Water
  - Food samples provided, along with recipe given in English & Spanish (up to 250 potential attendees)

On average, NTA performs 25-30 teacher/parent/staff nutrition education sessions per year, with at least 23-25 of these sessions including food demonstrations within both Early Head Start and Head Start. To add, each food demo will accommodate 15-45 participants, depending on the sign up. Topics are often chosen from popular topics currently highlighted in social media and focus on “fact over fiction.” These demonstrations are provided for parents, CoSA staff and teachers. During these demonstrations, the dietitian/nutritionist provides taste testing, food examples/models, and recipes in both languages. To help better engage the audience, multiple visuals are also used throughout all of these talks/demonstrations such as: nutrition posters, life-size posters depicting the human anatomy, food models, appropriate portion sizes, 5lb fat and 5lb muscle models, test tubes filled with fat, salt, and sugar to depict the amounts associated within foods, various nutrition books, nutrition placemats, and MyPlate paper plates. In addition, the dietitian/nutritionist will inform the audience on which local stores have the best prices for the presented recipes. The current NTA team member serving the City is known as “the food dietitian/nutritionist that provides “better than” recipes and food samples.” Food service workers and staff will schedule early in the school year to secure holiday sessions with food demos, primarily October-December and February-March. Examples of food demonstrations:

- Healthy Spooky Treats (see handout, **page 26**)
- Surviving the Holidays
- Healthy Heart
- Tea Time with Tirza
- Spring Treats
- Smart Snacking (see handout, **pages 27-28**)

During the peak stages of the COVID-19 pandemic, NTA was able to restyle some of its planned food demos, add a new “twist” to the demos and turn them into “virtual cook-along sessions” that involved families from both the SAISD and EISD districts involved in the Head Start program and, at times, the CoSA staff. For each session, 15-30 families are invited. These sessions are a “one man show,” with the NTA dietitian/nutritionist setting up 2 separate cameras, allowing the audience to (1) see the dietitian/nutritionist cooking overall and (2) also focus on her hands in a more close up visual. Individual food kits were prepared by the dietitian/nutritionist. Kits included portioned ingredients, kids chef hats and aprons, and kitchen supplies needed for recipe. Some topics of these cook-along sessions are listed below:

- Easy, Healthy Holiday Recipes: Turkey Veggie Tray (shaped as a turkey) with Homemade Ranch Dip & Homemade Holiday Cranberry Sauce
- Let's Hop into Spring with Healthy Treats! (bunny face treats)
- Going into the Summer Healthy!
- Supercharge Your Brain – Avocado Chocolate Pudding & Watermelon Auga Fresca (see handout, **pages 29-30**)

Furthermore, NTA was able to adapt all 1:1 consults, general food demos, and any necessary trainings to either Zoom, WebEx, or Teams meetings to ensure all nutrition services could continue for the community when the City was placed on high risk for COVID-19.

To engage the parents, NTA is often involved in speaking at parent committee meetings. As stated above, these talks are given in both English and Spanish, when needed. These sessions are provided to parents, grandparents, and all guardians/caretakers involved with the child enrolled in the program. The dietitian/nutritionist will focus talks on the overall health and wellness for the whole family (NTA will have Food Service Workers from the centers ask parents what topics they are interested in learning more about). In addition, there will be focus on the children, geared towards avoiding disease and education on healthy eating, preparing and getting the children/families read for grade school. The families will then be taught how to incorporate this new knowledge into the household. The speaker will travel to all EHS/HS sites interested and present parent nutrition talks/events to the parents at a convenient time for them (program drop-off or pick-up). To name a few, below are some examples of such presentations:

- Plant Based Foods, Yay or Nay
- Incredible or Inedible (trending healthy recipes)
- Raising Healthy Children in the New Year
- Heart Healthy Children
- Fiesta – Fun, Colorful, Nutritious & Delicious Snacks!

To help show the impact that past talks/presentations/food demos have had on the San Antonio community in the most recent years, please see the enclosed parent/staff evaluations (in English & Spanish) attached at the end of this section (**pages 31-48**). Looking back over the past 4 years working with the City, there have been numerous significant impacts that NTA has been able to achieve with both the Early Head Start and Head Start Programs. Focusing on the strengths of the programs, NTA has been successful at: (1) offering a variety of age-appropriate, diverse foods, embracing different cultures that fuel and nourish the bodies and brains of all EHS & HS children; (2) helping children achieve school readiness, as well as, promote prevention of childhood obesity and stressing the importance of physical activity; (3) nutrition education to staff, parents/guardians and children; and (4) health screenings, including nutrition and dental, that are provided to all program participants. However, just as with all successful programs, there are weaknesses that can be pointed out in order to help enhance the programs more in the future. Such weaknesses that NTA has come across over the years include: (1) meeting nutrition needs of all children/families so that no one “falls through the cracks,” causing their issues to become larger and (2) not having interaction/relationships with district (SAISD/EISD) dietitians. To improve on these weaknesses, training sessions can be provided on the importance of accuracy of measurements taken on children and accuracy of collecting nutrition information from parent/guardian during a nutrition screening session.

Additionally, NTA has been able to counsel multiple families and City staff in 1:1 settings. Past families involved in the Nutritional Educational Services for the EHS and HS Program often show improvement in their actions towards a healthier lifestyle for their child after spending quality time with the dietitian/nutritionist. Over the years, the current dietitian/nutritionist involved with the City contract states that more parents and staff are requesting 1:1 counseling appointments, now that they are aware the service is available to them. The dietitian/nutritionist reported parents making changes in their cooking habits, measuring out foods to help control portions served, and simply being aware of what their child was eating on a daily basis. Parents/staff in the program were able to “connect” with the dietitian/nutritionist involved and understand what changes they needed to make, as the primary focus is on making realistic, obtainable goals. For example: (1) Numerous autistic children became better eaters by having them participate in the kitchen with the dietitian/nutritionist. The dietitian/nutritionist would schedule home visits with these families to allow the autistic child to feel more comfortable. (2) In the recent years, the dietitian/nutritionist worked with a child and family who were overweight. The dietitian/nutritionist was able to meet with the mother at her local grocery store to help her make healthier food choices, without giving up cultural foods that were important to the family (**see page 49 for DHS Digest excerpt**). The family also learned how to incorporate more vegetables into their lifestyle. (3) The dietitian/nutritionist worked with a young child who was limited on their overall food intake, focusing mainly on bottle eating. After multiple 1:1 appointments, the child was able to expand their food intake into a variety of different foods. (4) The dietitian/nutritionist worked with a HS child with type I diabetes, providing appropriate nutrition education, simple meal planning, and various resources for proper medical care. (5) Many Head Start staff have shared with NTA that their blood pressure and cholesterol are better controlled, they have avoided needing further diabetes medication and have lost weight after having counseling sessions with the dietitian/nutritionist. (6) Lastly, multiple HS staff have reached out to NTA after testing positive for COVID-19. Often staff members presented with high anxiety about their immunity. NTA has been able to provide appropriate nutrition education to help fight against the pandemic virus and how to cope with potential community restrictions and still stay healthy.

Menu planning is another topic that NTA places as a top priority when working with Head Start and Early Head Start programs. In December 2015, NTA started working with the Early Head Start Program, building their nutrition program to involve staff trainings, parent nutrition sessions, cooking demonstrations, and most importantly, CACFP accepted menus. To increase her knowledge, the contract dietitian/nutritionist has attended multiple years of CACFP training at past annual conferences in Austin, TX. It is there and through her own research that she has learned the practicing guidelines to provide adequately prepared CACFP menus. Currently, NTA helps the center, Seton Home of San Antonio, with their menu needs. A 4-week seasonal cycle menu has been created, providing CACFP recipes. The dietitian/nutritionist will go over all food products to find ways to help reduce cost, especially with specialty diets. The dietitian/nutritionist will review ingredients and educate the cooks on specific specialty diets needed. Any CACFP questions on food components served and age-appropriate serving sizes are answered. The dietitian/nutritionist will also review the importance of labeling food items with dates and ways to incorporate them into leftovers to, once again, reduce costs. In addition to Seton Home of San Antonio, NTA has also provided menus in the past (2019) for Ella Austin Community Center. Furthermore, NTA’s dietitian/nutritionist has held quarterly meal

observations in classrooms to determine how well the food (menu used) was being accepted at Inman Christian Center, Seton Home of San Antonio, and YWCA centers. Over the years, visiting and building rapport with EHS-CCP directors and staff has benefited the communities served, as multiple centers now request nutrition services from NTA for a variety of reasons: individual center staff trainings, 1:1 nutrition consults, special diet/specific food item help, and training with cooks.

Besides nutrition education sessions, 1:1 counseling, food demos, and menu preparation, NTA dietitians/nutritionists have stayed abreast of necessary training in the field and have built partnerships amongst many state/public, community leaders. In the past, the contract dietitian/nutritionist attended the annual CACFP Conference in Austin, TX to stay tuned with CACFP guidelines (2016-2017). Additional trainings NTA has participated in over the past 4 years to help benefit the City Early Head Start & Head Start programs are as follows:

- Head Start Strategic Planning Event – 2018, 2019, 2020 (virtual)
- Feeding America Training online session – Focusing on Strengthening SNAP and other Key Anti-Hunger Programs (Feb 2018)
- Food Bank Nutrition Summit – Focus on Fighting Food Waste (March 2018)
- National Child Nutrition Conference in San Antonio (April 2018)
- Region 20-Annual Food and Nutrition Workshop, including CACFP breakout sessions (June 2018)
- Dairy Max: Exploring the Farm to Table Story, The Health Professional's Perspective (*invitation only event* – February 2019)
- Food Bank Nutrition Summit – Targeting Populations at Risk of Food Insecurity Through Innovative Approaches (March 2019)
- Dairy Max: Dairy Amazing Symposium (*invitation only event* – September 2019)
- Food Bank Nutrition Summit – Raising Healthy Eaters in Food Insecure Communities (March 2020)
- Food Bank Nutrition Summit – Healthcare Systems Change: Food Security for the Lifetime (virtual – March 2021)
- Food Bank – State of the Food Bank after COVID (virtual – August 2021)

Through the many years of working with the City and its Head Start and Early Head Start Programs, NTA has been able to connect with many community leaders. Upon meeting them, the dietitian/nutritionist has been able to form partnerships within the community to better help expand both the Early Head Start and Head Start Programs for the City. To name a few: multiple HEB store partners and managers, including the Healthy Living Department at multiple HEB stores, Trader Joe managers, Eric Cooper/San Antonio Food Bank, County Judge Peter Sakai, Commissioner Tommy Calvert, representatives at Labatt Food Service, Sysco, and Ben E. Keith Foods San Antonio. Just recently, the current NTA team member serving the City was also invited to be an Advisory Committee Member for the Center for Health Care Services. Lastly, the dietitian/nutritionist will participate in nutrition webinars that relate back to pediatric nutrition to stay abreast of current pediatric nutrition recommendations/research.

The City of San Antonio Early Head Start & Head Start Programs are not the only such programs that NTA has experience within the community. NTA also contracts with Parent/Child

Incorporated of San Antonio & Bexar County (EHS/HS) and has in the past worked with Center for New Communities (EHS), Economic Opportunities Development Corporation (EODC – HS) and Baptist Child & Family Services (BCFS – HS). Coincidentally, the same individual working on the City contracts has covered/is covering all the above-mentioned Early Head Start and Head Start Programs. Within these programs, this individual has revised/created cycle menus, performed kitchen inspections, had 1:1 counseling sessions with parents for their child at nutrition risk, presented nutrition talks to staff/teachers/parents, performed numerous food demonstrations, and taught children nutrition lessons during “classroom circle time.” Staff members within these programs have seen an increase of nutritional interest from parents once they learn there is a dietitian/nutritionist available to them.

In addition to the Early Head Start and Head Start Programs described above, NTA has had extensive involvement over the years with various Early Childhood Intervention (ECI) programs serving the San Antonio and Hill Country areas. NTA served with the Center for Healthcare services for over 12 years providing nutrition assessments and education to families in need. NTA has provided nutrition services for ECI programs for 15+ years and is currently serving with 3 separate ECI programs: Center for Life Resources, Any Baby Can - Austin, and Camino Real. The ECI population receiving nutrition services continues to multiply with each year, with NTA averaging 50-60 families every month.

To continue, in the past years, NTA also helped develop parts of a Health & Wellness Program with the non-profit agency, Any Baby Can of San Antonio. The partnership that NTA developed with Any Baby Can (ABC) exemplifies the impact that our dietitians/nutritionists can have on the San Antonio community. NTA started contracting with Any Baby Can in February 2012, as they revealed a new Health & Wellness Program known as Any Body Can. NTA’s dietitians/nutritionists were given the opportunity to develop the nutrition portion of this program in a way that they believed could best serve the community. In order to demonstrate standard practices, NTA dietitians/nutritionists developed a Policies & Procedures Manual for the nutrition portion of this wellness project. NTA created a nutrition program for ABC that involved: 1:1 consulting sessions with parents, 1:1 consulting sessions with children on an appropriate learning level, grocery store tours, pantry makeovers, and nutrition education classes opened to the ABC community and the public. The nutrition portion along with the fitness portion of the Any Body Can program completed a full four years before funding ran short. However, during this this time, each year showed an increase in its participants by a minimum of 15% or more due to the success of the program in the previous years.

Starting in 2020, NTA added to its collaboration with Camino Real Community Services and started providing nutrition services for the Supplemental Nutrition Assistance Program (SNAP)-Education Program. NTA’s involvement with the SNAP-Ed Program has involved individual nutrition counseling to qualifying families, both pediatric and adult. Within the boundaries of this program, NTA is able to provide basic nutrition education to all family members that qualify. When counseling a family, both a pre and post-test are given to assess the family’s current nutrition habits. On average, each post-test shows an improvement when compared to its associated pre-test. Additional to individual family counseling, NTA is also available to provide group nutrition classes to interested families. Lastly, the covering dietitian/nutritionist for the SNAP-Ed Program provides a monthly nutrition newsletter and monthly nutrition video for all qualifying families. To name a few topics, these newsletters and videos highlight ways to improve on one’s nutrition, how to adapt to healthy eating during holidays or stressful times (i.e. COVID-19 pandemic), and give healthy recipes/food

demonstrations.

All dietitians/nutritionists on the NTA team are available to serve on multiple contracts, assist each other when faced with a new nutrition challenge, and are typically assigned to a contract based on their qualifications related to the specific scope of services requested by the contract. The current individual involved with the City's Head Start and Early Head Start programs (mentioned above) has worked with various Early Head Start & Head Start programs and Early Childhood Intervention programs for over 21 years and also worked with the previously mentioned Any Baby Can Wellness project. Throughout this length of time, this individual has been witness to the growth of families transitioning from the ECI programs and Early Head Start Programs (0-3 years) to the Head Start programs (4-5 years) and then even to the contract mentioned before in association with Any Baby Can (school-age years). Thus, their nutrition knowledge of all age ranges is extensive, allowing them to provide comprehensive nutrition education to families at all levels.

3. List other resources, including total number of employees, number and location of offices, number and types of equipment available to support this project.

NTA is currently composed of a team of 3 contract dietitians/nutritionists, along with its owner who is also a Registered & Licensed Dietitian. The team conducts its services using nutrition assessment forms, nutrition education handouts, weighing scales, height measuring boards, nutrition/recipe books (English & Spanish), MyPlate education material (English & Spanish), specific holiday decorations/props for table display, and food modeling props. With the current City contract that NTA holds, it has access to a combination of equipment that either belongs to the City or to NTA: hot plate, tea pot, microwave, baking sheets (multiple shapes & sizes), small toaster/oven, ice chest, blender, cooking utensils, bowls, serving pieces, and storage equipment. NTA's home office is based in Boerne, TX; however, all dietitians/nutritionists perform on-site visits for their clientele, whether it is at a home, school, daycare, agency or other location.

4. If Respondent is proposing as a team or joint venture or has included sub-contractors, describe the rationale for selecting the team and the extent to which the team, joint ventures and/or sub-contractors have worked together in the past.

NTA knows that often it takes more than one individual to make a difference. It takes a team to accomplish the ultimate goal. In order to provide Early Head Start and Head Start programs with the most complete nutrition program, it takes not only a team of dietitians/nutritionists but also the building of relationships throughout various community workers/leaders. Thus, although NTA assigns one dietitian/nutritionist to a contract, that dietitian/nutritionist at times may ask a fellow team member for advice on a project if needed. All NTA dietitians/nutritionists work together as a team to provide the most solid foundation of nutrition education they can provide. With the current City contract NTA holds, the NTA owner is readily updated on all contract progress involving various projects and tasks being worked on with the City.

5. Identify the number and professional qualifications (to include licenses, certifications, associations) of staff to be assigned to the project and relevant experience on projects of similar size and scope. Include resumes for key personnel to be assigned to project.

NTA dietitians/nutritionists are involved in such organizations as the Academy of Nutrition and Dietetics, South Region of the Texas Academy of Nutrition and Dietetics, Texas Dietetic Association, and the Pediatric Nutrition Practice Group. NTA's dietitians/nutritionists are all skilled in both pediatric and adult nutrition with varying qualifications such as, Registered and Licensed for the state of Texas, certified in Pediatric CPR/First Aid, and bilingual, speaking/writing both English and Spanish. Please see attached resumes for those that will be involved in the new City contract if awarded (**pages 50-54**).

Please note, experience on projects relevant to this RFP have been described in detail above in #1 and #2.

6. Additional information: Identify any additional skills, experience, qualifications, and/or other relevant information about the Respondent's qualifications.

In order to help parents build healthy eating behaviors for them and their families, NTA focuses on the community, its cultural background, all individuals involved, and their surrounding circumstances. All presentations are available in English and Spanish, with Spanish sessions held on separate days when possible. In all presentations, whether virtual or in person, NTA will discuss food insecurity and offer solutions/resources to the program families, as well as the current dietitian/nutritionist's contact information. NTA has also learned how to be flexible in the manner that their services are provided due to the recent COVID-19 pandemic. Nutrition presentations/counseling sessions have been adapted and are now available via telehealth communication when needed. If awarded this RFP, the current individual serving the City Early Head Start and Head Start programs will continue with their collaboration/partnership with the City, its staff, and its community workers/leaders. Additionally, they will utilize NTA's team of dietitians/nutritionists as needed. The owner of NTA will stay abreast of all City projects and communicate accordingly.

The current contract dietitian/nutritionist has 21+ years of pediatric nutrition. She knows how to connect on the level of each of her audiences. She is very engaging during her presentations and has been applauded for her great public speaking qualities. At a recent engagement at the Knox Early Childhood Education center, (principal) Tabitha Palencia noted that NTA's dietitian/nutritionist connected well with the parents and always makes time to listen and provide relatable/helpful information. At this recent event, parents completed evaluations, stating their support for the presentation (**pages 42-43**). NTA has been involved in Jose A. Cardenas ECC "La Platica," which serve as round table discussions where NTA provides hands-on nutrition projects for the children while the principal meets with the parents. The current NTA dietitian/nutritionist has been specifically requested by the principal for these events. As mentioned, she is bilingual, which has also proven to be a great asset to the City's needs. With her work with the City, she involves all needed personnel in her work. For example, she works daily with City Family Support Workers (FSW's), engaging and collaborating with the FSW staff for parent engagement nutrition activities. She also gets "hands-on" with the centers' cooks as needed to adjust recipe issues and/or help adapt for a child on a special diet.

NTA's team of dietitians/nutritionists are passionate in what they do. Our mission is to

provide sound nutritional education to both the individual and their family/caretakers involved.  
A NTA motto to remember, “You are what you eat and if you eat well, you can live well!”

**016 - RFP ATTACHMENTS****RFP ATTACHMENT A, PART ONE****GENERAL INFORMATION**

**1. Respondent Information:** Provide the following information regarding the Respondent. (NOTE: Co-Respondents are two or more entities proposing as a team or joint venture with each signing the contract, if awarded. Sub-contractors are not Co-Respondents and should not be identified here. If this proposal includes Co-Respondents, provide the required information in this Item #1 for each Co-Respondent by copying and inserting an additional block(s) before Item #2.)

Respondent Name: NUTRITION THERAPY ASSOCIATES, INC.  
(NOTE: Give exact legal name, as it will appear on the contract, if awarded.)

Principal Address: 8407 MONUMENT OAK

City: BOERNE State: TEXAS Zip Code: 78015

Telephone No. 210-349-9837 Fax No: 866-849-4267

Website address: www.nutritiontherapyassociates.com

Year established: 1995

Provide the number of years in business under present name: 27 YEARS 8 MONTHS

Social Security Number or Federal Employer Identification Number: 74-2739753

Texas Comptroller's Taxpayer Number, if applicable: 17427397538  
(NOTE: This 11-digit number is sometimes referred to as the Comptroller's TIN or TID.)

DUNS NUMBER: n/a

Unique Entity ID (generated buy SAM.gov): LBWYQ1RKBA16

Business Structure: Check the box that indicates the business structure of the Respondent.

Individual or Sole Proprietorship If checked, list Assumed Name, if any:  
 Partnership  
 Corporation If checked, check one:  For-Profit  Nonprofit

Also, check one:  Domestic  Foreign

Other If checked, list business structure: \_\_\_\_\_

Printed Name of Contract Signatory: CHRISTINA FRANTZ

Job Title: OWNER & PRESIDENT

Provide any other names under which Respondent has operated within the last 10 years and length of time under for each:

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Provide address of office from which this project would be managed:

City: BOERNE State: TX Zip Code: 78015

Telephone No. 210-349-9837 Fax No. 866-849-4267

Annual Revenue: \$ 115,000+

Total Number of Employees: 1

Total Number of Current Clients/Customers:

13 AGENCY CONTRACTORS + INDIVIDUAL PRIVATE CLIENTS

Briefly describe other lines of business that the company is directly or indirectly affiliated with:

NTA serves both the San Antonio and Hill Country areas. Currently, 95% of our populations are pediatrics, leaving the remaining 5% adults. We serve 3 Early Childhood Intervention agencies covering San Antonio & Hill Country areas: Camino Real, Center for Life Resources, and Any Baby Can – Austin. We also serve multiple Early Head Start and Head Start Programs: City of San Antonio (EHS/HS/EHS-CCP), Parent/Child Incorporated of San Antonio & Bexar County (EHS/HS), covering over 30 sites. Other agencies serviced by NTA are: Advantage Care Services, HomeLife & Community Services, Heart to Home, Camino Real IDD, Camino Real SNAP-Ed Program, and Adela's Angels

List Related Companies:

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2. **Contact Information:** List the one person who the City may contact concerning your proposal or setting dates for meetings:

Name: CHRISTINA FRANTZ Title: OWNER & PRESIDENT

Address: 8407 MONUMENT OAK

City: BOERNE State: TX Zip Code: 78015

Telephone No. 210-349-9837 Fax No: 866-849-4267

E-mail:

frantzchristy@gmail.com

3. Does Respondent anticipate any mergers, transfer of organization ownership, management reorganization, or departure of key personnel within the next twelve (12) months?

Yes \_\_\_\_\_ No X

4. Is Respondent authorized to do business with the State of Texas Secretary of State?

Yes X No \_\_\_\_\_ If "Yes", provide registration number.

TEXAS COMPTROLLER OF PUBLIC ACCOUNTS, SECRETARY OF STATE

TEXAS DEPARTMENT OF LICENSING AND REGULATION (TDLR), License Number:

DT07585

5. Where is the Respondent's corporate headquarters located? BOERNE, TX

6. **Local/County Operation:** Does the Respondent have an office located in San Antonio, Texas?

Yes \_\_\_ No X If "Yes", respond to a and b below:

a. How long has the Respondent conducted business from its San Antonio office?

Years \_\_\_\_\_ Months \_\_\_\_\_ **(NOTE: BUSINESS CONDUCTED WITH A SAN ANTONIO ADDRESS FOR 19 YEARS PRIOR TO CHANGE IN OWNERSHIP IN 2014. ALL SERVICES ARE CURRENTLY PROVIDED TO CLIENTS IN THE SAN ANTONIO METROPOLITAN STATISTICAL AREA.)**

b. State the number of full-time employees at the San Antonio office.

If "No", indicate if Respondent has an office located within Bexar County, Texas:

Yes  No  If "Yes", respond to c and d below:

c. How long has the Respondent conducted business from its Bexar County office?

Years 8 Months 11

d. State the number of full-time employees at the Bexar County office. 1

**7. Debarment/Suspension Information:** Has the Respondent or any of its principals been debarred or suspended from contracting with any public entity?

Yes  No  If "Yes", identify the public entity and the name and current phone number of a representative of the public entity familiar with the debarment or suspension, and state the reason for or circumstances surrounding the debarment or suspension, including but not limited to the period of time for such debarment or suspension.

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**8. Surety Information:** Has the Respondent ever had a bond or surety canceled or forfeited?

Yes  No  If "Yes", state the name of the bonding company, date, amount of bond and reason for such cancellation or forfeiture.

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**9. Bankruptcy Information:** Has the Respondent ever been declared bankrupt or filed for protection from creditors under state or federal proceedings?

Yes  No  If "Yes", state the date, court, jurisdiction, cause number, amount of liabilities and amount of assets.

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**10. Disciplinary Action:** Has the Respondent ever received any disciplinary action, or any pending disciplinary action, from any regulatory bodies or professional organizations? Yes  No  If "Yes", state the name of the regulatory body or professional organization, date and reason for disciplinary or impending disciplinary action.

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**11. Previous Contracts:**

a. Has the Respondent ever failed to complete any contract awarded?

Yes \_\_\_ No X If “Yes”, state the name of the organization contracted with, services contracted, date, contract amount and reason for failing to complete the contract.

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b. Has any officer or partner proposed for this assignment ever been an officer or partner of some other organization that failed to complete a contract?

Yes \_\_\_ No X If “Yes”, state the name of the individual, organization contracted with, services contracted, date, contract amount and reason for failing to complete the contract.

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c. Has any officer or partner proposed for this assignment ever failed to complete a contract handled in his or her own name?

Yes \_\_\_ No X If “Yes”, state the name of the individual, organization contracted with, services contracted, date, contract amount and reason for failing to complete the contract.

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**12. Financial Review:** Is your firm publicly traded? Yes \_\_\_ No X If “Yes”, provide your firm’s SEC filing number.

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## REFERENCES

**Provide three (3) reference letters from three (3) separate organizations/companies/firms, that the Respondent has provided services to within the past three (3) years.** The contact person named on the reference letter should be familiar with the day-to-day management of the contract and would be able to provide type, level, and quality of services performed. In addition, please provide the contact information below of the references you have submitted.

**Reference No. 1:**

Firm/Company Name PARENT/CHILD INCORPORATED OF SAN ANTONIO & BEXAR COUNTY

Contact Name: SHARON SMALL Title: CHIEF EXECUTIVE OFFICER HS/EHS DIRECTOR

Address: 7815 MAINLAND DR

City: SAN ANTONIO State: TX Zip Code: 78250

E-mail: ssmall@pcitx.com

Telephone No. 210-2266232 Fax No: \_\_\_\_\_

Date and Type of Service(s) Provided: FEBRUARY 2015 – PRESENT

Provide nutrition services for both Early Head Start and Head Start programs. Services include but are not limited to: menu modification, staff nutrition training, 1:1 parent consultations for children at nutritional risk, parent training meetings/presentations, nutrition classes as needed, and development of a child-friendly cookbook.

**Reference No. 2:**

Firm/Company Name CAMINO REAL COMMUNITY SERVICES - ECI

Contact Name: YVETTE HINOJOSA Title: ECI DIRECTOR

Address: P.O. BOX 725

City: LYTLE State: TX Zip Code: 78052

E-mail: yvetteh@caminorealcs.org

Telephone No. 210-357-0329 Fax No: \_\_\_\_\_

Date and Type of Service(s) Provided: CONTRACT ONGOING FOR 15+ YEARS

Provide evaluations, nutrition therapy, education, and consultation by scheduled appointment for

all families involved in ECI program.

**Reference No. 3:**

Firm/Company Name CENTER FOR LIFE RESOURCES – ECI (previously under Hill Country Community MHMR Center, Hill Country MHDD Centers, ECI Program)

Contact Name: CHRISTY EWEN Title: ECI PROGRAM SUPERVISOR

Address: 123 COMMERCE ST, SUITE A

City: KERRVILLE State: TX Zip Code: 78028

E-mail:  
christy.ewen@cflr.us

Telephone No. 830-315-0123 Fax No: \_\_\_\_\_

Date and Type of Service(s) Provided: CONTRACT ONGOING WITH HILL COUNTRY MHDD FOR 10+ YEARS, RECENTLY TAKEN OVER BY CFLR FOR 5+ YEARS

Provide nutritional assessments and consultation for clients served. Provide recommendations and participation consisting of in-service and monitoring of nutritional services. Provide material development and menu planning as determined within the Individual Family Service Plan.

**Attachment C**

**WITNESSETH:**

**HIPAA BUSINESS ASSOCIATE AGREEMENT**

**This HIPAA Business Associate Agreement** is entered into by and between the City of San Antonio (“Covered Entity”), and Nutrition Therapy Associates, a Business Associate (“BA”).

WHEREAS, the City of San Antonio and BA have entered into a Professional Services Contract to provide nutrition education services to the City of San Antonio Head Start Program (“Service Contract”), effective July 1, 2023; and

WHEREAS, Covered Entity and BA may need to use, disclose and/or make available certain information pursuant to the terms of the Service Contract, some of which may constitute Protected Health Information (“PHI”); and

WHEREAS, Covered Entity and BA intend to protect the privacy and provide for the security of PHI disclosed to each other pursuant to the Service Contract in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”) and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the “HIPAA Regulations”), Health Information Technology for Economic and Clinical Health Act (“HITECH Act”) and other applicable laws; and

WHEREAS, the purpose of this Agreement is to satisfy certain standards and requirements of HIPAA and the HIPAA Regulations, including, but not limited to, Title 45, Section 164.504(e) of the Code of Federal Regulations (“C.F.R.”), as the same may be amended from time to time;

**NOW THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

A. Definitions. For the purposes of this Agreement, the following terms have the meanings ascribed to them:

- (1) “Breach” shall mean an impermissible use or disclosure under the Privacy Rule that compromises the security or privacy of the protected health information. An impermissible use or disclosure of protected health information is presumed to be a breach unless the covered entity or business associate, as applicable, demonstrates that there is a low probability that the protected health information has been compromised based on a risk assessment of at least the following factors:
  - (a) the nature and extent of the protected health information involved, including the types of identifiers and the likelihood of re-identification;
  - (b) the unauthorized person who used the protected health information or to whom the disclosure was made;
  - (c) whether the protected health information was actually acquired or viewed; and
  - (d) the extent to which the risk to the protected health information has been mitigated.
- (2) “Designated Record Set” shall have the same meaning as the term “designated record set” in 45 C.F.R. 164.501.
- (3) “Disclosure” with respect to PHI, shall mean the release, transfer, provision of access to or divulging in any other manner of PHI outside the entity holding the PHI.
- (4) “Health Information” is defined in 45 C.F.R. 160.103 as any information, including genetic information, whether oral or recorded in any form or medium that: (1) is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care

clearinghouse; and (2) relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual.

- (5) "Individual" means the person who is the subject of protected health information and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. 164.502(g).
- (6) "Individually Identifiable Health Information" is defined in 45 C.F.R. 160.103 as information that is a subset of health information, including demographic information collected from an individual, and: (1) is created or received by a health care provider, health plan, employer, or health care clearinghouse; and (2) relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and (i) identifies the individual; or (ii) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.
- (7) "Privacy Rule" shall mean the regulations for Privacy of Individually Identifiable Health Information at 45 C.F.R. Part 160 and Part 164, Subpart E.
- (8) "Protected Health Information" or "PHI" shall have the same meaning as the term "protected health information" in 45 C.F.R. 160.103, limited to the information created or received by BA from or on behalf of Covered Entity. PHI includes "Electronic Protected Health Information" or "EPHI" and shall have the meaning given to such term under the HIPAA Rule, including but not limited to 45 C.F.R. Parts 160, 162, 164, and under HITECH.
- (9) "Required By Law" means a mandate contained in law that compels an entity to make a use or disclosure of protected health information and that is enforceable in a court of law. Required by law includes, but is not limited to, court orders and court-ordered warrants; subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or an administrative body authorized to require the production of information; a civil or an authorized investigative demand; Medicare conditions of participation with respect to health care providers participating in the program; and statutes or regulations that require the production of information, including statutes or regulations that require such information if payment is sought under a government program providing public benefits. 45 C.F.R 164.103.
- (10) "Secretary" shall mean the Secretary of the U.S. Department of Health and Human Services or his designee.
- (11) "Security Rules" shall mean the Security Standards for the Protection of Electronic Protected Health Information codified at 45 C.F.R. Part 164.
- (12) The Health Information Technology for Economic and Clinical Health ("HITECH") Act shall mean Division A, Title XII of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5).

**B. BA Obligations and Activities.** BA agrees that it shall:

- (1) Not use or disclose the PHI other than as permitted or required by this Agreement or as Required by Law;
- (2) Establish and maintain appropriate administrative, physical, and technical safeguards that reasonably and appropriately protect, consistent with the services provided under this Agreement, the confidentiality, integrity, and availability of the electronic protected health information that it creates, receives, maintains, or transmits on behalf of Covered Entity;
- (3) Mitigate, to the extent practicable, any harmful effect that is known to BA of a use or disclosure of PHI by BA in violation of the requirements of this Agreement;

- (4) Report to Covered Entity any use or disclosure of PHI of which BA is aware or becomes aware that is not provided for or allowed by this Agreement as well as any Security Incident as defined by 45 C.F.R. 164.304 that BA becomes aware of;
- (5) Ensure that a business associate agreement is in place with any of its agents or subcontractors with which BA:
  - (a) does business, and
  - (b) to whom it provides PHI received from, or created or received by BA on behalf of, Covered Entity; and ensures such agents or subcontractors are aware of and agree to the same restrictions and conditions that apply through this Agreement to BA with respect to such information, and further agree to implement reasonable and appropriate administrative, physical and technical safeguards that render such PHI unusable, unreadable and indecipherable to individuals unauthorized to acquire or otherwise have access to such PHI;
- (6) Provide access, at the request of Covered Entity, and in a reasonable time and manner as agreed by the Parties, to PHI in a Designated Record Set to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements 45 C.F.R. §164.524;
- (7) Make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 C.F.R. 164.526 at the request of the Covered Entity or an Individual, and in a reasonable time and manner agreed to by the Parties;
- (8) Make available to the Covered Entity or to the Secretary all internal practices, books and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received by the BA on behalf of the Covered Entity, for purposes of the Secretary in determining Covered Entity's compliance with the Privacy Rule;
- (9) Document disclosures of PHI, and information related to such disclosures, as would be required for Covered Entity to respond to a request from an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. 164.528;
- (10) Provide Covered Entity or an Individual, in a reasonable time and manner as agreed to by the Parties, information collected in accordance with Section B(9) of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. 164.528;
- (11) Immediately, and in no event later than three days from discovery, notify Covered Entity of any breach of PHI, including ePHI, and will coordinate with Covered Entity to identify, record, investigate, and report to an affected individual and U.S. Department of Health and Human Services, as required, any covered PHI breach. Breach notification to Covered Entity must include: names of individuals with contact information for those who were or may have been impacted by the HIPAA Breach; a brief description of the circumstances of the HIPAA Breach, including the date of the breach and date of discovery; a description of the types of unsecured PHI involved in the breach; a brief description of what the BA has done or is doing to investigate the breach and mitigate harm. BA will appoint a breach liaison and provide contact information to provide information and answer questions Covered Entity may have concerning the breach;
- (12) Comply with all Security Rules requirements;
- (13) Comply with the Privacy Rule for any obligation Covered Entity delegates to BA;
- (14) Under no circumstances sell PHI in such a way as to violate Texas Health and Safety Code, Chapter 181.153, effective September 1, 2012, nor shall BA use PHI for marketing purposes in such a manner as to violate Texas Health and Safety Code Section 181.152, or attempt to re-identify any information in

violation of Texas Health and Safety Code Section 181.151, regardless of whether such action is on behalf of or permitted by the Covered Entity.

C. Permitted Uses and Disclosures by BA

- (1) Except as otherwise limited in this Agreement, BA may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Service Contract, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity.
- (2) Except as otherwise limited in this Agreement, BA may disclose PHI for the proper management and administration of the BA, provided that disclosures are Required By Law, or BA obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the BA of any instances of which it is aware in which the confidentiality of the information has been breached.
- (3) Except as otherwise limited in this Agreement, BA may use PHI to provide Data Aggregation Services to Covered Entity as permitted by 45 C.F.R. 164.504(e)(2)(i)(B).
- (4) BA may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. 164.502(j)(1).

D. Obligations of Covered Entity. Covered Entity shall inform BA of its privacy practices and restrictions as follows. Covered Entity shall:

- (1) Notify BA of any limitations in its notice of privacy practices in accordance with 45 C.F.R. 164.520, to the extent that such limitation may affect BA's use or disclosure of PHI;
- (2) Notify BA of any changes in, or revocation of, permission by any Individual to use or disclose PHI, to the extent that such changes may affect BA's use or disclosure of PHI;
- (3) Notify BA of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. 164.522 to the extent that such changes may affect BA's use or disclosure of PHI;
- (4) Coordinate with BA regarding any PHI breach and make timely notification to affected individuals within 60 days of discovery.

E. Permissible Requests by Covered Entity.

Covered Entity shall not request BA to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity, except that the BA may use or disclose PHI for data aggregation or management and administrative activities of the BA.

F. Term and Termination.

- (1) This Agreement becomes effective on the date specified herein. This Agreement shall terminate when all PHI encompassed by this Agreement is destroyed or returned to Covered Entity or, if it is infeasible to return or destroy the PHI, protections are extended to such information in accordance with the termination provisions in this Section.
- (2) Termination for Cause. Upon Covered Entity's knowledge of a material breach by BA, Covered Entity shall either (a) provide an opportunity for BA to cure the breach in accordance with the terms of the Service Contract or, if the BA does not cure the breach or end the violation within the time for cure specified in the Service Contract, end the violation and terminate this Agreement and the Service Contract; or (b) immediately terminate this Agreement and the Service Contract if BA has breached a material term

of this Agreement and cure is not possible. If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.

- (3) **Effect of Termination.**
- (a) Except as provided below in paragraph (b) of this Section F(3), upon termination of this Agreement for any reason, BA shall return or destroy all PHI received from the Covered Entity, or created or received by BA on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of BA or its subcontractors or agents. BA shall not retain any copies of PHI.
- (b) In the event that BA determines that returning or destroying PHI is infeasible, BA shall provide to Covered Entity written notification of the condition that makes the return or destruction of PHI infeasible. Upon BA's conveyance of such written notification, BA shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make its return or destruction infeasible, for so long as BA maintains such PHI.
- (4) Notwithstanding any other provision under this Agreement, the Parties agree that the Service Contract may be terminated by either Party without penalty should the other Party violate a material obligation under this Agreement.
- G. **Amendment to Comply with Law.** The Parties agree to take written action as is necessary to amend this Agreement to comply with any Privacy Rules and HIPAA legal requirements for Covered Entity without the need for additional council action.
- G. **Survival.** The respective rights and obligations of the BA under Sections B, C (2) and (4), and F(3) shall survive the termination of this Agreement.
- H. **Interpretation.** Any ambiguity in this Agreement shall be interpreted to permit Covered Entity to comply with the Privacy Rule.
- I. **Regulatory References.** A reference in this Agreement to a section in the Privacy Rule means the section as in effect or amended.
- J. **No Third Party Beneficiaries.** Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer upon any person other than Covered Entity, BA, and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.
- K. ***INDEMNIFICATION. BA WILL INDEMNIFY, DEFEND AND HOLD COVERED ENTITY AND ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS HARMLESS, FROM AND AGAINST ANY AND ALL LOSSES, LIABILITIES, DAMAGES, COSTS AND EXPENSES ARISING OUT OF OR RELATED TO ANY THIRD-PARTY CLAIM BASED UPON ANY BREACH OF THIS AGREEMENT BY BA IN ACCORDANCE WITH THE INDEMNITY PROVISIONS IN THE SERVICE CONTRACT, WHICH ARE HEREBY INCORPORATED BY REFERENCE FOR ALL PURPOSES.***
- L. **Reimbursement. BA will reimburse Covered Entity for reasonable costs incurred responding to a PHI breach by BA or any of BA's subcontractors.**
- M. **Waiver.** No provision of this Agreement or any breach thereof shall be deemed waived unless such waiver is in writing and signed by the party claimed to have waived such provision or breach. No waiver of a breach shall constitute a waiver of or excuse any different or subsequent breach.
- N. **Assignment.** Neither party may assign (whether by operation of law or otherwise) any of its rights or delegate or subcontract any of its obligations under this Agreement without the prior written consent of the other party. Notwithstanding the foregoing, Covered Entity shall have the right to assign its rights and obligations hereunder to any entity that is an affiliate or successor of Covered Entity, without the prior approval of BA.

- O. Entire Agreement. This Agreement constitutes the complete agreement between Business Associate and Covered Entity relating to the matters specified in this Agreement, and supersedes all prior representations or agreements, whether oral or written, with respect to such matters. In the event of any conflict between the terms of this Agreement and the terms of the Service Contract or any such later agreement(s), the terms of this Agreement shall control unless the terms of such Service Contract comply with the Privacy Standards and the Security Standards. No oral modification or waiver of any of the provisions of this Agreement shall be binding on either party. This Agreement is for the benefit of, and shall be binding upon the parties, their affiliates and respective successors and assigns. No third party shall be considered a third-party beneficiary under this Agreement, nor shall any third party have any rights as a result of this Agreement.
  
- P. Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Texas. Venue of any court action brought directly or indirectly by reason of this Agreement shall be in Bexar County, Texas.

**EXECUTED** to be effective as of the date of the Service Contract.

**COVERED ENTITY**  
City of San Antonio

**BUSINESS ASSOCIATE:**  
Nutrition Therapy Associates, Inc.

\_\_\_\_\_  
Melody Woosley, Director  
Department of Human Services

  
\_\_\_\_\_  
Christina Frantz Owner & President

APPROVED AS TO FORM:

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