

DEPARTMENT OF SPECIAL SERVICES
TOWNSHIP OF UNION PUBLIC SCHOOLS
M-E-M-O-R-A-N-D-U-M

TO: Dr. Scott Taylor

C: Gerald Benaquista
Dr. Gretel Perez
Diana Cappiello
Bernadette Watson

From: Kim Conti

Re: Board Agenda Item

Date: March 21, 2022

Approve Preferred Home Health Care and Nursing Services to district student to provide Nursing Services, at the rate of \$59.00 for RN and \$54.00 for LPN, not to exceed \$149,000.00 for the 2022-2023 school year. (Acct # 11-000-216-320-01-19)

Preferred Home Health Care & Nursing Services, Inc.

SCHOOL STAFFING AGREEMENT

This Agreement is entered into this 5th day of March 2022, by and between Township of Union, Public Schools, Special Services, located at 2369 Morris Avenue, Union, New Jersey 07083, referred to in this Agreement as SCHOOL, and Preferred Home Health Care & Nursing Services, Inc. including its affiliates and subsidiaries, with an office located at 45 Main Street (Highway 35) Eatontown, NJ 07724 referred to in this Agreement as PREFERRED.

SCHOOL requires health care personnel to provide nursing services to SCHOOL students under the general supervision of the SCHOOL and wishes to engage PREFERRED to provide such personnel to supplement SCHOOL staff.

PREFERRED employs health care personnel and is willing to provide such personnel to SCHOOL.

Therefore, SCHOOL and PREFERRED agree to the following terms and conditions.

ARTICLE 1. - TERM OF AGREEMENT

Section 1.01 **Term and Termination.** This Agreement will be in effect for one (1) SCHOOL calendar year 7/01/2022 – 6/30/2023. Either party may terminate this Agreement at any time, with or without cause, by providing at least thirty (30) days advance written notice of the termination date to the other party. Such termination will have no effect upon the rights and obligations resulting from any transactions occurring prior to the effective date of the termination.

ARTICLE 2. - RESPONSIBILITIES OF PREFERRED

Section 2.01 **Services.** Subject to availability of qualified Personnel CHHA(s), RN(s) and LPN(s), PREFERRED will, upon request by SCHOOL, provide one-on-one nursing services to physically and/or mentally challenged SCHOOL STUDENT(s). PREFERRED may also provide a SCHOOL nurse for sick days and vacation days for the regular/full-time SCHOOL nursing staff. Services will be provided according to the SCHOOL calendar year, provided by SCHOOL and includes, but not limited to, traveling to and/or from SCHOOL on transportation provided by SCHOOL.

Section 2.02 **Personnel.** PREFERRED will supply SCHOOL with personnel who meet the following criteria:

- A. Possess current state license/registration and/or certification, as applicable and appropriate for the services provided to SCHOOL, and possess CPR certification, if required by applicable laws, regulations, or accreditation standards, to be presented to SCHOOL Administrator upon request.
- B. Meet PREFERRED and SCHOOL conditions of employment regarding health clearance, provision of professional references and any other applicable hiring criteria such as a criminal background check, documentation of which will be kept in the employee file.

Section 2.03 **Nurse Pool.** PREFERRED will establish a back-up personnel pool to provide coverage in the event of personnel sickness, vacation or unexpected termination, while still allowing for consistency in STUDENT(s) care.

Section 2.04 **Insurance.** PREFERRED will maintain (at its sole expense), or require the individuals it provides under this Agreement to maintain, a valid policy of insurance evidencing general and professional liability coverage of not less than \$1,000,000 per occurrence and \$5,000,000 in aggregate covering acts or omissions which may give rise to liability for services under this Agreement. PREFERRED

will provide a certificate of insurance evidencing such coverage upon request by SCHOOL.

Section 2.05 Additional Insured Status and Certificate of Insurance. The SCHOOL(s), along with their respective officers, agents and employees, shall be named as Additional Insured's for Operations and Products / Completed Operations on the Contractors' Commercial General Liability Policy and the Contractor's Automobile Liability, which must be primary and noncontributory with respect to the Additional Insured's.

Section 2.06 Employer Obligations. PREFERRED will follow its standard employment policies and procedures to verify that all personnel meet applicable licensing requirements. PREFERRED, or its subcontractors, if applicable, will maintain direct responsibility as employer for payment of wages and other compensation, and for any applicable mandatory withholdings and contributions such as federal, state, and local income taxes, social security taxes, workers compensation and unemployment insurance.

ARTICLE 3. - RESPONSIBILITIES OF SCHOOL

Section 3.01 Responsibility for Student Care. SCHOOL retains full authority for STUDENT(s) care while using PREFERRED personnel.

Section 3.02 Individual Education Programs (IEP). Services to be provided will be determined by the individual students IEP. SCHOOL will provide PREFERRED with STUDENT(s) IEP and all duties will be carried out on SCHOOL premises including, but not limited to, the school bus or other mode of transportation when indicated by the STUDENT(s) IEP. SCHOOL agrees and guarantees, through all reasonable and necessary means, that the IEP will not contradict any aspect of STUDENT(s) plan of care, as established by STUDENT(s) physician.

Section 3.03 Right to Dismiss. If SCHOOL(s) Board or designee determines that anyone provided by PREFERRED is incompetent, has engaged in misconduct, or has been negligent, SCHOOL may require such personnel to leave the premises and will notify PREFERRED immediately. SCHOOL(s) obligation to compensate PREFERRED for such personnel services will be limited to the number of hours actually worked. PREFERRED will not reassign such personnel to SCHOOL without prior approval of the SCHOOL(s) Board or designee. PREFERRED has the right to cure such incompetence by replacing incompetent personnel with competent personnel.

Section 3.04 Insurance. SCHOOL will maintain at its sole expense a valid professional liability policy of insurance covering acts or omissions which may give rise to liability for services under this Agreement in an amount generally considered standard in the SCHOOL industry. SCHOOL will forward a copy of its professional liability insurance certificate to PREFERRED prior to execution of this Agreement and will give prompt written notice of any material change in SCHOOL coverage.

Section 3.05 Placement Fee. SCHOOL will take no steps to recruit or hire as its own employees those personnel provided by PREFERRED during the term of this Agreement. SCHOOL understands PREFERRED is not an employment agency and that personnel are assigned to the SCHOOL to render temporary service(s) and are not assigned to become full-time employees by the SCHOOL. The SCHOOL further acknowledges the substantial investment in business related costs incurred by PREFERRED to include advertisement, recruitment, interviewing, evaluation, reference, checks, training and supervising personnel. In the event that SCHOOL, or any affiliate, subsidiary, department, or division of SCHOOL hires personnel, SCHOOL will be in breach of this Agreement and SCHOOL agrees that damages would be too difficult to calculate. Accordingly, SCHOOL agrees that if SCHOOL recruits or hires Personnel who has been introduced to SCHOOL through this Agreement, SCHOOL agrees to give PREFERRED one hundred eighty (180) days notice of its intent to hire, continuing to staff personnel through PREFERRED for a

minimum of thirty-six (36) hours per week through the one hundred eighty (180) days notice period or SCHOOL agrees to pay PREFERRED liquidated damages of thirty thousand dollars (\$30,000.00) or the sum of thirty percent (30%) of such Personnel annual salary (calculated as Hourly Pay Rate x 2080 Hours x 30%), whichever is greater.

ARTICLE 4. - MUTUAL RESPONSIBILITIES

Section 4.01 Orientation. PREFERRED will cooperate with SCHOOL to provide PREFERRED personnel with an adequate and timely orientation to SCHOOL. At a minimum, SCHOOL will orient PREFERRED personnel to its hazardous communication procedures and the SCHOOL - specific Exposure Control Plan as it pertains to OSHA requirements for blood borne pathogens.

Section 4.02 Non-discrimination. Neither PREFERRED nor SCHOOL will discriminate on the basis of age, race, color, national origin, religion, sex, disability, being a qualified disabled veteran, being a qualified veteran of the Vietnam era or any other category protected by law.

ARTICLE 5. - COMPENSATION

Section 5.01 Rates PREFERRED will supply personnel under this Agreement at the rates listed in Attachment A.

Section 5.02 Billing. PREFERRED will submit invoices to SCHOOL every week for personnel provided to SCHOOL. Invoices are to be sent to the following SCHOOL address:

**Attention: Joseph Seugling
Township of Union, Public Schools
Division of Special Services
2369 Morris Avenue
Union, New Jersey 07083**

Section 5.03 Payment. All amounts due to PREFERRED are due and payable within thirty (30) days from date of invoice. SCHOOL will send all payment to the following address:

**Preferred Home Health Care & Nursing Services, Inc.
PO BOX 826408
Philadelphia, PA 19182-6408**

Please send executed contracts to the following address:

**Preferred Home Health Care & Nursing Services, Inc.
45 Main Street (Highway 35)
Eatontown, NJ 07724
P: (732) 443-8100
F: (732) 443-8101
contracts@preferredcares.com**

Section 5.04 Late Payment. Invoices not paid within thirty (30) days from issue date will accumulate interest, until paid, at the rate of one and one-half percent (1.5%) per month on the unpaid balance, equating to an annual percentage rate of eighteen percent (18%) or the maximum rate permitted by applicable law, whichever is less.

Section 5.05 Rate Change. PREFERRED will give SCHOOL at least thirty (30) days advance written notice of any change in billing/hourly rates.

ARTICLE 6. - GENERAL TERMS

- Section 6.01** **Independent Contractors.** The parties enter into this Agreement as independent contractors, and nothing contained in this Agreement will be construed to create a partnership, joint venture, agency or employment relationship between the parties.
- Section 6.02** **Assignment.** Neither party may assign this Agreement without the prior written consent of the other party, and such consent will not be unreasonably withheld. No such consent will be required for assignment to an entity owned by or under common control with assignor. In any event, the assigning party will remain fully responsible for compliance with all the terms of this Agreement.
- Section 6.03** **Indemnification.** Both parties, PREFERRED and SCHOOL, agree to indemnify and hold harmless each other, their respective directors, officers, employees and agents from and against any and all claims, actions or liabilities, which may be asserted against them by third parties in connection with the negligent performance of either PREFERRED or SCHOOL, their respective directors, officers, employees or agents under this Agreement.
- Section 6.04** **Headings.** The headings of sections and subsections of this Agreement are for reference only and will not affect in any way the meaning or interpretation of this Agreement.
- Section 6.05** **Entire Contract.** This Agreement constitutes the entire contract between SCHOOL and PREFERRED regarding the services covered under this Agreement. Any agreements, promises, negotiations or representations not expressly set forth in this Agreement are of no force or effect. This Agreement may be executed in any number of counterparts, each of which will be deemed to be the original. No amendments to this Agreement will be effective unless made in writing and signed by both parties. This Agreement will be governed by and construed in accordance with the laws of the State of New Jersey.
- Section 6.06** **Availability of Personnel.** The parties agree that PREFERRED(s) duty to supply personnel on request of SCHOOL is subject to the availability of qualified SCHOOL personnel. The failure of PREFERRED to provide personnel or the failure of SCHOOL to request personnel results in no penalty and does not constitute a breach of this Agreement.
- Section 6.07** **Compliance with Laws.** PREFERRED agrees that all services provided pursuant to this Agreement shall be performed in compliance with all applicable federal, state or local rules and regulations. If any law or regulation is enacted, modified or judicially interpreted so that any section of this Agreement would be found not to comply with such law or regulation, such section shall be deemed null and void and this Agreement shall be construed and continued in effect as if such section had never been contained herein.

ARTICLE 7. - CONFIDENTIALITY OF PROTECTED HEALTH INFORMATION

- Section 7.01** **HIPAA Compliance.** In instance where PREFERRED received Protected Health Information, (PHI), herein referred to as HIPAA from SCHOOL, PREFERRED agrees that it shall:
- 1) Comply with the applicable provisions of the Administrative simplification section of the Health Insurance Portability and Accountability Acts of 1996, as codified at 42 U.S.C. & 1320d through d-8 (HIPAA), and the requirements of any regulations promulgated there under.
 - 2) No use or further disclosure of any PHI concerning a patient other than as permitted by this Agreement, the requirements of HIPAA and/or applicable federal regulations. PREFERRED shall implement appropriate safeguards to prevent the use or disclosure of a patient(s) PHI other than as provided for by this Agreement.



Home Health Care & Nursing Services

800.603.CARE (2273)

3) Promptly report to SCHOOL any violations, use and/or disclosure of a patient(s) PHI not provided for by this Agreement as soon as practicable, upon becoming aware of the improper violation(s), use and/or disclosure.

**ATTACHMENT A
PREFERRED HOME HEALTH CARE & NURSING SERVICES, INC.
SCHOOL STAFFING RATES**

A school day consists of hours worked. (Eight (8) hours is the standard billing per day, but varies.)
Transportation only cases will be billed at a minimum of 2.5 hours in the AM and PM unless the run takes longer or other arrangements have been made.

If special needs one-on-one services are provided, charges will be based on a rate of \$54.00 per hour for services rendered by a LPN.

If special needs one-on-one services are provided, charges will be based on a rate of \$59.00 per hour for services rendered by a RN.

SCHOOL and PREFERRED have acknowledged their understanding of and agreement to the mutual promises written above by executing this Agreement.

Township of Union, Public Schools DOSS

Preferred Home Health Care & Nursing Services, Inc.

Signature

Signature

Printed Name and Title

Printed Name and Title

Date

Date

DocuSigned by:
Todd Thiede
DC7541D737849C

Todd Thiede CFO

03/01/22

5-2-18

RIDER FOR PUBLIC SCHOOL SERVICE CONTRACTS

This Rider is incorporated fully into the terms of the attached Agreement between the Preferred Home Health Care & Nursing Services, Inc. and the Union Tp. Board of Education. To the extent that there are any inconsistencies between the terms of the Agreement and this Rider, the terms of the Rider take precedence.

I. Licensing/Certification

Provider shall only provide employees who are licensed or certified as may be required by State law.

II. Criminal Background Check

Provider shall provide a Criminal History Record Information (CHRI), including fingerprint background check for each of its employees who provide direct services to a student during the term of this Agreement and shall provide the Board with verification of the CHRI. During the term of the Agreement, Provider shall report to the Board any modification of the CHRI including without limitation any arrest or conviction of any employees providing direct services to students.

III. Sexual Abuse/Child Abuse Disclosure Release Form

Provider hereby acknowledges its obligations under the Sexual Abuse/Child Abuse Disclosure requirements of P.L. 2018, c.5, N.J.S.A. 18A:6-7.6 to 7.13 (commonly referred to as "Pass the Trash", the "PTT Law"), as applicable, and certifies that it is compliant with the PTT Law and all obligations required therein.

Provider agrees to indemnify, defend and hold the Board and its respective officers, employees and agents harmless from and against any suits, actions, liabilities, claims, damages and expenses including, without limitation, costs of investigation, expert witness fees, and attorney fees for the defense of the underlying suit, arising out of or in any manner connected with Provider's compliance with its obligations under the PTT Law, including services performed under this Agreement by Provider, or anyone directly or indirectly employed by it, for any acts or omissions for which Provider may be legally liable with respect to the PPT Law. If in any given case a court rules that Provider is not negligent and/or did not breach its statutory duty, then Provider would have no obligation to defend and indemnify the Board.

IV. Insurance

1. Provider shall maintain general liability and professional liability coverage for any negligent acts or omissions of its employees which may give rise to liability under this Agreement. Coverage shall be written on a "claims made basis" for a minimum of One Million Dollars (\$1,000,000.00) per individual and in the sum of Two Million Dollars (\$2,000,000.00) per occurrence.

2. Provider shall maintain, as its sole expense, Worker's Compensation insurance for its employees.
3. Provider shall file upon execution of the contract all certificates of insurance upon forms acceptable to Board. The certificates shall contain a provision that the coverage afforded on the policies will not be cancelled or materially changed during the term of the contract.

V. Indemnification

Provider agrees to indemnify and hold harmless Board from any and all claims, liability, damages and expenses, including but not limited to reasonable attorney's fees, arising out of, resulting from and/or related to the services which Provider, its agents and/or employees render pursuant to the within Agreement, whereby the claims, liability, damages and expenses are caused by any error, omission, negligence, willful misconduct, or intentional act of Provider, its agents and/or employees.

VI. Billing and Payment of Personnel.

- A. Provider, as an employer, shall remain responsible for the payment of wages and other compensation, reimbursement of expenses and compliance with Federal, State and local tax withholdings, Worker's Compensation, Social Security, employment and other insurance requirements for its personnel.
- B. Provider shall forward to Board an itemized bill on a monthly unless Board requires more frequent billing.
- C. Board agrees to pay submitted bills within thirty (30) days after the monthly Board meeting immediately following receipt by the Board of the billing.
- D. Provider shall be paid in accordance with the fees set forth in the attached Agreement, provided that the total compensation for the **2022-2023 school year shall not exceed \$149,000.00 There shall be no change rates for the 2022-2023 school year.**
- E. Provider shall provide notice to the Board if payment has not been received within five (5) days of the date by which compensation should be made for services satisfactorily performed. Conditioned upon receipt of written notice of non-payment, interest for payment shall accrue at one percent (1%) per year, commencing on thirty days past the date by which compensation should be made for services satisfactorily performed.

VII. Term and Termination

- A. This Agreement will remain in effect through June 30 of the academic school year. This Agreement may be extended at the option of the Board, subject to satisfactory performance by Provider, availability of funds by the Board and applicable provisions of the Public School Contracts Law, N.J.S.A. 18A:18A-1 *et seq.*
- B. Either party may terminate this Agreement, for any reason, upon thirty (30) days prior written notice. Upon termination, any and all outstanding fees for services rendered by Provider shall be paid upon submission of the invoice to the Board.
- C. Either party may terminate this Agreement for cause due to breach of any material provisions in this Agreement by giving ten (10) days prior written notice.

VIII. Public Contracting Requirements

- A. Non-Collusion. The Provider warrants and represents that this Agreement has not been solicited, secured or procured directly or indirectly in a manner contrary to the laws of the State of New Jersey and that the federal, state and local laws and regulations have not been violated and shall not be violated as they relate to the procurement or the performance of the Agreement by any conduct, including the paying or giving of any fee, commission, compensation, gift, gratuity or consideration of any kind, directly or indirectly, to any state or district employee, officer or official.
- B. Business Registration. Pursuant to N.J.S.A. 52:32-44, the Provider must provide a copy of its business registration certificate to the District prior to execution of the contract.
- C. Pay-To-Play. Pursuant to N.J.S.A. 19:44A-20.27 (P.L. 2005, c. 271), each contracting for-profit Provider shall file an annual disclosure statement on political contributions with the New Jersey Election Law Enforcement Commission if the for-profit Provider receives contracts in excess of \$50,000 from public entities in a calendar year. It is the for-profit Provider's responsibility to determine if filing is necessary.
- D. Non-Discrimination. The Provider shall be fully responsible for the recruitment and hiring of staff necessary to perform this Agreement. The Provider shall operate in conformity with applicable provisions of all federal and state anti-discrimination statutes and directives, including the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 *et seq.*, the mandatory language of N.J.A.C. 17:27-3.4(a) and N.J.A.C. 17:27-7.4(a) and (b), regarding Affirmative action, and the requirements of 42 U.S.C. 121.01 *et seq.*, regarding the Americans with Disabilities Act.

The Provider certifies that it is an Equal Opportunity Employer and will not discriminate in the recruitment, selection, hiring, promotion or demotion of staff

or the selection of services provided to children on the basis of or against any person because of race, creed, religion, color, national origin/nationality, ancestry, age, sex/gender (including pregnancy), marital status/civil union partnership, familial status, affectional or sexual orientation, gender identity or expression, domestic partnership status, atypical hereditary cellular or blood trait, genetic information, disability, (including perceived disability, physical, mental, and/or intellectual disabilities), or liability for service in the Armed Forces of the United States.

- E. Records. Provider shall keep all records pertaining to its services under this Agreement for no less than five (5) years.

IX. ADDITIONAL TERMS

- A. Governing Law. This Agreement will be construed and governed in all respects according to the laws of the State of New Jersey. Any litigation shall be filed within the courts of the State of New Jersey.
- B. Relationship to Parties. Provider enters into this Agreement as an independent contractor. Nothing contained in this Agreement will be construed to create a partnership, joint venture, agency or employment relationship between the parties.
- C. Assignment. This Agreement may not be assigned by either party, in whole or part.
- D. Modification of Terms. No amendments or modifications to the terms of this Agreement will be binding unless evidenced in writing and signed by an authorized representative of each party hereto.
- E. Notices. Any Notice given in connection with this Agreement will be given in writing and will be delivered either by hand, by courier with proof of delivery, or by certified mail, return receipt requested, to the other party, at the party's address stated below.
- F. Confidentiality. Except for acknowledging the existence of this Agreement, the parties understand and agree that the terms of this Agreement, including all payment terms, shall be kept confidential unless disclosure is required by law or the parties agree, in writing, to such disclosure. All methods and mode of conduct of business for Board and Provider are to be kept confidential by Board and Provider and not disclosed to any other party or used in part or whole without the permission of Board and/or Provider.
- G. Entire Agreement. This writing constitutes the entire Agreement between Provider and Board; there are no prior written or oral promises or

representations incorporated herein. Each Attachment, Fee Schedule, Proposal or other documents referenced herein and/or attached to this Agreement are incorporated herein as if the same was set out in full in the text of this Agreement, but to the extent any terms included in a Proposal conflict with the terms of the Rider, this Rider takes precedence.

- H. Force Majeure. Neither Provider nor the Board shall be deemed to be in default of the Agreement if either party is prevented from performing any of the obligations hereunder by reason of fire, floods, strikes, boycotts, embargoes, unusually severe weather conditions, epidemics, pandemics or any other similarly extreme circumstance for which it is not responsible or which is not within its control. If any of the foregoing occur during the term of the Agreement and Provider is unable to perform, the Board shall not be responsible for payment of any services that are not performed.

X. NOTICE

All notices, requests, consents and approvals under this Agreement shall be served or given in writing by certified mail or courier with signature required and tracking confirmation.

Notices to the Board shall be delivered to:

Yolanda Koon , Business Administrator/Secretary
Union Tp. Board of Education
2369 Morris Avenue
Union, New Jersey 07083

With a copy of legal notices to:

Lester E. Taylor, Esq.
Florio Perrucci Steinhardt Cappelli Tipton & Taylor LLC
430 Mountain Avenue, Suite 103
New Providence, NJ 07974

Notices to Provider shall be delivered to:

Todd Thiede, CFO
Preferred Home Health Care & Nursing Services, Inc.
45 Main Street
Eatontown, NJ 07724

SIGNATURES ON NEXT PAGE

THE PARTIES hereby agree to the terms of this Rider:

PROVIDER

BOARD OF EDUCATION

Print name/Title:

Print Name/Title:

Dated: _____

Dated: _____

