

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

**TO: Greg Tatum
Diane Cappiello
Julia Vicidomini**

From: Kim Conti

Re: Board Agenda Item

Date: June 2, 2020

**Approve ATC (Around the Clock) Healthcare Services Inc., to provide Nursing Services, at the rate \$60.00 for a RN-CSN and \$53.00 for RN non CSN and \$44.68 for a LPN, not to exceed \$565,000.00 for the 2020-2021 school year.
(Acct # 11-000-216-320-01-19)**



SERVICE AGREEMENT

By and Between

Union Township Schools

And

ATC HEALTHCARE SERVICES, LLC

MEMBER



American Staffing Association



Contract Holder
FSS Contract V797P-4515A

This AGREEMENT is made and entered into by and between **Union Township Schools**, located at 2155 Morris Ave, Union, NJ 07083 (hereinafter referred to as SCHOOL), and **ATC Healthcare Services, LLC**, a corporation having its principal office at 1983 Marcus Avenue, Suite E-122, Lake Success, NY 11042 (hereinafter referred to as ATC).

WHEREAS, SCHOOL desires, for the purpose of assisting students during transport, the personnel listed in Exhibit A (hereinafter referred to as Healthcare Associates) on a temporary basis for the period commencing **July 1, 2020** ("Effective Date") and;

WHEREAS, ATC is willing to provide Healthcare Associates to SCHOOL for temporary staffing;

In consideration of the mutual promises, covenants, and agreements contained in the Agreement ATC and SCHOOL agree as follows:

In accordance with the New Jersey "Pass the Trash" law, N.J.S.A. 18A:6-7.6 to 7.13 (hereinafter "Law"), which became effective June 1, 2018, hereby ATC acknowledges its obligations under the Law and certifies that it is in compliance with the Law and all obligations required therein. ATC agrees to continue to comply with all the requirements of the Law during the term of the Agreement.

Furthermore, ATC shall indemnify, defend and hold the Board and its respective offices, employees, servants, agents, assigns and affiliates (Indemnified Parties"), harmless from and against any and all suits, actions, liabilities, losses, claims, damages and expenses including, without limitations, costs of investigation and defense (including Cost of private investigation and surveillance), costs for medical treatment, expert witness fees, legal fees (e.g., fees of attorneys, paralegals and other legal professionals for the defense of the underlying suits, etc.), expenses and diminution of value, whether or not involving a third party claim, arising out of or in any manner connected with the Company's compliance with or lack thereof, its obligations under the Law, **N.J.S.A.** 18A:6-7.6 to 7.13 to be provided for the Indemnified Parties, including, but not limited to, services performed under this Agreement, or any such other work performed for the Indemnified Parties, in any way related to the acts or omissions of the Company, its agents, servants, employees, Subcontractors, subconsultants, anyone directly or indirectly employed by them or anyone for whose acts or omissions they may be legally liable ("Covered Parties") to the extent that such suits, actions, liabilities, losses, claims, damages and expenses are caused by the covered Parties. If in a given case a court rules that the Company is not negligent and/or did not breach its statutory duty, then the Company no longer has an obligation to defend and indemnify the Board in such case.

THEREFORE, SCHOOL and ATC agree as follows:

1. RESPONSIBILITIES OF ATC

- A. Provision of Personnel. ATC will provide Healthcare Associate(s) to fill specified position(s) who possess the skills and qualifications for said position(s) as defined by SCHOOL.
- B. Experience. ATC will verify that Healthcare Associates have the relevant experience or as defined by SCHOOL in writing for a specified position. ATC will perform standard professional background checks on all Healthcare Associates to ensure that they possess clinical experience in the areas that they are to provide services under this Agreement.
- C. OSHA. As requested, ATC will provide generic infection control and safety training to Healthcare Associates.
- D. Licensure. ATC will provide SCHOOL with Healthcare Associates who have current nurse licensing.
- E. Personnel Standards. ATC complies with OSHA and other governmental standards for contracted agency personnel. ATC provides Healthcare Associates who are HIPAA trained, and qualified in relation to their education, training, licensure, and competence as defined by SCHOOL's written job description or specification, if applicable.

- F. Criminal Background Checks. ATC shall perform criminal background checks as specified in writing by SCHOOL. Such written specification by SCHOOL should include disqualifying infractions.
- G. Payment to Healthcare Associates. ATC is responsible for all payments made to Healthcare Associate(s) for services provided under this Agreement.
- H. Insurance. ATC shall procure and maintain (or require its subcontractors, if applicable, to maintain at subcontractor's expense) General and Professional Liability Insurance with limits not less than \$1,000,000 per occurrence, \$3,000,000 aggregate; Automobile Liability Insurance with combined single limit of \$1,000,000; and Worker's Compensation Insurance as required by state law. ATC will provide, at SCHOOL's request, certificates of insurance evidencing such coverage.

2. RESPONSIBILITIES OF SCHOOL

- A. Request for Personnel. SCHOOL will notify ATC and Healthcare Associate(s) of specific needs and the duration of assignment thereof as soon as the need is determined. SCHOOL will orient Healthcare Associate as to their duties and responsibilities (per the attached Exhibit B).
- B. Acceptance and Supervision of Personnel. SCHOOL and, as appropriate, parent(s), shall have the right of refusal where SCHOOL has determined that Healthcare Associate(s) is/are not qualified for the position requested. Members of SCHOOL's professional staff will supervise Healthcare Associates while Healthcare Associates provide services under this Agreement.
- C. Communication of Actions and Other Incidents. SCHOOL agrees to contact ATC and communicate in writing any performance related issues, occupational injuries/hazards, incidents related to Healthcare Associates within one (1) business day of known occurrence. SCHOOL understands that Healthcare Associates are expected to contact ATC whenever such incidents occur.
- D. Unsatisfactory Performance. SCHOOL will notify the ATC representative immediately and provide written documentation for any unsatisfactory performance or conduct by the Healthcare Associate(s). If it is determined that a Healthcare Associate is incompetent, has engaged in misconduct, or has been negligent, SCHOOL may request the Healthcare Associate to leave SCHOOL. SCHOOL will be obligated to compensate ATC only for the number of hours actually worked by such Healthcare Associate.
- E. Cancellation of Assignment. SCHOOL will use Healthcare Associate(s) for all scheduled assignments. If an assignment is canceled, SCHOOL will be billed per Cancellation Policy below.
- F. Recruitment of Healthcare Associates. SCHOOL acknowledges and understands that ATC incurs considerable expense to advertise, recruit, interview, reference check, and evaluate its employees. As a result, SCHOOL will take no steps to recruit as its own employees those Healthcare Associates provided by ATC under this Service Agreement. SCHOOL may hire an ATC employee six (6) months after the last date employee worked for SCHOOL at no charge. If SCHOOL hires a Healthcare Associate at any time during their employment at SCHOOL through ATC, or within six (6) months after the last date worked, SCHOOL will be liable for liquidated damages of Twelve Thousand Five Hundred dollars (\$12,500.00), or twenty percent (20%) of first year's salary, whichever is greater. Furthermore, the non-solicitation language herein applies to any Healthcare Associate that is scheduled to work at SCHOOL by ATC who subsequently switches to a competing agency or entity of any kind to work at SCHOOL.
- G. Direct Placement. If SCHOOL hires any Healthcare Associate on a direct placement basis who has been introduced, interviewed, or provided resumes for by ATC, SCHOOL agrees to pay ATC a direct placement fee of twenty percent (20%) of the Healthcare Associate's annualized first year salary

(see Exhibit B attached for Direct Placement Fee Confirmation Form). SCHOOL agrees not to refer any Healthcare Associate who has been introduced to SCHOOL by ATC to another party, including but not limited to, any affiliate, department or division of SCHOOL. Should SCHOOL refer Healthcare Associate to another party, and the party enters into a service relationship with the Healthcare Associate, both SCHOOL and party will be responsible for payment of the placement fee.

All direct placement fees are due and payable to ATC upon receipt of an invoice. SCHOOL will send payment to:

ATC Healthcare Services, LLC
75 Remittance Drive, Dept. 6773
Chicago, IL 60675-6773

If the hired Healthcare Associate is dismissed or leaves for any reason (except for dismissal due to layoff or a reduction in workforce), within thirty (30) days of date of hire, ATC will replace Healthcare Associate at no additional charge to the SCHOOL. If a suitable replacement cannot be found, a refund will be administered to SCHOOL. This refund will be pro-rated based on number of days worked within the thirty (30) day new hire window.

Once SCHOOL hires Healthcare Associate, ATC is released from all staffing responsibility, employer obligations, and personnel matters related to Healthcare Associate, including, but not limited to insurance coverage, payment of wages or other forms of compensation, and mandatory state and federal withholdings. SCHOOL agrees to indemnify, defend, and hold harmless ATC from any liability or claim, arising out of employment with SCHOOL.

- H. Insurance. SCHOOL will procure and maintain General and Professional Liability Insurance with limits not less than \$1,000,000 per occurrence, \$3,000,000 aggregate; and Worker's Compensation Insurance for its employees as required by state law. SCHOOL will provide, at ATC's request, certificates of insurance evidencing such coverages.

3. SCHOOL SAFETY PARTNERSHIP

- A. Safe Working Environment. In order for ATC to provide SCHOOL with the best service possible and for SCHOOL to provide a safe work injury environment for ATC's employees, following is a mutual understanding of safety and on-the-job injury procedures, practices and philosophies:
1. ATC employees will be oriented and trained by SCHOOL in all safety, hazardous communication (MSDS information, etc.) and operational instructions in the same manner as other SCHOOL employees or as required by ATC's policies or law, including but not limited to safety meetings.
 2. ATC will be notified immediately in the event of an accident or injury to an ATC employee. ATC will coordinate appropriate medical treatment in this event, except in emergent cases requiring immediate treatment or medical care. SCHOOL will allow an authorized representative of ATC to obtain a report after an accident or injury to ensure proper disposition of the matter.
 3. SCHOOL will notify ATC in the event any ATC employee appears to be under the influence of any substance.

4. HOLD HARMLESS STATEMENT

- A. Prohibited Job Related Activities. Unless SCHOOL has obtained the prior written consent of ATC, SCHOOL agrees not to ask or allow an ATC employee to perform any of the following job related activities:
1. Driving an automobile or other motor vehicle;
 2. Handling cash, securities, or other valuables.

If this prior written consent is not obtained, SCHOOL agrees to waive all rights to make a claim against ATC, and SCHOOL will relieve ATC from all liability and responsibility for any damage, loss, or expense which SCHOOL incurs as a result of the ATC employee engaging in such activities, and SCHOOL further agrees to indemnify and hold harmless ATC from and against all claims, damages, bodily injuries, losses, and expenses which might be caused as a result of the ATC employee engaging in any of these activities.

- B. Hazards. SCHOOL agrees not to knowingly expose any ATC employee to unnecessary hazard or extra hazards and to not violate any OSHA, safety law, rule or regulation whether federal, state or local. SCHOOL may be held liable as a result of any such violation.

5. INVOICING AND PAYMENT

- A. Payment. SCHOOL will remit invoice payment to ATC based on rates and terms listed in Exhibit A within thirty (30) days of date of invoice. SCHOOL is responsible for paying interest on all accounts receivable over thirty (30) days in the amount of 1.5% (one and one-half percent) per month (18% [eighteen percent] per annum), or the maximum rate permitted by applicable law, whichever is less.
- B. Invoicing. Invoicing will be done by ATC on a weekly basis from a signed time slip. Hours will be rounded to the nearest quarter hour for billing purposes. Invoices will be considered correct unless disputed in writing by SCHOOL within thirty (30) days of date of invoice.
- C. Orientation. SCHOOL will be invoiced for any required orientation at the rates listed in Exhibit A.
- D. Nonpayment. In the event of nonpayment of any amounts owing under this agreement, SCHOOL agrees to pay all reasonable attorneys' fees, collection costs, and expenses incurred by ATC in connection with the collection of such amounts.
- E. Per Diem Cancellations and Late Requests.
1. SCHOOL has the right to cancel any scheduled short-term assignments with two (2) hours notice prior to the start of the assignment without penalty. Assignments canceled with less than two (2) hours notice will be billed for two (2) hours at the agreed assignment rate.
 2. If a Healthcare Associate begins an assignment and is sent home for any reason other than unsatisfactory performance, the entire assignment will be billed.

6. MUTUAL RESPONSIBILITIES

- A. Term and Termination. This agreement shall commence on the Effective Date and will be automatically renewed on an annual basis. Either party may terminate this agreement at any time with or without cause, upon thirty (30) days written notification 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.
- B. Notices. All notices required or permitted to be given under this Agreement shall be in writing and may be delivered personally with proof of receipt, sent by registered or certified pre-paid mail, return receipt requested, or by an overnight carrier with proof of receipt.

Notices to ATC shall be sent to:

ATC Healthcare Services, LLC
350 Springfield Ave
Suite 200
Summit NJ 07901
Attn: Jeff Singer

and

ATC Healthcare Services, LLC
1983 Marcus Avenue, Suite E-122
Lake Success, NY 11042
Attn: Contracts Department

Notices to SCHOOL shall be sent to:

Union Township Schools
2155 Morris Ave
Union, NJ 07083
Phone: 908-851-4426
Attn: Kim Conti, Director of SS

- C. Amendments. No amendments to this Agreement will be effective unless made in writing and signed by both parties.
- D. Independent Contractors. In entering into and performing under this agreement, both parties are at all times performing as independent contractors. Nothing in this agreement shall constitute or be construed as the creation of an employment relationship, partnership, or joint venture between ATC, its agents or employees, and SCHOOL. With respect to personnel furnished to SCHOOL under this agreement, such personnel shall be at all times considered employees of ATC and ATC shall comply with all local, state, and federal laws and ordinances applicable to it as an employer, including requirements for payment of wages, verification of employment eligibility pursuant to United States immigration laws, fair labor standards, workers compensation, and laws requiring equal employment opportunity and prohibiting discrimination in employment. Nothing in this Agreement shall be construed as creating an employment relationship between SCHOOL and Healthcare Associate.
- E. Indemnification. Each party shall indemnify and hold harmless the other party and its parents, subsidiaries, affiliates, shareholders, directors, officers, trustees, employees, agents, and contractors against all actions, claims and demands whatsoever including costs, expenses, and reasonable attorneys' fees resulting from or claimed to have resulted from any negligent acts or omissions of the indemnifying party, its employees or independent contractors (including, for ATC, a Healthcare Associate), with respect to the performance of services under this Agreement or in the performance of the indemnifying party's obligations pursuant to this Agreement.
- F. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey without regard to principles of conflicts of law. Any action or proceeding initiated by any party to this Agreement shall be brought against in the courts of the State of New Jersey and each of the parties consents and submits to the jurisdiction of such courts in any such action or proceeding, and each party waives any objection to venue laid therein.
- G. Dispute Resolution. Both parties shall attempt to resolve any dispute arising out of or relating to this Agreement through negotiations between senior executives of the parties, or their respective designees, who have authority to settle the same, and, furthermore, both parties agree not to commence any formal action or proceeding unless the matter is not resolved by such negotiation within sixty (60) days of receipt of a written dispute notification. Nothing in this clause shall be construed as prohibiting a party or its affiliate from applying to a court for interim injunctive relief.
- H. Non-Discrimination. ATC and SCHOOL affirm and agree to comply with ATC's policy as it relates to discrimination and harassment, including sexual harassment, as stated below:
1. It is the policy of ATC not to discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, age, disability, disabled veteran, Vietnam-era veteran or other protected veteran status, or any other characteristic protected by federal,

state or local laws.

2. Harassment and sexual harassment violate ATC policy as all employees should have the ability to perform their jobs in an atmosphere which is free from all forms of discrimination.
 3. All complaints of discriminatory treatment in violation of ATC policy, and any complaint of harassment of any type, including sexual harassment, as well as any complaint of retaliation for the reporting of such unlawful treatment should be brought to the attention of a member of ATC's management staff. Both ATC and SCHOOL agree to investigate all complaints and collectively cooperate in the investigation and appropriate resolution of such complaints.
- I. Entire Agreement. This Agreement constitutes the entire contract between ATC and SCHOOL regarding the services covered under this Agreement, and will supersede any prior agreements between the parties for the same services. Any agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force or effect.
 - J. Assignment. Neither party may assign this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld, except that either party may, without the consent of the other, assign the Agreement to a controlled subsidiary of that party or a purchaser of all or substantially all of that party's assets used in connection with performing this Agreement, provided the assigning party guarantees the performance of and causes the assignee to assume in writing all obligations of the assignor under this Agreement. The rights and obligations of this Agreement shall bind and benefit any successors or assigns of the parties.
 - K. Waiver. The waiver by either party of a breach or violation of any provision of this Agreement will not be deemed a waiver of any subsequent breach of the same or a different provision.
 - L. Invalid Provision. In the event that a provision of this Agreement is held to be invalid, the remainder of this Agreement will remain in full force and effect.
 - M. Headings. The headings of sections of this Agreement are for reference only and will not affect the meaning or interpretation of this Agreement.
 - N. Applicable Laws. Both parties will comply with all applicable local, state and federal laws and regulations in the provision of services under this Agreement and certify that they are licensed, as applicable, to provide such services.
 - O. Access to Records. If required by law or regulation, both parties will make available all contracts, books, documents, and records relating to the nature and extent of the costs hereunder for a period of four (4) years after furnishing services in fulfillment of the terms herein, or such other time period as required by applicable law.
 - P. Confidential Information. Each party agrees to use its best efforts to prevent and protect the other party's Confidential Information, as hereinafter defined, from disclosure to any person other than its employees or agents having a need for disclosure in connection with the provision of services under this Agreement. Confidential Information includes, but is not limited to, costs, profit and margin information, financial information, and client lists, regardless of whether such information is designated as Confidential Information at the time of its disclosure. Confidential Information shall not be deemed proprietary and the receiving party shall have no obligation with respect to such information where the information: (a) was known to the recipient prior to receiving the Confidential Information from the other party; (b) has become publicly known through no wrongful act of the recipient; (c) was received by the recipient without breach of this Agreement from a third party without restriction as to the use and disclosure of the information; (d) was independently developed by the recipient without use of the Confidential Information; or (e) was ordered to be publicly released by the requirement of a government agency. Each party agrees that all Confidential Information shall remain the property of the discloser. Nothing contained herein shall be construed as granting or

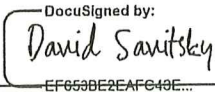
implying any transfer of rights to the recipient in the Confidential Information. This clause shall survive termination of the Agreement.

- Q. Protected Health Information. Both parties agree to use and disclose protected health information only as permitted by applicable state and federal laws, including applicable provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and regulations promulgated thereunder, the HIPAA Privacy and Security Rules codified at 45 C.F.R. Parts 160 and 164, and all applicable HIPAA-related rules and regulations as they are published and as further defined by later-occurring government regulations.
- R. Affordable Care Act. Upon thirty (30) days prior written notice, ATC may implement a rate adjustment based on increased labor costs attributable to the Affordable Care Act, with such adjustment being effective at the end of the thirty (30) day notice period. ATC warrants that such rate adjustment will not exceed two percent (2%) of the then current rates.

The parties have executed this Agreement and so certify below by signatures of authorized representatives.

ATC Healthcare Services, LLC

Union Township Schools

BY:  EF653BE2EAF649E...

BY: _____

NAME: David Savitsky

NAME: _____

EMAIL: DSavitsky@atchealthcare.com

EMAIL: _____

TITLE: CEO

TITLE: _____

DATE: 6/1/2020

DATE: _____

THIS DOCUMENT IS NOT VALID OR BINDING UNLESS SIGNED BY AN OFFICER OR DIRECTOR OF CONTRACTING OF ATC HEALTHCARE SERVICES, LLC

EXHIBIT A

**ATC Healthcare Services, LLC
Per Diem Hourly Rates**

Union Township Schools	
Occupation	Per Diem Hourly Rate
Registered Nurse - CSN	\$60.00
Registered Nurse – non CSN	\$53.00
Licensed Practical Nurse	\$44.68
Aide	\$27.50
<p style="text-align: center;">Additional terms:</p> <ul style="list-style-type: none">• All assignments will be a two hour minimum charge.• Bus trips will be maximum of three students Healthcare Associate is responsible for.• SCHOOL has the right to cancel any scheduled short-term assignment with two (2) hours notice prior to the start of the assignment without penalty. Assignments canceled with less than two (2) hours notice will be billed for two (2) hours at the agreed assignment rate.• Overtime Pay: 1.5 times the hourly bill rate• If Healthcare Associate is attends a field trip or some other SCHOOL outing, SCHOOL will reimburse ATC for all reasonable normal expenses incurred during such outing (i.e. transportation expense, entrance fees, etc.)	

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S

ATC Initials

SCHOOL Initials

EXHIBIT B

ATC Healthcare Services, LLC

Healthcare Associates' duties and responsibilities

The following is a partial listing of the duties and responsibilities of the Healthcare Associate. This listing is subject to change at the request of SCHOOL and/or parent, as necessary, in order to accommodate student needs. Healthcare Associate shall:

1. Become thoroughly familiar with student's needs, transportation procedures, emergency protocols, and emergency evacuation procedures and will implement same;
2. Maintain appropriate documentation and/or record of student transport, as directed by SCHOOL;
3. Ensure the availability and working order of medical equipment and supplies, as applicable;
4. Keep SCHOOL and parent(s) apprised of student's needs and status;
5. Participate in school conferences and other activities at the discretion of SCHOOL and parent(s);
6. Safeguard the privacy of students by protecting information of a confidential nature;
7. Provide continuous supervision of the student throughout transport until student is met by parent(s) or designated caregiver upon exiting SCHOOL vehicle.

