

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

TO: Dr. Scott Taylor

**CC: Gerald Benaquista
Dr. Gretel Perez
Yolanda Koon
Diane Cappiello
Bernadette Watson**

From: Kim Conti 

Re: Board Agenda Item

Date: April 4, 2023

Approve ATC (Around the Clock) Healthcare Services Inc., to provide Nursing Services, at the rate of \$90.00 for an RN-CSN and \$66.00 for RN non-CSN, and \$55.00 for an LPN, not to exceed \$450,000.00 for the 2023-2024 school year.

(Acct # 11-000-216-320-01-19)



SERVICE AGREEMENT

By and Between

Union Township Schools

And

ATC HEALTHCARE SERVICES, LLC



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.

- G. 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 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 Forty-five (45) days of date of invoice. SCHOOL is responsible for paying interest on all accounts receivable over Forty-five (45) 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. 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 in effect for one year. 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

- 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, defend, 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 by New Jersey laws regarding confidentiality of student records, including NJDOE regulations 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: _____

BY: _____

NAME: David Savitsky

NAME: _____

EMAIL: DSavitsky@atchealthcare.com

EMAIL: _____

TITLE: CEO

TITLE: _____

DATE: _____

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 New Rates:	
Occupation	Per Diem Hourly Rate
Registered Nurse - CSN	\$90.00
Registered Nurse – non CSN	\$66.00
Licensed Practical Nurse	\$55.00
Bus Aide	\$45.00
<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.)	

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.

RIDER FOR PUBLIC SCHOOL SERVICE CONTRACTS

This Rider is incorporated fully into the terms of the attached Agreement between ATC Healthcare Services, LLC, 1983 Marcus Avenue, Suite E-122, Lake Success, NY 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. Insurance

1. Provider shall maintain general liability and professional liability coverage for any negligent acts or omissions of its employees and independent contractors 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 occurrence and in the sum of Three Million Dollars (\$3,000,000.00) annual aggregate.
2. The Board shall be named as an additional insured on Provider's general liability insurance policy. Provider's liability program shall not exclude abuse and molestation.
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.

II. 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 basis 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 **2023-2024 school**

year shall not exceed Four Hundred and Fifty Thousand Dollars (\$450,000.00). There shall be no change in rates for the 2023-2024 school year.

- E. Provider shall provide notice to the Board if payment has not been received within five 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.

III. 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. Each Agreement, Attachment, Fee Schedule, Proposal or other documents referenced herein and/or attached to this Rider are incorporated herein as if the same was set out in full in the text of this

Rider, but to the extent any terms included in any attached document 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
Township of Union Public Schools
2369 Morris Avenue
Union, NJ 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:

ATC Healthcare Services, LLC
1963 Marcus Avenue, Suite E-122
Lake Success, NY 11042
ATTN: Contracts Department

SIGNATURES ON NEXT PAGE

THE PARTIES hereby agree to the terms of this Rider:

PROVIDER

(Signature) _____

Print name/Title

Dated: _____

BOARD OF EDUCATION

(Signature) _____

Print Name/Title:

Dated: _____

