

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

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**To:** Dr. Scott Taylor

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

**From:** Kim Conti 

**Re:** Board Agenda Item

**Date:** May 16, 2023

Approve Mom and Dad Care Home Health PC 107 East Mount Pleasant Avenue Suite 13, Livingston NJ 07039 to provide Nursing Services, at the rate of \$99.00 for RN /LPN Weekdays and \$109.00 RN/ LPN for Weekends and Holidays not to exceed \$350,000.00 for the 2023-2024 school year. (Acct # 11-000-216-320-01-19)

## 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 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 \$350,000.00 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 (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. **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.

a. Fee Schedule. SCHOOL shall pay AVEANNA for Services rendered in accordance with Schedule A. SCHOOL shall not be obligated to pay for any Services delivered by AVEANNA that were not requested by SCHOOL.

b. Invoice. AVEANNA shall provide SCHOOL with weekly or monthly invoices as indicated below. If required, FINAL INVOICES for the school year MUST be received by the SCHOOL by the date indicated below.

Weekly  Monthly  Final Invoice Due: \_\_\_\_\_  
Purchase order required:  YES  NO  
Time Sheets required for documentation:  YES  NO  
Email address for Claims Submission: \_\_\_\_\_  
Contact Name and Phone Number for billing questions: \_\_\_\_\_

c. Payment Terms. All payments to be made by SCHOOL to AVEANNA under this Agreement are due thirty (30) days from SCHOOL's receipt of a related invoice. SCHOOL's obligation for payment to AVEANNA is independent of any reimbursement received by SCHOOL from any other source. Payments shall be remitted to the address represented on the invoice.

4. Term/Termination.

This Agreement shall be effective July 1, 2023 through June 30, 2024. Either party may terminate this Agreement at any time upon thirty (30) days written notice 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.

5. Miscellaneous.

a. Indemnification.

(i) To the extent allowed by law, SCHOOL shall defend, indemnify and hold harmless AVEANNA and each of its officers, directors, employees, and agents (the "AVEANNA Parties"), from and against any and all claims, liabilities, losses, damages, costs or expenses of any kind (including attorneys' fees and disbursements) ("Indemnified Amounts") incurred by the AVEANNA Parties or any of them as a result of, or arising out of, or relating to SCHOOL's negligent acts or omissions or willful misconduct.

(ii) AVEANNA shall defend, indemnify and hold harmless SCHOOL and each of its officers, directors, employees, and agents (the "SCHOOL Parties"), from and against any and all Indemnified Amounts incurred by the SCHOOL Parties or any of them as a result of, or arising out of, or relating to AVEANNA's negligent acts or omissions or willful misconduct.

b. Insurance. As applicable and permissible by State Law, each party agrees to maintain the following insurance covering its activities performed pursuant to this Agreement;

(i) Comprehensive General Liability in an amount not less than \$1,000,000 per occurrence and \$3,000,000 in the aggregate.

(ii) Professional Liability insurance in an amount not less than \$1,000,000 per occurrence and \$3,000,000 in the aggregate.

(iii) Worker's Compensation in accordance with applicable statutory requirements.

(iv) Each party shall provide written notification to the other party not less than 30 days prior to cancellation, expiration, or material change in insurance coverage. Certificates of insurance

relevant to this Agreement shall be furnished upon reasonable request.

In the event that SCHOOL requires AVEANNA personnel to accompany student during transport to and from school or to and from alternate sites for SCHOOL related events, SCHOOL shall maintain automobile liability coverage with limits not less than \$1,000,000.00 combined single limit or \$1,000,000.00 per person/ \$1,000,000.00 per accident for bodily injury.

c. **Non-Solicitation of Employees.** (1) During the term of this Agreement and for a period of one (1) year following its termination, neither party will directly solicit for employment any individual employed by the other party with whom the party has come in contact as a result of the services provided pursuant to this Agreement.

(2) This restriction does not prohibit a party from entering into discussions or hiring an employee of the other party who approaches said party on his or her own initiative without any solicitation prohibited in this Section 5.c or from placing general advertisements or using search firms that are not directed at the other party's employees and then hiring any employee of the other party resulting from such general, non-targeted efforts. The restriction does not apply to routine, indirect solicitation or recruiting (e.g., advertisement or announcement of a job opening on the internet or in print).

(3) The parties acknowledge that the restriction contained in this Section 5.c., in view of the nature of the business in which they are engaged, is reasonable and necessary to protect the legitimate interests of each, and that any violation thereof may result in injuries to the affected party. The parties therefore acknowledge that, in the event this restriction is violated, the affected party will be entitled to apply to a court for injunctive relief. Such right will be cumulative and in addition to any other rights or remedies to which the affected party may be entitled.

(4). The parties acknowledge that it would be impractical and extremely difficult to anticipate or determine a party's actual damages in the event of a violation of this provision. Accordingly, upon a breach of this provision, the breaching party shall pay the non-breaching party a fee of Five Thousand Dollars (\$5,000) as liquidated damages, which the parties agree is not a penalty.

d. **Independent Contractor.** AVEANNA shall be an independent contractor and will employ appropriate personnel to deliver the Services. Nothing in this Agreement shall be construed to create the relationship of employer and employee, or principal and agent, or any relationship other than that of independent parties contracting with each other solely for the purpose of carrying out the terms of this Agreement. In no event shall any employee of AVEANNA be considered an employee or agent of the SCHOOL. AVEANNA is responsible for meeting all tax obligations related to its employees and for maintaining all required insurance coverage related to its employees, including workers' compensation insurance.

e. **Assignment.** Neither party may assign this Agreement without the prior written consent of the other party, however, AVEANNA may assign this Agreement to any of its subsidiaries or affiliates at any time upon giving notice to SCHOOL.

f. **Confidentiality.** AVEANNA, by executing this Agreement, agrees to make every reasonable effort to comply with the laws and regulations relevant to SCHOOL's responsibility to protect the privacy and confidentiality of SCHOOL's students and employees and related information and data. AVEANNA will take reasonable measures to maintain the privacy, confidentiality and security of all such information and data. Aveanna agrees to abide by applicable laws, regulations, policies, standards and the like of any government entity having jurisdiction, including but not limited to, all requirements of the Family Educational Rights and Privacy Act ("FERPA"), and the Health Insurance Portability and Accountability Act. For purposes of this Agreement, pursuant to FERPA, SCHOOL hereby designates AVEANNA as a school official with legitimate educational interest in the educational records of the students to whom AVEANNA provides Services to the extent that access to the records are required by AVEANNA for provision of the Services. AVEANNA agrees to maintain the confidentiality of the educational records in accordance with the provisions of FERPA. Aveanna may not use the names of any students or any private, confidential, or personally identifiable information pertaining to any of School's

**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:**

Sajimon Antony  
Mom & Dad Home Healthcare PC  
107 East Mt. Pleasant Avenue, Suit 13  
Livingston, NJ 07039

**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: \_\_\_\_\_