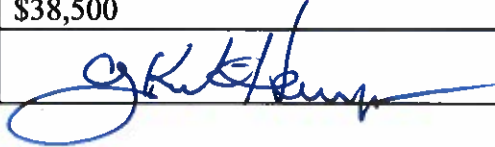


Cover Sheet for Submissions for Board of Education Meetings

Title of item to be presented:	Contract-BrightStar
Prepared by:	Kimberly Waller Supervisor of Special Education
Department/Office:	Special Education Department
To be presented by:	Kimberly Waller
Background/Description:	This contract is for Certified Nursing Assistant to address a student's health and safety plan as delineated in the IEP. The projected amount is based on the hourly rate of \$34 per hour for 37.5 hours per week for a total of \$38,500.
Budget/Cost:	\$38,500
Is this item included in the budget?	Yes
Budget category:	General Fund
Account or grant code:	1206700000000 204
Was this item put out to bid?	No.
Other:	
State recommended action:	Approval of a contract with BrightStar for \$38,500
Approved for submittal to the Superintendent by:	

The Board of Education of Dorchester County

CONTRACT REVIEW VERIFICATION

The attached contract has been reviewed by the individuals below. The services and/or products are necessary to meet the needs and programmatic goals of the Board.


Vendor/Contractor Name: BrightStar

Total Amount of Contract: \$38,500


Accounting Code to be Charged: 1206700000000 204

Any additional information to support accepting the attached contract?

This is a medical staffing company that DCPS has been using to provide a Certified Nursing Assistant (CNA) services to a student with a disability at Choptank Elementary School. The cost of the CNA to address the student's health and safety plan.

 9/29/22
Signature of Principal or Supervisor Date

Signature of Grant Manager Date
 9/29/22

Signature of Comptroller Date
 9/29/22
Signature of Director Date

reviewed 9/22/22
Confirm Review by Board Attorney, or, Explanation for Not Sending

Signature of Superintendent if needed Date

BrightStar Care® Staffing Agreement

This Agreement (this "Agreement") is made and entered into this September 21, 2022 by and between Flat Creek Investments LLC., a Maryland corporation, doing business as Brightstar Care with its principal place of business at 2111 Baldwin Ave, Suite 3, Crofton, MD ("BrightStar"), and the Board of Education Dorchester County 700 Glasgow St., Cambridge, MD, 21613 ("Client"). Client and BrightStar are hereinafter referred to jointly as the "Parties."

WITNESSETH:

WHEREAS BrightStar is a staffing agency in the State Of Maryland that provides Healthcare Personnel to health care providers;

WHEREAS Client is a public school system in need of staffing services with respect to health care providers; and

WHEREAS BrightStar and Client desire to enter into an agreement whereby BrightStar will provide certain staffing services to Client in accordance with the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Engagement.** Client hereby engages BrightStar to provide, and BrightStar hereby agrees to provide, the staffing services identified on Exhibit A attached hereto (the "Services") pursuant to the terms and conditions set forth in this Agreement.

2. **Status of Parties.** In accordance with the mutual intentions of BrightStar and Client, this Agreement establishes an independent contractor relationship, and all of the terms and conditions of this Agreement shall be interpreted in light of that relationship. This Agreement does not create an employer-employee, agency, joint venture or partnership relationship between the Parties.

3. **Responsibilities of BrightStar.**

3.1 BrightStar shall use its best efforts in providing the Services to Client pursuant to the terms and conditions of this Agreement and shall provide all Services in a manner consistent with all applicable federal, state, and local laws and regulations.

3.2 BrightStar shall recruit, interview, select, and employ qualified individuals ("the Healthcare Personnel") to provide the Services described in Exhibit A.

3.3 BrightStar shall employ the Healthcare Personnel assigned to Client under this Agreement. Consistent with its role as employer, BrightStar will: (i) maintain all necessary personnel and payroll records for its employees, (ii) accurately compute wages and withhold applicable Federal, State, and local income taxes, Social Security taxes, and Medicare

taxes, (iii) timely pay withholdings and employer contributions for Social Security taxes, Medicare taxes, and Federal Unemployment taxes to the appropriate governmental authorities, (iv) pay net wages and fringe benefits, if any, directly to its employees, and (v) pay Unemployment Compensation Insurance premiums and provide for Workers' Compensation Insurance coverage. The costs of the aforementioned taxes and benefits (the "Payroll Burden Costs") are included in the hourly billing rates set forth in Exhibit B.

3.4 Upon the request of Client, BrightStar will replace assigned Healthcare Personnel within a reasonable period of time, based on the availability of alternate Healthcare Personnel. Client shall have the unilateral authority to prohibit a particular employee of BrightStar from performing services under this Agreement if, in the sole discretion of Client, the employee has engaged in conduct which would warrant suspension or termination for cause of Client's employees under Maryland law.

3.5 Healthcare Personnel assigned to Client under this Agreement shall provide patient care in compliance with a patient care plan established by Client with the input of BrightStar-assigned Healthcare Personnel, and the applicable standard of care.

3.6 The Parties agree at all times to have policies and procedures in place that comply with federal and state privacy laws. Client shall provide a copy of those policies to the Healthcare Personnel performing Services for the Client pursuant to this Agreement. Client shall, if it is deemed appropriate or necessary, provide training at Client's expense related to these policies and procedures.

3.7 BrightStar shall complete a criminal background check for each employee prior to any such employee entering Client property where students are typically present. BrightStar is aware of and agrees to comply with Section 6-113 of the Education Article ("ED") and Section 11-722 of the Criminal Procedure Article ("CP") of the Annotated Code of Maryland. Pursuant to ED § 6-113(b), BrightStar may not knowingly assign an employee to work on school premises with direct, unsupervised, and uncontrolled access to children, if the employee has been convicted of a crime identified in ED § 6-113(a). Pursuant to CP § 11-722(c), a person who enters into a contract with a county board of education may not knowingly employ an individual to work at a school if the individual is a sex offender registry registrant. Notwithstanding anything to the contrary in this Agreement, BrightStar understands and agrees that violation of these provisions may result in immediate termination of this Agreement for cause.

4. Responsibilities of Client.

4.1 In its performance of this Agreement, Client shall interact with BrightStar employees in a professional manner consistent with the standards of practice existing within the community and all applicable federal, state, and local laws and regulations.

4.2 To the extent that Client determines it is necessary, Client shall provide Healthcare Personnel training which is necessary for the Healthcare Personnel to perform the Services at Client's facilities. All training time conducted by Client shall be considered Services under this Agreement.

4.3 Client shall have in place a nondiscrimination policy prior to the execution of this Agreement. Any violation of this nondiscrimination policy shall be reported by Client to BrightStar whether it is a complaint directed at the Healthcare Personnel or a complaint by the Healthcare Personnel. Client shall take appropriate action to investigate and

resolve any complaints and provide BrightStar with a copy of its investigation and the final outcome.

5. **Representations and Warranties of BrightStar**

5.1 BrightStar represents and warrants that all Healthcare Personnel assigned to the Client (i) shall possess all licenses, certificates, or other applicable permits from all relevant governmental authorities that are legally required for the Services they are assigned to perform; (ii) all such licenses, certificates, or permits are valid and in full force and effect; (iii) they are not in material violation of the terms of any such license certificate or permit; (iv) have been subject to a background check upon hiring; and (v) it otherwise does not have knowledge that any governmental authority is considering limiting, suspending, modifying, or revoking any such applicable license, certificate, or permit. If any such license, certificate, or permit is suspended or revoked during the term of this Agreement, BrightStar will notify Client in writing and Healthcare Personnel affected will be replaced.

6. **Representations and Warranties of Client.**

6.1 Client represents and warrants that it (i) shall possess all licenses, certificates, or other applicable permits from all relevant governmental authorities that are legally required for providing health care services BrightStar Healthcare Personnel will be assigned to perform; (ii) all such licenses, certificates, or permits are valid and in full force and effect; (iii) they are not in material violation of the terms of any such license, certificate, or permit; and (iv) it otherwise does not have knowledge that any governmental authority is considering limiting, suspending, modifying, or revoking any such applicable license, certificate, or permit. If any such license, certificate, or permit is suspended or revoked during the term of this Agreement, Client will notify BrightStar immediately in writing.

6.2 Client shall have and shall maintain at all times throughout the term of this Agreement insurance coverage including but not limited to, professional liability coverage and premise liability coverage.

7. **Compensation for Services.** In consideration for BrightStar providing Services hereunder, Client shall pay BrightStar at the rates specified in Exhibit B.

7.1 The number of compensable hours/visits worked each week by Healthcare Personnel assigned to Client will be determined by reference to time sheets submitted by Healthcare Personnel on a weekly basis. Client will designate members of its staff authorized to review, approve, and sign time sheets prepared by Healthcare Personnel on Client's behalf. Time sheets submitted to BrightStar bearing the signature of an authorized member of Client's staff shall be conclusive of the number of compensable hours worked by Healthcare Personnel assigned to Client each week.

7.2 BrightStar will invoice Client on a weekly basis for Services. Invoices will be sent to Client at the following address:

Dorchester County Public Schools
W. David Bromwell
Board of Education
700 Glasgow St.
Cambridge, MD 21613

Payment for all Services is due upon receipt by Client of the weekly invoice from BrightStar. Payment shall be made within (15) days of the receipt of the invoice. Client shall remit all payments to the address printed on the invoice. Client agrees to pay all costs incurred by BrightStar to collect for unpaid amounts due under this Agreement, including, but not limited to, collection agency costs, court costs, and attorneys' fees, whether or not a lawsuit is filed.

7.3 The Parties acknowledge that the rates set forth in Exhibit B applies only to the first forty (40) hours worked by non-exempt Healthcare Personnel in any Workweek. For the purposes of this Agreement, a "Workweek" is defined as a calendar week beginning on a Monday and ending on a Sunday. For any hours worked by Healthcare Personnel assigned to Client in excess of forty (40) hours in a Workweek, such hours in excess of forty (40) hours ("Overtime Hours") shall be subject to an "Overtime Pay Rate" equal to one hundred and fifty percent (150%) of the hourly rates set forth in Exhibit B. Client agrees to pay for such Overtime Hours at the Overtime Pay Rate. Such additional hours, if any, shall be performed only at the specific request of Client, and any unauthorized Overtime Hours worked by Healthcare Personnel may be the basis for Client requesting replacement of the noncompliant Healthcare Personnel as permitted by Section 3.4. In addition, Client agrees to pay BrightStar a night shift differential and a weekend shift differential all as more fully set forth on Exhibit B. All hours shall be evidenced by the time sheets as described in Section 7.1.

7.4 Hours worked on holidays ("Holiday Hours") by Healthcare Personnel assigned to Client are subject to a "Holiday Pay Rate" equal to one hundred fifty percent (150%) of the hourly rates set forth on Exhibit B. The holidays subject to the Holiday Pay Rate in this Section 7.4 are set forth on Exhibit B. Client agrees to pay for such Holiday Hours at the Holiday Pay Rate. Holiday Hours will be performed only at the specific request of the Client, , and any unauthorized Overtime Hours worked by Healthcare Personnel may be the basis for Client requesting replacement of the noncompliant Healthcare Personnel as permitted by Section 3.4. All hours shall be evidenced by the time sheets set forth in Section 7.1.

7.5 The Parties acknowledge that the hourly rates set forth in Exhibit B include employee wages, Payroll Burden Costs, and gross profit. To the extent BrightStar is required to increase employee wages or Payroll Burden Costs as the direct result of any determination, order, or action of any Federal, State, or local governmental authority, collective bargaining unit, or third-party insurer, Client agrees that the hourly rates set forth in Exhibit B shall be increased in an amount equal to Brightstar's increased employee wage and/or Payroll Burden Costs.

7.6 The Parties expressly agree that two hours' notice is required for Client cancellation of any assigned shift of Healthcare Personnel. If Client cancels with less than two hours' notice, Client shall pay a four-hour minimum charge based upon the rate for the Services the relevant Healthcare Personnel were scheduled to perform.

8. Term and Termination.

8.1 This Agreement shall commence on the Effective Date and, unless earlier terminated as provided in this Section 8 or elsewhere in this Agreement and continue for a term of one year ("Term"), such Term commencing the first day after this Agreement has been executed. This Agreement shall automatically renew for one-year Terms unless either Party notifies the other in writing (30) thirty days prior to the end of the current Term.

8.2 This Agreement may be terminated at any time during the Term as by

either Party upon providing written notice to the other if the other Party should fail in any material respect to comply with the terms of this Agreement, and such failure continues for a period of thirty (30) days after written notice thereof has been given by the non-defaulting Party.

8.3 In the event of termination hereunder the total amounts payable by Client pursuant to this Agreement shall be payable in full upon receipt of the final weekly invoice for Services, subject to the provisions of Section 7.2.

9. **Non solicitation.** Client acknowledges that BrightStar employees comprise its inventory of skilled professionals and their continued employment represents a valuable asset of BrightStar. During the term of employment of any Healthcare Personnel with BrightStar and for a period of twelve (12) months following the termination of any Healthcare Personnel's employment with BrightStar, Client shall not, directly or indirectly, except through another entity or staffing agency whereby the relevant Healthcare Personnel lawfully left the employ of BrightStar and began employment with another entity or staffing agency without Client's encouragement or interference, employ any such Healthcare Personnel, or induce or attempt to induce any Healthcare Personnel of BrightStar to leave the employment of, or terminate services to, BrightStar, or in any way interfere with the employment relationship between BrightStar and any such Healthcare Personnel. However, BrightStar may waive the forgoing provision, at its sole discretion, and permit Client to employ, or cause to be employed, any BrightStar Healthcare Personnel upon receipt of payment by Client to BrightStar of a fee in the amount of thirty-five percent (35%) of the full-time annual salary of such Healthcare Personnel (the "Conversion Fee"). Should a BrightStar Healthcare Personnel be employed by Client under the provisions of this Section 9 on a part-time basis, the applicable Conversion Fee will be equal to thirty-five percent (35%) of the annualized part-time equivalent salary of such Healthcare Personnel.

10. **Insurance.**

10.1 BrightStar agrees to maintain in effect throughout the duration of this Agreement Commercial General Liability/Professional Liability Insurance on an occurrence basis with a combined Bodily Injury and Property Damage limit of at least \$1,000,000 per occurrence and 3,000,000 per project aggregate, issued by a reputable carrier licensed to do business in the State of Maryland. BrightStar shall produce proof of insurance to Client upon Client's written request.

11. **Indemnification and Limitation of Liability.**

11.1 Each party agrees to indemnify and hold harmless the other Party, its agents, employees, successors and assigns for all liabilities, claims, demands, suits, losses, damages, costs and expenses (including reasonable attorneys' fees) arising out of any bodily injury to or death of any person, or damage to or destruction of any property, directly caused by any negligent act or omission on the part of the Party, its officers, or employees. This mutual indemnification provision shall not apply to grossly negligent or malicious acts or omissions.

11.2 Each Party's liability hereunder shall be limited to the limits of its respective insurance policies and each Party's assets; and no partner, member, shareholder, director, officer, agent, servant, employee, representative or affiliate of either party shall have any personal liability in connection with this Agreement. Neither party shall be liable to the other for, and each party hereby specifically waives, any and all rights to claim against the other party for any special, indirect, incidental, consequential, punitive or exemplary damages

in connection with this Agreement, including, but not limited to, lost revenue or profits.

11.3 If either Party shall commence any proceeding permitted by this Agreement against the other Party relating to the construction, interpretation, application or enforcement of this Agreement, the unsuccessful Party in the proceeding shall reimburse the prevailing Party for all reasonable expenses and attorneys' fees.

11.4 Notwithstanding anything to the contrary in this Agreement, Client shall be entitled to assert the defense of sovereign immunity with respect to any dispute or action arising out of this Agreement.

12. **Disputes Resolution.**

12.1 Any and all disputes or controversies, by or between BrightStar and Client, or their respective officers, employees, or agents, whether legal or equitable, in any way arising out of or related to this Agreement, its construction, interpretation, application or enforcement, shall be submitted to mandatory, binding, and final arbitration. The Parties stipulate that the terms of this Agreement will be a complete defense to any suit, action, or proceeding instituted in any court, State or Federal, or before any administrative tribunal. The issue of whether any claim, dispute, or controversy is subject to arbitration shall also be submitted to final and binding arbitration under this paragraph. A single arbitrator selected by the American Arbitration Association shall conduct the arbitration in accordance with the American Arbitration Association's then current rules. The arbitrator shall be an attorney at law licensed to practice in the State of Maryland. The Parties shall pay the costs of arbitration (filing fees, administrative costs, and the arbitrator's compensation) equally. The hearing shall be held in Cambridge, Maryland. All statute of limitations that would be applicable in a court proceeding shall be applicable in any arbitration. Nothing in this Agreement shall give the arbitrator any authority, power, or right to alter, change, amend, modify, add, or subtract from the provisions of this Agreement. The decision of the arbitrator shall be final and binding on the Parties. Should legal action be necessary to compel arbitration, the Party moving for arbitration, or moving to stay legal action pending arbitration, shall be entitled to recover all of its attorneys' fees and other costs associated with litigation from the Party seeking to resist or avoid arbitration. The Parties specifically, knowingly, and voluntarily waive any right to resolve any claim in a judicial forum, including the right to a jury trial, and understand that the right to compel other parties to produce documents and be examined is more limited in arbitration than in a lawsuit and that the grounds to appeal or change an arbitration award are very limited.

12.2 Notwithstanding the foregoing, Section 12.1 shall not apply to any collection actions hereunder by BrightStar for unpaid invoices or other amounts due BrightStar under this Agreement.

13. **Notices.** Any notice delivered to a Party pursuant to this Agreement must be in writing and delivered personally or will be deemed to be delivered when deposited in the U.S. Mail, postage prepaid, registered or certified mail, return receipt requested, addressed to the Party at the address indicated below, or at such other address that may have been specified by written notice delivered in accordance with this provision:

If to Client:

Attn: W. David Bromwell
Board of Education
700 Glasgow St., Cambridge, MD 21613

Cambridge, MD 21613

If to BrightStar:

Attn: Thomas Graves, MBA FACHE
Flat Creek Investments, LLC dba Brightstar Care
2111 Baldwin Ave
Suite 3
Crofton, MD 21114

14. **Waiver.** The waiver by any Party of a breach of any provision of this Agreement will not be construed as a waiver of a subsequent breach of the same provision by that Party or the breach of any other provision of this Agreement. The delay or failure of a Party to give any written notice will not constitute a waiver by that Party of any breach of this Agreement.
15. **Governing Law.** This Agreement will be governed by the laws of the State of Maryland.
16. **Severability.** If any provision of this Agreement is held to be illegal, invalid, or unenforceable, that provision will be removed from this Agreement and this Agreement will be interpreted and enforced as if the illegal, invalid, or unenforceable provision had never been a part of this Agreement and the remaining provisions will remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or its removal.
17. **Entire Agreement.** This Agreement and its attachments is the entire understanding of the Parties, and supersedes all prior agreements or understandings, whether written or oral, with respect to the subject matter contained herein. No terms or conditions, other than those written in this Agreement, and no amendments, modifications, or changes to this Agreement will be binding on the Parties unless in writing and signed by the Parties. No oral modifications of this Agreement shall be permitted, authorized, or accepted by either Party. The Parties agree to ignore, disregard, and not rely to their detriment, on any oral communication by the other Party that purports to alter the terms and conditions of this Agreement.
18. **Assignment; Binding Effect.** Client shall not assign this Agreement or any part hereof without the prior written consent of BrightStar. BrightStar may, without Client's consent, assign or extend this Agreement, including all rights and obligations hereunder, at any time to any entity acquiring substantially all of Brightstar's assets to which this Agreement relates.
19. **Force Majeure.** If either Party is delayed or prevented from fulfilling its respective obligations under this Agreement by any cause beyond its reasonable control, then that Party will not be liable under this Agreement for that delay or failure.
20. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which will be considered an original, but which together will constitute one and the same Agreement.
21. **Headings.** The headings contained in this Agreement are for convenience of


reference only and shall not affect or alter the meaning or effect of any provision hereof.

IN WITNESS WHEREOF, the Parties have signed this Agreement as of the day and year first written above.

BrightStar

Client

Thomas Graves, MBA, FACHE
President/CEO
BrightStar Care



W. David Bromwell
Superintendent
Board of Education Dorchester County

9/23/2022

EXHIBIT A

Services

I. BrightStar Contact:

Thomas Graves, MBA FACHE
President/CEO
BrightsStar Care
2111 Baldwin Ave, Suite 3
Crofton, MD 21114

II. BrightStar Care Qualifications:

BrightStar Care is a licensed Nurse Staffing Agency in the State of Maryland and provides medical and non-medical staffing services to private duty and institutional clients. BrightStar Care is fully insured, bonded and in compliance with all local, state, and federal guidelines.

III. Scope of Services:

- Registered Nurses, Licensed Practical Nurses and Nursing Aides to staff facility related positions.

IV. BrightStar Staffing Requirements

Each BrightStar staff employee is subject to the following hiring requirements:

- Verification of Valid Licensure
- Drug Test
- Criminal Background Check
- Minimum of One Employment Reference Check (if 2 years employed)
- Current/Valid Driver's License
- Blood Bourn Pathogen Training
- HIPAA Training
- Annual TB Screening
- CPR Certification
- Attendance at BrightStar Staff Orientation

EXHIBIT B

Compensation

In exchange for Services described in this Agreement, Client shall compensate BrightStar as follows:

(1) **Bill Rates:**

	Type	Rate Per Hour
RN	Registered Nurse	\$75.00
LPN	Licensed Practical nurse	\$58.00
CNA	Certified Nursing Assistant	\$34.00

- (1) **Holiday Pay.** The 24-hour period consisting of the following holidays, or parts thereof, will be billed at 150% times the regular rate: Memorial Day; Independence Day; and Labor Day, New Year's Eve; New Year's Day; Easter, Thanksgiving Day; Christmas Eve; and Christmas Day.

BrightStarCare®
Staffing
Agreement

This Assignment is entered into and executed as of the signature below and supplements the Staffing Agreement between MD Board of Education (Dorchester County) and BrightStar Care. Client will pay BrightStar Care for hours worked by Mykea Haynes CNA on the following terms:

Employee: Mykea Haynes

School District Name: MD Board of Education
Dorchester County (Choptank)

Start Date/End Date: 2022-2023 School Year

Start and End dates are subject to the school districts calendar.

Position: CNA

Bill Rate: \$54 per hour

Minimum Hours: 35 hours

Overtime Rate: \$51.00

Holiday Rate: \$51.00

Billing Work Week: Monday through Friday

Additional Terms:

- The CNA will be expected to report to the designated school location TBD by DCPS.
- The CNA will report to the designated school location TBD by DCPS and will be paid for that day.
- CNA will NOT be paid their full day's pay when short days occur due to weather conditions.
- The CNA will NOT be paid for school holidays and school vacations that occur on their designated workdays.
- The CNA will not change or switch their designated workdays with other CNA unless specifically approved by DCPS. The CNA will only be paid for days actually worked if the reason for not working is related to their own schedule changes.

David Bromwell
Superintendent Board of Education
Dorchester County

Thomas Graves
President
BrightStar Care