

**NORTH CAROLINA
DURHAM COUNTY**

CONTRACT AMENDMENT

THIS CONTRACT AMENDMENT is made and entered into this 1st day of December, 2020 by and between the **COUNTY OF DURHAM** (hereinafter referred to as “**County**”) and **Express Employment Professional** (hereinafter referred to as “**Contractor**”).

WITNESSETH:

THAT WHEREAS, the County and Contractor entered into a contract dated September 1, 2020, for the provision of COVID-19 Screening, (hereinafter the “Original Agreement”); and

WHEREAS, the County and Contractor desire to amend the Original Agreement, while keeping in effect all terms and conditions of the Original Agreement not inconsistent with the terms and conditions set forth below.

NOW THEREFORE, for and in consideration for the mutual covenants and agreements made herein, the parties agree to amend the Original Agreement as follows:

1. The Term of the Original Agreement is hereby extended through June 30, 2021.
2. The compensation paid to Contractor shall be an amount not to exceed \$270,061. Contract amendment two (2) will increase the current contract from \$86,868 to \$270,061, a \$183,193 increase.
3. **INDEMNIFICATION.** To the fullest extent permitted by law, COUNTY hereby reserves the right to recover legal expenses including attorney fees, litigation expenses and court costs as well as actual damages or losses suffered by COUNTY, if CONTRACTOR is found to be a proximate cause of damages or losses suffered by COUNTY, resulting from CONTRACTOR’s performance during the execution of this Contract.
4. **SECURITY BACKGROUND CHECKS.** The Contractor is responsible for requesting and paying for criminal history checks on all individuals providing services under this contract who will be obtaining COUNTY identification badges and allowed unescorted access to COUNTY facilities. Background checks can be provided by any vendor, or from a North Carolina State agency, providing that the criminal history check is done nationwide. The Sheriff’s Office will conduct background investigations for those Contractor employees who will be working at the Courthouse or Detention Center. A criminal history will not automatically disqualify a Contractor employee from employment on a COUNTY contract unless explicitly mandated by law. The Contractor will send the results of the background checks, prior to commencing work at Durham County Government, to their County point of contact who will provide them to the Durham County Security Manager. The Security Manager will individually assess and determine the degree to which the nature of a person’s criminal conduct has a direct and/or specific negative bearing on a person’s fitness or ability to perform contract services in Durham County buildings. The Security Manager will consult the Legal Office, as needed, on any negative determinations. The Security Manager will notify the Contractor’s County point of contact of the results of the review. A Contractor can appeal a negative determination by the Security Manager to the County Manager or his designee for final disposition. Appeals need to be submitted in writing to the contract point of contact within 30 days of notice of a decision to remove or deny an individual from working the County contract due to adverse information in the background check. This information shall be updated annually by the Contractor, 90 days prior to the renewal or extension of the contract and submitted to their County point of contact who will provide them to the Durham County Security Manager. Personnel without a currently approved background check will have their access to those buildings disabled.

Additional background screening may be necessary at specific COUNTY buildings. The Contractor shall provide names of all individuals in the Contractor communications log and to the COUNTY Representative. This information will be reviewed annually.

For those Contractor employees who will be working at the Courthouse or Detention Center, the Sheriff’s Office will make the security determination. The Contractor will provide the results of their background check to the Major for Support Services who will conduct an additional investigation and then individually assess and determine the degree to which the nature of a person's criminal conduct has a direct and/or specific negative bearing on a person's fitness or ability to perform contract services in the Courthouse or Detention Facility. A Contractor can appeal a negative determination to the Chief Deputy for final disposition. Appeals need to be submitted in writing to the Chief Deputy within 30 days of notice of a decision to remove or deny an individual from working the contract due to adverse information in the background check. While an appeal is pending, the employee will not be allowed access to the Courthouse or Detention Facility.

This information will be updated by the Contractor and submitted to the Sheriff’s Office annually, 90 days prior to the renewal or extension of the contract. Personnel without a currently approved background check will have their access to those buildings restricted.

- 5. By execution hereof, the person signing for Contractor below certifies that he/she has read this Contract Amendment and that he/she is duly authorized to execute this contract on behalf of the Contractor.
- 6. Except for the changes made herein, the Original Agreement shall remain in full force and effect to the extent not inconsistent with this Amendment. In the event that there is a conflict between the Original Agreement and this Amendment, this Amendment shall control.

IN WITNESS WHEREOF, the parties have expressed their agreement to these terms by causing this Contract Amendment to be executed by their duly authorized office or agent. This Contract Amendment shall be effective as of the date herein.

COUNTY OF DURHAM

CONTRACTOR

By: _____

By: _____

Print Name/Title: _____

Print Name/Title: _____

Date of Signature: _____

Date of Signature: _____

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

Susan Tezai, Durham County Chief Financial Officer



All-inclusive Service Rate for Durham County Government Contract Amendment 2

<u>Job Title/Assignment</u>	<u>Pay Rate</u>	<u>Bill Rate</u>	<u>Bill Rate for 80 days</u>
Temperature Screeners: (4) Part-time Admin 2 Building	\$15.00	\$22.50	\$35,876
Temperature Screeners (2) Part-time Public Health EE entrance	\$16.00	\$24.00	\$19,430
Temperature Screeners (10) Part-time HHS Main Entrance	\$16.00	\$24.00	\$96,207
Temperature Screener (2) Fulltime HHS Bilingual	\$16.50	\$24.75	\$31,680
			<hr/> \$183,193

The all-inclusive client service rate includes Express Employment Professionals absorption of the following expenses:

Associate's pay	Worker's Compensation Insurance
Payroll Burden (W-2 Employment)	Weekly invoicing of payroll (NET30)
Advertising	Administration (including payroll and unemployment claims)
Recruiting and Screening	Quality Control & HR Support
ISO Certified Selection Process	Employment Verification & Skills Testing
General Liability Insurance	Drug Screen & Background Checks (as needed)

This quote is for temporary and evaluation/hire assignments. Our agreed upon evaluation hire (contract-to-hire) period is **520** hours. Please contact Express if you are interested in hiring our associate as a regular employee.

The Client agrees to review and approve the associate's timesheet on a weekly basis or notify Express Employment Professionals of another authorized approver. Express will use our online timesheet system (at office.expresspros.com) when available, but may also use individual or group printed timesheets when necessary. Client is aware that, for accurate payroll and billing, all timesheets must be received (approved) by 12 PM on Monday (following the Monday – Sunday work week). Client further authorizes Express to treat faxed or emailed copies of signed timecards, group timesheets or emailed printouts as the original.

The nature of our business requires that we pay our temporary/contract associates each week. Express Employment Professionals bills for services rendered weekly based on hours worked and the all-inclusive service rate listed above.

If you would like to consider our associate for permanent employment, our standard evaluation hire period is 520 hours worked.

Please contact Aileen Hayworth at 919-572-6755 with questions regarding this quote.

Please mail all payments to Express Services Inc., PO Box 535434 Atlanta, GA 30353-5434

Please acknowledge your understanding of these terms by signing below and returning it. We appreciate your business!

Express Employment Professionals
5306 NC Highway 55, Suite 103
Durham, NC 27713
919-572-6755

Durham County Government-HR
200 E. Main Street
Durham, NC 27701
919-943-1362

Aileen Hayworth

Signature

Signature

8/28/2020

Date

Date

Original Contract

NORTH CAROLINA
DURHAM COUNTY

SERVICE CONTRACT

THIS SERVICE CONTRACT is made, and entered into this the 1st day of September, 2020, by and between the COUNTY of DURHAM, a political subdivision of the State of North Carolina, (hereinafter referred to as "COUNTY"), and

Express Employment Professionals a corporation duly authorized to do business in the state of North Carolina, (hereinafter referred to as "CONTRACTOR").

For and in consideration of mutual promises to each as herein after set forth, the parties hereto do mutually agree as follows:

1. SCOPE OF SERVICES. CONTRACTOR hereby agrees to provide the services and/or materials under this Contract pursuant to the provisions and specifications identified in "Attachment 1" (hereinafter collectively referred to as "Services"). Attachment 1 is hereby incorporated herein and made a part of this Contract. Time is of the essence with respect to all provisions of this Agreement that specify a time for performance.

The COUNTY will perform on-going Agreement monitoring to ensure that the terms of this Contract are complied with. CONTRACTOR agrees to cooperate with the COUNTY in its monitoring process and provide documentation and/or information requested during the term of this Contract for the purpose of monitoring the services provided by CONTRACTOR.

2. TERM OF CONTRACT. The Term of this Contract for services is from September 1, 2020 to December 31, 2020 unless sooner terminated as provided herein. Notwithstanding the aforesaid this Agreement shall have a minimum term of thirty (30) days and COUNTY shall pay for a minimum thirty (30) days.

3. PAYMENT TO CONTRACTOR. CONTRACTOR shall receive from COUNTY an amount not to exceed Thirty four thousand, two hundred ninety Dollars (\$34,290.00) as full compensation for the provision of Services. COUNTY agrees to pay CONTRACTOR at the rates specified for Services performed to the satisfaction of the COUNTY, in accordance with this Agreement and Attachment 1. Unless otherwise specified, CONTRACTOR shall submit an itemized invoice to COUNTY by the end of the month during which Services are performed. A Funds Reservation number may be assigned to encumber the funds associated with this Contract and must appear on all invoices and correspondence mailed to Purchaser. Payment will be processed promptly upon receipt and approval of the invoice by COUNTY.

4. INDEPENDENT CONTRACTOR. COUNTY and CONTRACTOR agree that CONTRACTOR is an independent contractor and shall not represent itself as an agent or employee of COUNTY for any purpose in the performance of CONTRACTOR's duties under this Contract. Accordingly, CONTRACTOR shall be responsible for payment of all federal, state and local taxes as well as business license fees arising out of CONTRACTOR's activities in accordance with this Contract. For purposes of this Contract taxes shall include, but not be limited to, Federal and State Income, Social Security and Unemployment Insurance taxes.

CONTRACTOR, as an independent contractor, shall perform the Services required hereunder in a professional manner and in accordance with the standards of applicable professional organizations and licensing agencies.

5. INDEMNIFICATION. To the fullest extent permitted by laws and regulations, CONTRACTOR shall indemnify and hold harmless the COUNTY and its officials, agents, and employees from and against all claims, damages, losses, and expenses, direct, indirect, or consequential (including but not limited to fees and charges of engineers or architects, attorneys, and other professionals and costs related to court action or mediation) arising out of or resulting from CONTRACTOR's performance of this Contract or the actions of the CONTRACTOR or its officials, employees, or subcontractors under this Contract or under contracts entered into by the CONTRACTOR in connection with this Contract. This indemnification shall survive the termination of this Contract.

In claims against any person or entity indemnified under this provision by an employee of the CONTRACTOR, a subcontractor, an employee of a subcontractor, or an agent of the CONTRACTOR or a subcontractor, the indemnification obligation under this provision shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the CONTRACTOR or a subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

6. INSURANCE. COUNTY is a governmental entity and is self-insured and upon request will supply CONTRACTOR with a letter of such from its Risk Manager. CONTRACTOR shall procure and maintain for the duration of the Contract the following insurance coverage from an insurance company(s) possessing a rating of A-VII or higher from the A.M. Best Company and licensed to do business in North Carolina. All of the policies required of the CONTRACTOR shall contain a waiver of subrogation provision to waive all rights of recovery under subrogation or otherwise against the COUNTY. In the event CONTRACTOR'S Insurance Policy or Certificate of Insurance conflicts with the aforesaid language concerning "waiver of subrogation" this Contract shall govern. CONTRACTOR shall advise the COUNTY of any cancellation, non-renewal, or material change in any policy within ten (10) days of notification of such action and provide updated certificates of insurance evidencing renewals within fifteen (15) days of expiration. CONTRACTOR'S insurance shall be primary and any insurance or self-funded liability programs maintained by the COUNTY shall not contribute with respect to the CONTRACTOR's insurance. COUNTY shall not be listed as an additional insured on any Insurance Policy or Certificate of Insurance of the CONTRACTOR.

In the event CONTRACTOR'S Insurance Policy or Certificate of Insurance conflicts with the aforesaid language concerning "additional insured" this Contract shall govern.

6.1 Commercial General Liability: Insurance Services Office (ISO) Form CG 00 01 on an "occurrence" basis, including products and completed operations, property damage, bodily injury, and personal & advertising injury with limits no less than \$1,000,000 per occurrence and \$2,000,000 aggregate.

6.2 Commercial Automobile Liability: ISO Form CA 00 01 covering any auto with limit not less than \$1,000,000 per accident for bodily injury and property damage.

6.3 Worker's Compensation and Employers Liability: as required by The State of North Carolina, with statutory limits, and Employers Liability Insurance with a limit of no less than \$1,000,000 per occurrence.

By requiring insurance herein, the COUNTY does not represent that coverage and limits will necessarily be adequate to protect CONTRACTOR, and such coverage and limits shall not be deemed as a

limitation on CONTRACTOR's liability under the indemnities granted to the COUNTY in this Contract.

CONTRACTOR shall provide the COUNTY a valid certificate of insurance, in advance of the performance of any work, exhibiting coverage required. CONTRACTOR shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein.

The failure of the COUNTY at any time to enforce the insurance provisions, to demand such certificates of insurance, or to identify a deficiency shall not constitute a waiver of those provisions, nor reduce obligations of the CONTRACTOR to maintain such insurance or to meet its obligations under the indemnification provisions. Notwithstanding the foregoing, nothing contained in this section shall be deemed to constitute a waiver of the governmental immunity of the COUNTY, which immunity is hereby reserved to the COUNTY.

7. TERMINATION.

7.1. EVENT OF DEFAULT. Any one or more of the following acts or omissions of the Contractor shall constitute an Event of Default hereunder:

- a. Failure to perform the Services satisfactorily or on schedule,
- b. Failure to submit any report required hereunder; and/or
- c. Failure to perform any other covenant, term, or condition of this Contract.

Upon the occurrence of an Event of Default, the County may take one or more or all of the following actions:

1. Give Contractor written Notice of the Event of Default, specifying the Event of Default and requiring it to be remedied within, in the absence of greater or lesser specification of time, seven (7) calendar days from the date of the notice; and if the Event of Default is not timely remedied, terminate the agreement, effective two (2) days after giving the Contractor written Notice of Termination; and/or

2. Deduct any and all expenses incurred by the County for damages caused by the Contractor's Event of Default; and/or

3. Treat the Contract as breached and pursue any of its remedies at law or in equity, or both, including damages and specific performance.

7.2 TERMINATION FOR CONVENIENCE. This Contract may be terminated, without cause, by either party upon thirty (30) days written notice to the other party. This termination notice period shall begin upon receipt of the Notice of Termination.

Termination of this Contract, under either section 7.1 or 7.2, shall not form the basis of any claim for loss of anticipated profits by either party.

8. COUNTY NOT RESPONSIBLE FOR EXPENSES. COUNTY shall not be liable to CONTRACTOR for any expenses paid or incurred by CONTRACTOR, unless otherwise agreed in writing.

9. EQUIPMENT. CONTRACTOR shall supply, at its sole expense, all equipment, tools, materials, and or supplies required to provide Services hereunder, unless otherwise agreed in writing.

10. COMPLIANCE WITH LAWS. CONTRACTOR shall abide by all statutes, rules, regulations, laws, and executive orders Federal, State and Local as they relate to, but are not limited to, (i) services in general, (ii) payment of employees, subcontractors and agents, (iii) the Fair Labor Standards Act and (iv) the Wage and Hour Division. In the event CONTRACTOR is determined by the final order of a court or appropriate agency to be in violation of any Federal, State or Local statute, rule, regulation, law or executive order or this provision, this Contract may be canceled, terminated or suspended in whole or in part by COUNTY and CONTRACTOR may be declared ineligible for further COUNTY contracts.

11. HEALTH AND SAFETY. CONTRACTOR shall be responsible for initiating, maintaining and supervising all safety precautions and programs required by OSHA and all other regulatory agencies while providing Services under this Contract. CONTRACTOR agrees that all records of this transaction which contains personally identifiable information shall remain confidential. All records shall be kept in a secure location preventing access by unauthorized individuals. Upon termination of this Contract, CONTRACTOR shall maintain and retain any such records for accounting and audit purposes for a period of at least three (3) years or any other period required by the Federal government, which ever period is longer.

12. NON-DISCRIMINATION IN EMPLOYMENT/EQUAL EMPLOYMENT OPPORTUNITY

(1) During the performance of this Contract CONTRACTOR will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sex orientation, gender identity or national origin. CONTRACTOR shall take affirmative action to ensure that applicants are employed and that employees are treated during employment with regard to their race, color, religion, sex, sexual orientation, gender identity or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment advertising; lay-off or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to provide setting forth the provisions of this nondiscrimination clause.

(2) The CONTRACTOR will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The CONTRACTOR will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The CONTRACTOR will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the CONTRACTOR's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The CONTRACTOR will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The CONTRACTOR will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the CONTRACTOR's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The CONTRACTOR will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The CONTRACTOR will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event CONTRACTOR becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the CONTRACTOR may request the United States to enter into such litigation to protect the interests of the United States.

The CONTRACTOR further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the Agreement.

The CONTRACTOR agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The CONTRACTOR further agrees that it will refrain from entering into any contract or contract modification

subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

13. EMPLOYMENT ADVERTISING REQUIREMENTS. CONTRACTOR shall post local job openings, in connection with this Agreement, with the City of Durham's Office of Economic and Workforce Development, the North Carolina Department of Commerce-Division of Employment Services (formerly ESC, Employment Security Commission) and with the Durham County Department of Social Services throughout the term of this Agreement; provided that the foregoing requirement does not limit CONTRACTOR'S ability to advertise and/or otherwise post job openings with other organizations or media outlets.

14. E-VERIFY. As a condition of payment for services rendered under this Contract, CONTRACTOR shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. Further, if CONTRACTOR provides the services to the County utilizing a subcontractor, CONTRACTOR shall require the subcontractor to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes as well. CONTRACTOR shall verify, by affidavit, compliance of the terms of this section upon request by the COUNTY.

15. AFFORDABLE CARE ACT REQUIREMENTS (Applicable Only to Staffing Agencies). Beginning in 2015, employers with 100 or more full-time equivalent employees (50 or more beginning in 2016) must offer health insurance coverage that is affordable and provides "minimum value" to full-time employees and dependents as defined by the Patient Protection and Affordable Care Act or face penalties. Staffing companies under contract with Durham County are required to provide affordable minimum essential coverage as defined by the Patient Protection and Affordable Care Act and to indemnify Durham County against any 4980H penalties that result from their failure to provide the appropriate coverage. By signing this contract as a Staffing Company, CONTRACTOR shall comply with the aforementioned health insurance coverage requirements of the Affordable Care Act and to indemnify the County against any associated 4980H penalties. Please complete Exhibit A and return with this contract.

16. SECURITY BACKGROUND CHECKS. The CONTRACTOR is responsible for requesting and paying for criminal history checks on all individuals providing services under this contract who will be obtaining County identification badges and allowed unescorted access to County facilities. Background checks can be provided by any vendor, or from a North Carolina State agency, providing that the criminal history check is done nationwide. The Sheriff's Office will conduct background investigations for those CONTRACTOR employees who will be working at the Courthouse or Detention Center. A criminal history will not automatically disqualify a Contractor employee from employment on a County contract unless explicitly mandated by law.

The CONTRACTOR will send the results of the background checks to their County point of contact who

will provide them to the Durham County Security Manager. The Security Manager will individually assess and determine the degree to which the nature of a person's criminal conduct has a direct and/or specific negative bearing on a person's fitness or ability to perform contract services in Durham County buildings. The Security Manager will consult the Legal Office on any negative determinations. The Security Manager will notify the CONTRACTOR's County point of contact of the results of the review. CONTRACTOR can appeal a negative determination by the Security Manager to the County Manager for final disposition. Appeals need to be submitted in writing to the agreement point of contact within 30 days of notice of a decision to remove or deny an individual from working the County agreement due to adverse information in the background check.

This information will be updated annually by the CONTRACTOR, 90 days prior to the renewal or extension of the Agreement, and submitted to their County point of contact who will provide them to the Durham County Security Manager. Personnel without a currently approved background check will have their access to those buildings restricted.

Additional background screening may be necessary at specific county buildings. The CONTRACTOR shall provide names of all individuals in the Contractor communications log and to the County Representative. This information will be reviewed annually.

For those CONTRACTOR employees who will be working at the Courthouse or Detention Center, the Sheriff's Office will make the security determination. The CONTRACTOR will provide the results of their background check to the Major for Support Services who will conduct an additional investigation and then individually assess and determine the degree to which the nature of a person's criminal conduct has a direct and/or specific negative bearing on a person's fitness or ability to perform contract services in the Courthouse or Detention Facility. A Contractor can appeal a negative determination to the Chief Deputy for final disposition. Appeals need to be submitted in writing to the Chief Deputy within 30 days of notice of a decision to remove or deny an individual from working the contract due to adverse information in the background check. While an appeal is pending, the employee will not be allowed access to the Courthouse or Detention Facility.

This information will be updated by the CONTRACTOR and submitted to the Sheriff's Office annually 90 days prior to the renewal or extension of the contract. Personnel without a currently approved background check will have their access to those buildings restricted.

17. **AUDIT RIGHTS.** For all Services being provided hereunder, COUNTY shall have the right to inspect, examine, and make copies of any and all books, accounts, invoices, records and other writings relating to the performance of the Services. Audits shall take place at times and locations mutually agreed upon by both parties. Notwithstanding the foregoing, CONTRACTOR must make the materials to be audited available within one (1) week of the request for them.

18. **DISPUTE RESOLUTION PROCEDURE.** To prevent disputes and litigation, it is agreed by the parties that any claim or dispute between COUNTY and the CONTRACTOR, arising from this Contract or the services and/or materials being provided by the CONTRACTOR, shall be sent to the Durham County Manager who shall appoint a qualified mediator to address the issue. Such request shall be submitted to the County Manager in writing within ten (10) days of the claim or dispute. Upon receipt of a timely written claim, the Manager, or his designee, shall notify the Mediator who will conduct a mediation and notify the CONTRACTOR in writing of the decision within forty five (45) calendar days from the date of the submission of the claim or dispute, unless the Mediator requires additional time to gather information

or allow the parties to provide additional information. The Mediator's orders, decisions and decrees shall be non-binding. Mediation, pursuant to this provision, shall be a precondition to initiating litigation concerning the dispute. During the pendency of any dispute and after a determination thereof, parties to the dispute shall act in good faith to mitigate any potential damages including utilization of schedule changes and alternate means of providing services and/or materials. The costs of mediation shall be divided equally between parties to the dispute.

The mediation session shall be private and shall be held in Durham County, North Carolina. Mediation under this provision shall not be the cause for a delay of services and/or materials being provided which is the focus of the dispute.

If the disputed issue cannot be resolved in mediation or either party disagrees with the results of the mediation, the parties may seek resolution in the General Court of Justice in the County of Durham and the State of North Carolina. If a party fails to comply in strict accordance with the requirements of this provision, the non-complying party specifically waives all of its rights provided hereunder, including its rights and remedies under State law.

19. MISCELLANEOUS PROVISIONS.

19.1. COMPLIANCE WITH CONTRACT WORK HOURS AND SAFETY STANDARD ACT. (See 29 C.F.R. §5.5)

(a) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(b) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of 29 C.F.R. §5.5 the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of 29 C.F.R. §5.5, in the sum of \$26 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of 29 C.F.R. §5.5.

(c) Withholding for unpaid wages and liquidated damages. The (write in the name of the Federal agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of 29 C.F.R. §5.5.

(d) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of 29 C.F.R. §5.5 and also a clause requiring the subcontractors to include these

clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of 29 C.F.R. §5.5.

19.2. Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

Required Certification. If applicable, contractors must sign and submit to the non-federal entity the following certification.

APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING
Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

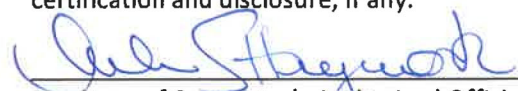
(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, _Express Employment Professionals, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that


the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.



Signature of Contractor's Authorized Official



Name and Title of Contractor's Authorized Official



Date

19.3. CLEAN AIR AND FEDERAL WATER POLLUTION CONTROL ACT

Clean Air Act

(a) The Contractor agrees to comply with all applicable standards, orders, or regulation issue pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

(b) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

Federal Water Pollution Control Act, If applicable

(a) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

(b) The Contractor agrees to report each violation to the (name of applicant entering into the contract) and understands and agrees that the (name of the applicant entering into the contract) will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(c) The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

19.4. SUSPENSION AND DEBARMENT

(a) This Contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(b) The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

(c) This certification is a material representation of fact relied upon by Durham County. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition

to remedies available to Durham County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

(d) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions

19.5. CONTRACT CHANGES

This Contract may not be changed or modified except in writing and by the consent of all parties.

19.6 DHS SEAL, LOGO, AND FLAGS

"The Contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval."

19.7. COMPLIANCE WITH FEDERAL LAW, REGULATIONS AND EXECUTIVE ORDERS

This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the Agreement. The Contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives."

19.8. NO OBLIGATION BY FEDERAL GOVERNMENT

"The Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from this Agreement.

19.9. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS.

"The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this Agreement."

20. EXISTENCE. CONTRACTOR warrants that it is a corporation or otherwise legal entity duly organized, validly existing, and in good standing under the laws of the State of _North Carolina and is duly qualified to do business in the State of North Carolina and has full power and authority to enter into and fulfill all the terms and conditions of this Agreement.

21. CORPORATE AUTHORITY. By execution hereof, the person signing for CONTRACTOR below certifies that he/she has read this Contract and that he/she is duly authorized to execute this Contract on behalf of the CONTRACTOR.

22. SUCCESSORS AND ASSIGNS. CONTRACTOR shall not assign its interest in this Contract without the written consent of COUNTY. CONTRACTOR has no authority to enter into contracts on behalf of COUNTY.

23. NOTICES. All notices which may be required by this Contract or any rule of law shall be effective when received by certified mail sent to the following addresses:

COUNTY OF DURHAM
ATTN: PURCHASING DEPARTMENT
4TH FLOOR, 200 EAST MAIN STREET

CONTRACTOR
ATTN: _Aileen Hayworth Express Employment Professionals
5306 NC Highway 55, Suite 103

DURHAM, NORTH CAROLINA 27701

Durham, NC 27713

24. HEADINGS. The subject headings of the sections are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions. This Agreement shall be deemed to have been drafted by both parties and no interpretation shall be made to the contrary.

25. GOVERNING LAW. This Contract shall be governed by and in accordance with the laws of the State of North Carolina. All actions relating in any way to this Agreement shall be brought in the General Court of Justice in the County of Durham and the State of North Carolina.

26. ENTIRE CONTRACT. This Contract, including Attachment 1, shall constitute the entire understanding between COUNTY and CONTRACTOR and shall supersede all prior understandings and agreements relating to the subject matter hereof and may be amended only by written mutual agreement of the parties.

IN TESTIMONY WHEREOF, the parties have expressed their Agreement to these terms by causing this Service Contract to be executed by their duly authorized officer or agent.

COUNTY OF DURHAM

By: 

Print Name and Title: Wendell M. Davis
County Manager

Date: Oct 1, 2020

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Budget Control Act.


Susan Tezai, Durham County Chief Financial Officer

CONTRACTOR

By: 

Authorized Representative

Print Name and Title: Alton S. Haywood, Office Manager

Date: 9/24/2020

"ATTACHMENT 1" to follow



All-inclusive Service Rate for Durham County Government

<u>Job Title/Assignment</u>	<u>Pay Rate</u>	<u>Bill Rate</u>	<u>Bill Rate for 15 days</u>
Temperature Screeners: (4) Part-time Admin 2 Building	\$15.00	\$22.50	\$6,750
Temperature Screeners (2) Part-time Public Health EE entrance	\$16.00	\$24.00	\$3,600
Temperature Screeners (10) Part-time HHS Main Entrance	\$16.00	\$24.00	\$18,000
Temperature Screener (2) Fulltime HHS Bilingual	\$16.50	\$24.75	\$5,940
			<hr/> \$34,290

The all-inclusive client service rate includes Express Employment Professionals absorption of the following expenses:

Associate's pay	Worker's Compensation Insurance
Payroll Burden (W-2 Employment)	Weekly invoicing of payroll (NET30)
Advertising	Administration (including payroll and unemployment claims)
Recruiting and Screening	Quality Control & HR Support
ISO Certified Selection Process	Employment Verification & Skills Testing
General Liability Insurance	Drug Screen & Background Checks (as needed)

This quote is for temporary and evaluation/hire assignments. Our agreed upon evaluation hire (contract-to-hire) period is 520 hours. Please contact Express if you are interested in hiring our associate as a regular employee.

The Client agrees to review and approve the associate's timesheet on a weekly basis or notify Express Employment Professionals of another authorized approver. Express will use our online timesheet system (at office.expresspros.com) when available, but may also use individual or group printed timesheets when necessary. Client is aware that, for accurate payroll and billing, all timesheets must be received (approved) by 12 PM on Monday (following the Monday – Sunday work week). Client further authorizes Express to treat faxed or emailed copies of signed timecards, group timesheets or emailed printouts as the original.

The nature of our business requires that we pay our temporary/contract associates each week. Express Employment Professionals bills for services rendered weekly based on hours worked and the all-inclusive service rate listed above.

EXHIBIT A
(For Staffing Agencies Only)
AFFORDABLE CARE ACT REQUIREMENTS

This Exhibit A is an integral part of the contract between the County of Durham (hereinafter referred to as "County"), and Express Employment Professionals (hereinafter referred to as "Contractor"), which contract is dated September 1, 2020, for the provision of temporary staffing services.

- (1) The Contractor agrees that, effective as of January 1, 2015, it shall offer "affordable," "minimum value" coverage to all "full-time employees" who are assigned by the Contractor to the County. For purposes of this provision:
 - (a) Coverage shall be considered "affordable" if it satisfies one of the "safe harbors" for "affordability" as set forth in Treasury Regulation § 54.4980H-5(e) or any successor regulation thereto;
 - (b) Coverage shall be considered to provide "minimum value" if the percentage of the total allowed costs of benefits provided under the coverage is no less than 60 percent when calculated in accordance with the provisions of 45 CFR § 156.145 or any successor regulation thereto; and
 - (c) A "full-time employee" means an employee of the Contractor who is considered to be a "full-time employee" as that term is defined in Code § 4980H(c)(3) and in the Treasury Regulations issued thereunder and entitled to the coverage and protections provided thereunder.
- (2) County shall pay \$0 for each individual per month for each full-time employee of the Contractor who was assigned to the County and who accepts coverage for that month. In the event that a full-time employee of the Contractor was assigned to the County for less than an entire calendar month or was covered for less than an entire calendar month, the employee's status will be determined as of the first day of the calendar month.
- (3) The parties agree that the above provisions are intended to ensure that the County is able to take advantage of the "safe harbor" provided by the Treasury in the preamble to the final "shared responsibility" regulations as published in the Federal Register on February 12, 2014 (79 Fed. Reg. 8544, 8966 (Feb. 12, 2014)) and that the above provisions should be construed and applied accordingly.
- (4) The Contractor shall indemnify the County and hold the County harmless from any and all claims and penalties that may be asserted against the County as a consequence of or arising out of the performance of services by the Contractor under this Agreement, including, but not limited to any penalties that may be assessed against the County under Code § 4980H relating to or caused by any failure on the part of the Contractor to offer "affordable," "minimum value" coverage to any "full-time employees" assigned to the County, and further including any costs and expenses incurred by the County in responding to an actual or proposed assessment of such penalties on the part of the Internal Revenue Service. This Section shall survive the expiration or termination of this Agreement.
- (5) The foregoing requirements shall not apply to any person who is assigned to the County and is engaged for less than sixty (60) days unless and until such time as such person has in fact been engaged for a period of greater than sixty (60) days. Upon meeting such threshold, the Contractor shall provide to the County the discount for employees that have accepted coverage pursuant to section 2 above.



All-inclusive Service Rate for Durham County Government

Contract Amendment 1

<u>Job Title/Assignment</u>	<u>Pay Rate</u>	<u>Bill Rate</u>	<u>Bill Rate for 23 days</u>
Temperature Screeners: (4) Part-time Admin 2 Building	\$15.00	\$22.50	\$10,350
Temperature Screeners (2) Part-time Public Health EE entrance	\$16.00	\$24.00	\$5,520
Temperature Screeners (10) Part-time HHS Main Entrance	\$16.00	\$24.00	\$27,600
Temperature Screener (2) Fulltime HHS Bilingual	\$16.50	\$24.75	\$9,108
			<hr/> \$52,578

The all-inclusive client service rate includes Express Employment Professionals absorption of the following expenses:

Associate's pay	Worker's Compensation Insurance
Payroll Burden (W-2 Employment)	Weekly invoicing of payroll (NET30)
Advertising	Administration (including payroll and unemployment claims)
Recruiting and Screening	Quality Control & HR Support
ISO Certified Selection Process	Employment Verification & Skills Testing
General Liability Insurance	Drug Screen & Background Checks (as needed)

This quote is for temporary and evaluation/hire assignments. Our agreed upon evaluation hire (contract-to-hire) period is **520** hours. Please contact Express if you are interested in hiring our associate as a regular employee.

The Client agrees to review and approve the associate's timesheet on a weekly basis or notify Express Employment Professionals of another authorized approver. Express will use our online timesheet system (at office.expresspros.com) when available, but may also use individual or group printed timesheets when necessary. Client is aware that, for accurate payroll and billing, all timesheets must be received (approved) by 12 PM on Monday (following the Monday – Sunday work week). Client further authorizes Express to treat faxed or emailed copies of signed timecards, group timesheets or emailed printouts as the original.

The nature of our business requires that we pay our temporary/contract associates each week. Express Employment Professionals bills for services rendered weekly based on hours worked and the all-inclusive service rate listed above.