

# FORSYTH COUNTY

## BOARD OF COMMISSIONERS

MEETING DATE: DECEMBER 3, 2020

AGENDA ITEM NUMBER: 16

**SUBJECT: RESOLUTION AUTHORIZING EXECUTION OF AN AGREEMENT BETWEEN FORSYTH COUNTY AND CMC ENTERPRISES, INC., TO PROVIDE TEMPORARY EMPLOYMENT SERVICES FOR GRANT FUNDED PROGRAMS AT THE FORSYTH COUNTY DEPARTMENT OF PUBLIC HEALTH (FORSYTH COUNTY DEPARTMENT OF PUBLIC HEALTH)**

**COUNTY MANAGER'S RECOMMENDATION OR COMMENTS:** Recommend Approval

### SUMMARY OF INFORMATION:

The agreement with CMC Enterprises, Inc., covers temporary employment services utilized by grant-funded programs (COVID-19 Vaccination, Minority Diabetes Prevention, Pregnancy Care Management, Child Service Coordination, and Women, Infants and Children (WIC) at the Forsyth County Department of Public Health. This agreement begins November 2, 2020, and ends June 30, 2023. The contracted amount in FY21 is \$175,890, FY22 is \$117,328, and FY23 is \$117,328. The total amount of this agreement is not to exceed \$410,546. This agreement will not be utilized if the aforementioned programs do not receive their prerequisite grant funding.

ATTACHMENTS:  YES  NO

SIGNATURE: J. Dudley Watts, Sr. /AMS  
COUNTYMANAGER

DATE: November 30, 2020

**RESOLUTION AUTHORIZING EXECUTION OF AN AGREEMENT BETWEEN  
FORSYTH COUNTY AND CMC ENTERPRISES, INC., TO PROVIDE TEMPORARY  
EMPLOYMENT SERVICES FOR GRANT FUNDED PROGRAMS AT THE FORSYTH  
COUNTY DEPARTMENT OF PUBLIC HEALTH  
(FORSYTH COUNTY DEPARTMENT OF PUBLIC HEALTH)**

**WHEREAS** the Forsyth County Department of Public Health will at times utilize temporary employees for the delivery of grant-funded programs in order to meet the requirements of North Carolina Department of Health and Human Services' agreement addenda;

**WHEREAS** the Forsyth County Department of Public Health requests to contract with CMC Enterprises, Inc., beginning November 2, 2020, through June 30, 2023, to provide temporary staffing services for the County; and

**WHEREAS** it is the recommendation of the County Manager, Deputy County Manager, and the Public Health Director that Forsyth County enter into an agreement with CMC Enterprises, Inc., in an amount not to exceed \$410,546;

**NOW, THEREFORE, BE IT RESOLVED**, by the Forsyth County Board of Commissioners that the Chairman or County Manager and the Clerk to the Board are hereby authorized to execute, on behalf of Forsyth County, the attached agreement, which is incorporated herein by reference, with CMC Enterprises, Inc., in an amount not to exceed \$410,546, subject to a pre-audit certificate thereon by the County Chief Financial Officer, where applicable, and approval to form and legality by the County Attorney.

Adopted this 3<sup>rd</sup> day of December 2020.

**STATE OF NORTH CAROLINA**

**AGREEMENT**

**FORSYTH COUNTY**

THIS AGREEMENT, made and effective this 2nd day of November, 2020, by and between Forsyth County, North Carolina (the "County"), and CMC Enterprises, Inc.(the "Provider");

For the purpose and subject to the terms and conditions hereinafter set forth, the County and the Provider hereby agree as follows:

**1. Services.** Provider shall provide temporary staffing services at the hourly markup rate 31.5% from the hourly rate. The County shall be responsible for selecting each temporary staff member. The Provider may make recommendations to the County for future temporary staff. The Provider shall conduct a criminal background check, and pre-employment drug screen at no additional charge to the County. The County will set the hourly rate for each of its temporary staff hires.

The County may need to send temporary staff to required trainings. The Provider will be reimbursed for charges related to registration and travel expenses provided the temporary staff member follows the travel policy set for by the County. The Provider may also charge a \$100 administrative fee in addition to being reimbursed for registration and travel expenses.

**2. Term.** The services of the Provider shall begin on November 2, 2020, and, unless sooner terminated by mutual consent or as hereinafter provided, shall be provided until June 30, 2023; provided that the County shall have the right to terminate this Agreement, without cause, upon 30 days' notice in writing to the other party, or upon 7 days written notice if the Provider breaches the Agreement.

**3. Compensation.** As full compensation for the Provider's services, the County agrees to pay the Provider a sum not to exceed \$175,890 for County FY21, a sum not to exceed \$117,328 for County FY22 and a sum not to exceed \$117,328 for County FY23 payable in installments. The Provider shall bill the County monthly for services rendered during the preceding 30 days. The County shall pay all such bills within the following 15 days provided all elements of the Agreement are satisfactorily met. Total payments under this contract are not to exceed \$410,546.

Notwithstanding anything to the contrary herein, in the event that public funds are unavailable and not appropriated for the performance of the County's obligations under this Agreement, then this Agreement shall automatically expire without penalty to the County 30 days after written notice of the unavailability and non-appropriation of public funds. In the event of a change in the County's statutory authority, mandate, or mandated functions by state or federal legislative or regulatory actions, which adversely affects the County's authority or duty to continue its obligations under this Agreement,

then this Agreement shall automatically terminate without penalty to the County 30 days after written notice of such limitation or change in the County's legal authority or duty.

**4. Independent Contractor.** The Provider shall operate as an independent contractor, and the County shall not be responsible for any of the Provider's acts or omissions.

The Provider, its employees, and subcontractors shall not be treated as an employee with respect to the services performed hereunder for federal or state tax, unemployment or workers' compensation purposes. Neither federal, state, nor payroll tax of any kind shall be withheld or paid by the County on behalf of the Provider or the employees of the Provider. The Provider is fully responsible for the payment of any and all taxes arising from the payment of monies under this Agreement. The Provider shall comply with the North Carolina Workers' Compensation Act and shall ensure that its subcontractors also comply. The Provider shall not be treated as an employee with respect to the services performed hereunder for purposes of eligibility for, or participation in, any employee pension, health, or other fringe benefit plan of the County. The Provider has no authority to enter into contracts or agreements on behalf of the County. The County shall not be liable to the Provider for any expenses paid or incurred by the Provider unless otherwise agreed in writing. The Provider shall supply, at its sole expense, all equipment, tools, materials, and/or supplies required to provide contracted services unless otherwise agreed in writing.

**5. Women Infant and Children Program Provision.** All activities under this contract will be conducted in accordance with Title VI, Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and WIC Program rules, regulations and policies. No person shall, on the grounds of race, color, creed, marital status, national origin, political beliefs, sex or handicap be subjected to discrimination under the Program.

**6. Indemnification.** The Provider agrees to indemnify, defend, and hold the County harmless from and against any and all claims, expenses (including attorney fees), costs or liability for acts or omissions of the Provider relating to this Agreement or services provided pursuant to it.

**7. Insurance.** The Provider shall maintain, at its sole expense, insurance coverage as required by the Forsyth County Risk Manager.

**8. County Property.** Provider agrees that it shall be responsible for the proper custody and care of any property furnished to it by the County for use in connection with the performance of this contract and will reimburse the County for loss of, or damage to, such property. Any information, data, documents, studies, or reports given to or prepared or assembled by the Provider under this Agreement shall be kept confidential and not divulged or made available to any individual or organization without prior written approval of the County.

**9. Notice.** All notices permitted or required to be given by one party to the other party shall be addressed and delivered in writing as follows:

For the County:  
Adam Pendlebury, Public Health Business Manager  
201 Chestnut Street Winston Salem, 27101  
pendleda@forsyth.cc

For the Provider:  
Casey Hamm  
450 W. Hanes Mill Road, Suite 105 Winston-Salem, NC 27105  
casey@theclarksgroup.com

**10. Assignment.** The Provider may not assign its obligations under this Agreement unless it has received prior written approval from the County, which may be withheld at the sole discretion of the County.

**11. Waiver.** No action or failure to act by the County shall constitute a waiver of any of its rights or remedies or as approval or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

**12. Governing Law.** This Agreement shall be governed by North Carolina law, except that provisions regarding conflicts of laws shall not apply. The venue for any legal proceeding shall be in Forsyth County, North Carolina.

**13. Non appropriation.** Notwithstanding anything to the contrary herein, in the event that public funds are unavailable and not appropriated for the performance of the County's obligations under this Agreement, then this Agreement shall automatically expire without penalty to the County 30 days after written notice of the unavailability and non-appropriation of public funds. In the event of a change in the County's statutory authority, mandate, or mandated functions by state or federal legislative or regulatory actions, which adversely affects the County's authority or duty to continue its obligations under this Agreement, then this Agreement shall automatically terminate without penalty to the County 30 days after written notice of such limitation or change in the County's legal authority or duty.

**14. Survival of Provisions.** All obligations arising prior to termination of this Agreement and all provisions of this Agreement allocating responsibility or liability between the parties shall survive the completion of services and termination of this Agreement.

**15. Modification.** This Agreement may only be modified in writing and signed by both the Provider and by the County Manager or other authorized County official.

**16. Conflict with Attachments.** In the event of any conflict between the provisions in this Agreement and any provisions in an attachment thereto, the provisions in this Agreement shall take precedence over any provision in an Attachment.

**17. Miscellaneous.** The Provider shall comply with all applicable laws and regulations including but not limited to federal, state and local laws regarding business permits, certificates, and licenses that may be required to carry out the services to be performed under this Agreement and all federal immigration laws in its hiring and contracting practices. Provider and its subcontractors shall comply with Article 2 of Chapter 64 of the North Carolina General Statutes relating to the required use of the federal E-Verify program to verify the work authorization of newly hired employees. Failure of the Provider to comply with this provision or failure of its subcontractors to comply could render this contract void under North Carolina law. Provider hereby certifies that it is not on the North Carolina State Treasurer's lists of persons engaging in business activities in Sudan (Darfur), Iran, or boycotting Israel, prepared pursuant to NCGS §§ 147-86.43, 147-86.58, and 147-86.81, nor will Provider utilize for this Agreement any subcontractor on such lists. This agreement is intended for the benefit of the County and the Provider and not for any other party. If any provision of this Agreement shall be unenforceable, the remainder of the Agreement shall be enforceable to the extent allowed by law.

IN WITNESS WHEREOF, the authorized officials of the County and the Provider have set their hands and seals as of the day and year first above written.

FORSYTH COUNTY, NORTH CAROLINA

(SEAL)

By: \_\_\_\_\_  
J. Dudley Watts, Jr, County Manager

Date: \_\_\_\_\_

By: \_\_\_\_\_  
J. Swift, Health Director

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Ashleigh M. Sloop, Clerk to the Board

Date: \_\_\_\_\_

PROVIDER

(SEAL)

By: \_\_\_\_\_

Printed Name \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_