



## **AGREEMENT FOR EDUCATIONAL STAFFING**

**THIS AGREEMENT**, dated July \_\_\_\_, 2008, between Kelly Services, Inc., a Delaware corporation, with its principal place of business located at 999 West Big Beaver Road, Troy, Michigan 48084 ("Kelly"), and Warren County School District, with its principal offices located at 185 Hospital Drive, North Warren, PA 16365 ("Customer").

### **1. DESCRIPTION, LOCATION AND PRICING OF SERVICES**

Kelly will assign its employees to Customer to provide education-related services at the location(s) and for the pricing described in Exhibit A. The pricing structure provided in Exhibit A is intended to be between Kelly and Customer. Customer will be permitted to use Exhibit in connection with its business operations, response to Freedom of Information Act requests and other uses as required by law.

### **2. KELLY'S RESPONSIBILITIES**

#### **(a) Generally**

Kelly will recruit, interview, select, hire and assign employees to Customer to provide education-related services. Kelly will further conduct any additional screening requested by Customer and mutually agreed upon by Kelly and Customer. Kelly assures Customer that it will not furnish Customer with any personnel whom the Customer would deem ineligible if the Customer were directly employing such personnel in the same type of position.

As the employer, Kelly will: (i) maintain all necessary personnel and payroll records for its employees; (ii) calculate their wages and withhold taxes and other government mandated charges, if any; (iii) remit such taxes and charges to the appropriate government entity; (iv) pay net wages and fringe benefits, if any, (i.e., vacation and holiday pay plus other(s) specified in Exhibit A) directly to its employees; (v) provide for liability and fidelity insurance as specified in Section 12 below, and (vi) provide workers' compensation insurance coverage in amounts as required by law.

At Customer's request, Kelly will remove any of its employees assigned to Customer; provided, that this Agreement will in no way affect the right of Kelly, in its sole discretion as employer, to hire, assign, reassign, discipline and/or terminate its own employees.

#### **(b) Compliance**

In connection with the performance of this Agreement, Kelly will comply with all applicable laws, regulations and orders, including, but not limited to, equal opportunity employment laws and regulations, the Fair Labor Standards Act, the Immigration Reform and Control Act, and criminal history record check laws.

#### **(c) Employees on Assignment**

The employees assigned to Customer under this Agreement shall remain employees of Kelly. Kelly's employees shall not be eligible for tenure with Customer or be entitled to participate in any of Customer's employee benefit plans, including pension, 401(k), profit sharing, retirement, deferred compensation, welfare, insurance, disability, bonus, vacation pay, severance pay and other similar plans, programs and agreements, whether reduced to writing or not. Kelly employees will be eligible to receive weekly pay and holiday and vacation bonus pay from Kelly and may participate in Kelly's 401(k) savings plan and group benefit plans that include medical, vision, dental, prescription drug, and life insurance.

**(d) The Kelly Guaranty**

Kelly guarantees that the employees it assigns to Customer will satisfactorily perform the services ordered by Customer. If such services are not performed satisfactorily, Kelly will, upon reasonable notice from Customer, cancel all charges for unsatisfactory services and furnish a replacement as soon as possible, which shall be Customer's sole and exclusive remedy, except for Kelly's indemnity obligations under Section 13 below.

**3. CUSTOMER'S RESPONSIBILITIES**

**(a) Generally**

The services to be performed by employees provided by Kelly will be performed under the direction, supervision and control of Customer. Customer will provide Kelly's employees with: (i) a suitable workplace which complies with all applicable safety and health standards, statutes and ordinances, (ii) all necessary information, training and safety equipment with respect to hazardous substances, and (iii) adequate instructions, assistance, supervision and time to perform the services requested of them. Customer will be responsible for the professional acts, errors, and omissions of Kelly employees who are assigned to work for Customer. Customer shall ensure that Kelly employees shall not have sole custody of a single student, be solely responsible for supervising more than one classroom of students at a time, or administer or maintain custody of any student medications. Customer shall also provide Kelly employees with all necessary site-specific information and training, including but not limited to emergency procedures, school rules and protocols, policies and procedures regarding student disciplinary actions, and confidentiality of student records and information. Customer shall be responsible for Kelly employees: (i) working in situations lacking in appropriate internal controls and safeguards, or (ii) handling cash, negotiables, valuables, merchandise, credit cards, check-writing materials, keys or similar property.

Customer remains sole custodian of its educational facilities and premises to which Kelly employees are assigned to work hereunder. Except for usual workers' compensation claims of Kelly employees, Customer will be responsible for all claims, losses, expenses and damages, including bodily injury and property damage, concerning the use of or loss of use of, and physical loss or damage to, any vehicle and its contents, machinery, equipment, or material in the care, custody or control of Kelly, its agents or its employees in connection with their assignment to Customer. Customer shall be solely responsible for any bodily injury claims asserted against Kelly or its employees by students, their parents or representatives, Customer personnel or business invitees, or other third parties, except to the extent that such claims are based on the negligence or intentional acts of Kelly or the failure of Kelly full time staff personnel to fulfill their obligations regarding the recruitment, screening, and hiring of Kelly employees assigned to Customer. Where a Kelly employee is assigned to perform work involving any of Customer's computer systems, Customer will be responsible for maintaining a current backup copy of any data associated with those systems. All records concerning Customer's students to which Kelly employees have access while assigned to Customer shall be owned by Customer to the extent permitted by law. Customer shall have appropriate written internal control procedures for ensuring the confidentiality of all Customer's student records and appropriately limiting Kelly employees' access to such records.

Customer agrees to provide Kelly with detailed information about the assignment duties that the Kelly employees will have and also agrees to use Kelly employees only in the capacities for which Customer has requested them to. Customer agrees not to



substantially change any Kelly employee's assignment duties without giving Kelly's prior notice and consent. Customer agrees that Kelly employees shall not be given any duties to be performed outside of Customer's premises without Kelly's prior notice and consent. Further, Customer agrees to comply with any restrictions Kelly advises Customer of regarding any restrictions on the responsibilities Customer assigns to Kelly employees.

Customer agrees to give Kelly prompt written notice of any concern or complaint about the conduct of a Kelly employee assigned to Customer. Customer will give such notice no later than the end of the same day that it learns of the concern or complaint. Customer also agrees to permit Kelly to actively participate in Customer's investigation of such a concern or complaint.

**(b) Compliance**

In connection with the performance of this Agreement, Customer will comply with its obligations under all applicable laws, regulations and orders, including, but not limited to, laws relating to employment discrimination. Further, Customer represents that its actions under this Agreement do not violate its obligations under any agreement that Customer has with any labor union.

Customer represents that the Kelly responsibilities set forth in this Agreement regarding substitute teacher screening, compensation, and the like are consistent with or do not violate any state or municipal requirement, or school, school board, or school district policy or practices that the Customer is subject to when the Customer directly employs substitute teachers. Customer also represents that it has disclosed to Kelly all screening requirements that Customer would use for the positions covered by this Agreement if the Customer were directly employing individuals in such positions.

**4. PAYMENT FOR SERVICES**

In consideration of Kelly's performance, Customer will pay Kelly in accordance with the pricing set forth in Exhibit A. Kelly will invoice Customer weekly at the address set forth above or at any other address that Customer designates. Payment will be due upon Customer's receipt of the Kelly invoice. In the event of termination of this Agreement, Customer will pay Kelly promptly for services performed up to the time of termination. Kelly time cards signed as provided in Section 9 below will be conclusive as to the number of compensable hours worked by each Kelly employee assigned to Customer.

**5. TERM; TERMINATION**

The term of this Agreement begins as of the date first shown above and will continue in effect until canceled by either party upon not less than thirty (30) days prior written notice to the other. Kelly reserves the right, however, to terminate this Agreement immediately in the event of non-payment for services rendered. In the event of termination, this Agreement will continue to govern the parties' rights and obligations with respect to services performed prior to termination.

**6. HIRING OF TEMPORARY EMPLOYEES**

Under no circumstances shall Customer be required to pay a fee to Kelly in the event that Customer hires a Kelly employee either during the course of or after the termination of this Agreement..

**7. DOCUMENTATION OF TIME WORKED**

**(a)** Customer agrees to review, approve and sign, by signature or electronic means, documentation of time worked by Kelly's employees. Customer will also designate one or more representatives of Customer to approve the record on its behalf. If Customer representative is

unavailable to approve, the Kelly representative responsible for the Customer assignment, or other Kelly representative authorized by Customer may approve the record on Customer's behalf or it may be approved in accordance with (b) below. Customer will use reasonable efforts to assist Kelly in the retrieval of missing or unsubmitted substitute teacher time sheets.

**(b)** Electronic approvals through the KASS Web Time system require the following:

- i. Substitute teacher will submit time for approval weekly. Final Customer approval should be completed by Wednesday at 11:59 PM. Customer will make reasonable efforts to ensure that approving managers take approval action on Monday and adhere to this schedule to expedite substitute payroll.
- ii. Approved time for a given weekending date will be gathered from the system Monday, Tuesday and after midnight Wednesday as time sheets are approved. At that time, all non-rejected time that has been submitted for approval will be considered approved-in-full by the school, and will be sent for payroll processing.
- iii. All Customer approvers must have school-issued, active e-mail accounts.
- iv. Each school should assign a KASS Web Time administrator to approve substitute teacher time sheet each week. A backup administrator should also be designated to approve time sheets in the event of the first administrator's absence.
- v. All adjustments to approved time will be handled outside of the KASS Web Time system. KASS will not be updated to reflect the adjusted values.



## **8. ADJUSTMENTS TO PRICING**

At least annually during the term of this Agreement the parties will review the pricing provided in Exhibit A and agree upon such adjustments as may be necessary to meet market conditions and the level of services requested by Customer. The pricing provided in Exhibit A will be adjusted by Kelly to reflect increases in wage and/or related tax, benefit and other costs incurred by Kelly during the term of this Agreement as the direct result of any determination, order or action by or under any applicable governmental authority, collective bargaining agreement or insurance or benefit program. Such adjustment will be applied as of the effective date of the amended wage, tax, benefit or mandated cost, and will be applied retroactively, if necessary. If a recalculation is required because Customer failed to disclose to Kelly information about Customer's business which impacts Kelly's obligation to pay wages, taxes or benefits with respect to its employees, Customer will be responsible for Kelly's reasonable administrative costs in connection with the recalculation. Unless otherwise provided by law, any sales or use tax on the services provided under this Agreement or prices set forth in Exhibit A will be added to the invoiced amount and paid by Customer to Kelly.

## **9. DAILY UNIT AND OVERTIME PAY/BILLINGS**

Kelly generally pays its employees and bills its customers on a daily unit basis. For each full day worked that does not exceed 8 hours, Kelly will pay its employee one unit of pay and bill the Customer for one full unit. Kelly will pay the employee and bill the customer for one-half unit if the employee worked a partial day not exceeding 4 hours Kelly will pay the employee and bill the customer for one unit if the employee worked a partial day that exceeded 4 hours but did not exceed 8 hours. Five units' pay is full compensation for up to 40 hours' work in a week.

If an employee works more than eight hours in a day, Kelly will pay the employee additional compensation for the time worked in excess of 8 hours on a fractional unit basis in quarter fraction increments (e.g.,  $\frac{1}{4}$ ,  $\frac{1}{2}$ ,  $\frac{3}{4}$  of a unit for up to 2, 4, or 6 hours, respectively). Kelly will bill the customer for such additional time in a similar fractional unit basis.

If Customer specifically requests that an employee work overtime and approves such overtime on the employee's time cards (see Section 9 above), Kelly will pay the employee and bill Customer at overtime rates for the time worked over 40 hours in a week. Overtime will be paid and billed at 1.5 times the employee's unit pay rate and customer's unit bill rate for any full or partial units over 5.0 units in a week, respectively. In states where daily overtime or double time pay is required (e.g., California), Kelly will bill Customer 1.5 times or 2.0 times the bill rate for the overtime or double time, respectively, that Kelly must pay its employees.

In situations where Customer and Kelly have agreed to hourly billing instead of daily unit billing, Kelly will pay its employees on an hourly basis in compliance with applicable overtime (and double time where required by state law) and other pay requirements for non-exempt employees. Kelly will bill Customer on an hourly basis at agreed upon hourly rates. If an employee works overtime as specifically requested by Customer and evidenced by the time cards (see Section 9 above), Kelly will bill Customer for such overtime at 1.5 times the Customer hourly bill rate. If double time pay requirements apply, Kelly will bill the Customer 2.0 times the applicable hourly billing rate.

## **10. WORKERS' COMPENSATION AND LIABILITY INSURANCE**

Kelly will, at its own expense, provide and keep in full force and effect during the term of this Agreement the following kinds and minimum amounts of insurance:

**(a) Workers' Compensation**

Workers' compensation statutory coverage as required by the laws of the jurisdiction in which the services are performed;

**(b) Automobile**

Commercial automobile liability insurance with a \$1,000,000 combined single limit on vehicles owned, leased, or rented by Kelly while performing under this Agreement;

**(c) General Liability**

Commercial general liability insurance, including personal injury, blanket contractual liability and broad form property damage, with a \$1,000,000 combined single limit per occurrence;

**(d) Bond**

Commercial blanket bond insurance with limits of \$3,000,000 in the aggregate per occurrence; and

**(e) Umbrella Liability Insurance**

\$5,000,000 combined single limit per occurrence. Kelly will furnish Customer with certificates evidencing such insurance coverage, upon request.

**11. INDEMNIFICATION BY KELLY**

Kelly will indemnify, defend and hold harmless Customer and its directors, officers, employees and agents, to the extent of the insurance limits set forth in Section 12, from and against all demands, claims, actions, losses, judgments, costs and expenses (including reasonable attorney fees) (collectively "Damages") imposed upon or incurred by Customer to the extent arising out of any of the following:

- (a)** Kelly's failure to comply with its obligations under any applicable laws, regulations or orders;
- (b)** Breach of any obligation of Kelly contained in this Agreement; or
- (c)** Any direct claim for workers' compensation benefits for job-related bodily injury or death asserted against Customer by any Kelly employees or, in the event of death, by their personal representatives.

Kelly's obligation to indemnify, defend and hold harmless will not apply to: (i) indirect, special or consequential Damages, (ii) the extent that Damages are due to Customer's failure to fulfill its duties under Section 3, (iii) the extent that any Damages, except for the payment of workers' compensation benefits, are the result of any negligent act or omission or intentional misconduct of Customer, its officers, employees or agents, or (iv) the extent that Customer is required to indemnify Kelly against such Damages under Section 14.

**12. INDEMNIFICATION BY CUSTOMER**

To the extent permitted by law, Customer will indemnify, defend and hold harmless Kelly and its directors, officers, employees and agents from and against all Damages imposed upon or incurred by Kelly, other than for job-related bodily injury or death of Kelly's employees on assignment to Customer, arising out of any of the following:

- (a)** Customer's failure to comply with its obligations under applicable laws, regulations or orders; or



**(b) Breach of any obligation of Customer contained in this Agreement;**

Customer's obligation to indemnify, defend and hold harmless will not apply (i) to indirect, special or consequential Damages or (ii) to the extent any Damages are caused by any negligent act or omission or intentional misconduct of Kelly, its officers, employees or agents.

**13. AUTOMATED SCHEDULING**

Kelly may provide an interactive, voice-activated response (IVR) and internet program for automated scheduling and absence reporting in some situations. Among other things, the program would enable Kelly to provide Customer with certain reports and information related to regular teacher absences and substitute teacher staffing coverage, and permit Customer and its designated representatives to schedule regular teacher absences. Implementation of the IVR/internet program would require that Customer provide certain information concerning the employment positions that the Agreement for Educational Staffing covers and the personnel currently in such positions.

Any information that Customer provides Kelly for purposes of implementing the IVR/internet program will be used in connection with the educational staffing services that Kelly provides. Kelly will not use such information for any other purpose without Customer's prior written consent.

Information in reports that Kelly furnishes to Customer which are generated based on the IVR/web program will contain information that Customer's personnel provides upon accessing and using the IVR/web program. Accordingly, the accuracy of such information depends on the accuracy of the information provided by Customer's personnel. Customer will be solely responsible for verifying the accuracy of such information. Kelly shall not be responsible for the accuracy of such information.

**14. NOTIFICATION OF CLAIMS**

Customer and Kelly agree (a) to notify each other in writing of any asserted claim within ten (10) days of either discovery of the occurrence upon which the claim may be based or learning of the claim, whichever occurs first, and (b) to permit Kelly or Customer, as the case may be, to defend the claim at the option of the party against whom the claim is asserted, with counsel acceptable to such party, which consent will not be unreasonably refused. Neither party will pay or agree to pay any asserted claim under this Agreement without prior written approval from the party against whom the claim is asserted, which approval will not be unreasonably withheld; provided that approval on behalf of Kelly must be obtained from the Kelly Law Department in Troy, Michigan.

**15. PERMITS AND LICENSES**

Each party will maintain in effect during the term of this Agreement any and all Federal, State and/or local licenses and permits which may be required with respect to the respective business in which each party is engaged.

**16. FORCE MAJEURE**

Kelly will not be responsible for failure or delay in assigning its employees to Customer if the failure or delay is due to labor disputes and strikes, fire, riot, war, acts of God or any other causes beyond the control of Kelly.

**17. NOTICES**

Any notices, consents or other communications required or permitted under this Agreement must be in writing (including telecommunications) and delivered personally or sent by telex, telecopy or other wire transmission (with request for assurance in a manner typical with respect to communication of that type), overnight air courier (postage prepaid), registered or certified mail (postage prepaid with return receipt requested), addressed as shown on the first page of this Agreement.

Unless otherwise stated in this Agreement, notices, consents or other communications will be deemed received (a) on the date delivered, if delivered personally or by wire transmission; (b) on the next business day after mailing or deposit with an overnight air courier; or (c) three business days after being sent, if sent by registered or certified mail.

**18. SECTION HEADINGS**

The Section headings of this Agreement are for the convenience of the parties only and in no way alter, modify, amend, limit, or restrict the contractual obligations of the parties.

**19. SEVERABILITY; WAIVER**

The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement. Any delay or waiver by a party to declare a breach or seek any remedy available to it under this Agreement or by law will not constitute a waiver as to any past or future breaches or remedies.

**20. ASSIGNMENT**

Neither Kelly nor Customer may assign this Agreement without the prior written consent of the other party; provided that Kelly may use secondary vendors to fulfill any or all of its obligations hereunder without securing Customer's consent. This Agreement will be binding upon the parties hereto, and their successors, heirs and assigns, as permitted.

**21. INDEPENDENT CONTRACTOR**

In its performance of this Agreement, Kelly will at all times act in its own capacity and right as an independent contractor, and nothing contained herein may be construed to make Kelly an agent, partner or joint venturer of Customer.

**22. AUTHORITY TO CONTRACT**

The Customer represents and warrants that it has the right, power, and any requisite authorization to enter into this Agreement. The Customer represents that it has satisfied any applicable procedural requirements necessary for it to be authorized to enter into this Agreement.

The Customer representative who is signing this Agreement represents that he/she has been delegated authority by the subject school board/district to execute this Agreement for the school board/district.

**23. LEGAL REVIEW**

Kelly and Customer represent that they have each read this Agreement in its entirety, had the opportunity to consult with legal counsel and exercised their own discretion in having their respective legal counsel review this Agreement. Both parties represent that they agree to the terms of this Agreement without relying on representations of the other party or the other party's officers, directors, employees, or legal counsel which are not expressly stated in this Agreement. Both parties further represent that the Agreement's terms are clear and



unambiguous. To the extent that in the future any term of the Agreement is deemed ambiguous, the parties expressly agree that neither party shall be deemed the drafter of the Agreement such that the ambiguity would be interpreted in favor of the other party.

**24. ENTIRETY**

This Agreement and its Exhibit(s) are the entire understanding and agreement between the parties with respect to the subject matter covered, and all prior agreements, understandings, covenants, promises, warranties and representations, oral or written, express or implied, not incorporated in this Agreement are superseded. This Agreement may not be amended or supplemented in any way except in writing, dated and signed by authorized representatives of both parties.


**IN WITNESS WHEREOF**, the parties have caused this Agreement to be signed by their respective duly authorized representatives as of the day and year shown above.

**KELLY SERVICES, INC.**

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

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

**Warren County School District:**

By: 

Title: BOB President



## EXHIBIT A

This Exhibit A is accepted and agreed to by both parties and made a part of the terms of the Agreement For Educational Staffing entered into on June 30, 2008.

1. Job title(s) that Kelly employees will be temporarily assigned under this agreement include:

- *Substitute Teachers*

2. Pricing; Markup Agreement

Job Title	Daily/Hourly Pay Rate	Markup	Daily/Hourly Bill Rate
Substitute Teacher	\$90/day May vary per district pay	1.38	\$124.20

3. Both parties agree to the terms stated above being incorporated in and a part of the terms of the Agreement for Educational Staffing.

**KELLY SERVICES, INC.**

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

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

**Warren County School District:**

By: *Jack Martin*

Title: *BOB President*