



CUSTOMER SERVICES AGREEMENT

This Agreement is between Kensington Police Protection and Community Services District ("Customer") and Kelly Services, Inc. ("Kelly") regarding the provision of its assigned employees ("Assigned Employees") and related staffing services by Kelly to Customer.

1. **Kelly Guarantee.** Kelly guarantees that Assigned Employees it places with Customer will satisfactorily perform the services ordered by Customer. If not, Kelly will, upon reasonable notice from Customer, cancel charges for unsatisfactory services and furnish a replacement as soon as possible.
2. **Placement of Assigned Employees.** Customer will place orders with Kelly describing type of work requested, specific duties to be performed, skills required, and any other requirements. Kelly will place Assigned Employees to perform services that Customer requests under Customer's operational supervision at the location(s) and at the rates in attached Exhibit A.
3. **Employment Relationship with Assigned Employees.** As the provider of staffing services, Kelly will be the employer of Assigned Employees, and will be responsible for the staffing services listed below. As the recipient of such staffing services, Customer will be responsible for controlling the environment in which Assigned Employees perform their work, the details of their work, and their work product, and for the business-related responsibilities below. Customer acknowledges that it is the responsibility of Kelly to attend to any disciplinary or performance management concerns affecting its Assigned Employees and Customer shall assume all liability in the event Customer takes actions that are Kelly responsibilities as defined in this Section 3.

A. Kelly's Responsibilities. Kelly will:

1. Recruit, select, and hire Assigned Employees;
2. Place Assigned Employees according to Customer's requirements;
3. Pay Kelly Assigned Employees the wages and provide the benefits that Kelly offers to them as its employees;
4. Pay or withhold payroll taxes (e.g., FICA) and insurance premiums (e.g., Medicare) and fulfill its obligations for unemployment compensation (e.g., FUTA, SUTA);
5. Provide workers' compensation benefits and coverage for Assigned Employees;
6. Maintain Assigned Employees' personnel and payroll records related to their employment by Kelly;
7. Comply with laws, rules or regulations applicable to providers of staffing services;
8. Comply with the Patient Protection and Affordable Care Act ("Affordable Care Act") and its regulations, as applicable, and have established internal procedures for reviewing and maintaining its compliance with the Affordable Care Act;
9. Require Assigned Employees to agree in writing to protect confidentiality of Customer's proprietary information;
10. Require Assigned Employees to execute agreements that Customer requests with regard to intellectual property developed by them in performance of their work for Customer;
11. Require Assigned Employees to acknowledge in writing that they have no right to participate in Customer's employee benefit plans;
12. Require Assigned Employees to comply with all rules and policies of Customer (e.g., those relating to premises access and security);
13. Make legally required employment law disclosures to Assigned Employees; and
14. Provide Assigned Employees of diverse race, gender, ethnicity, and background.

B. Customer's Responsibilities. Customer will:

1. Provide Assigned Employees with a safe and suitable workplace that complies with all applicable safety and health standards, statutes, and ordinances, (including all site-specific training related to the chemical, physical, and biological hazards in the workplace), and provide all required information and safety equipment applicable to Assigned Employee's placement and prompt notice of:
 - a) any injury suffered by an Assigned Employee (and adhere to OSHA recordkeeping requirements);
 - b) when an Assigned Employee's assignment requires termination; and,
 - c) if Customer wishes to hire an Assigned Employee.
2. Use Assigned Employees only in assignments that match the job descriptions for which Kelly places them;
3. Provide adequate internal controls, supervision, and instructions for Assigned Employees, and be responsible for their conduct when they are required to handle cash, confidential or credit card information, trade secrets, valuables, or similar property;
4. Be responsible for use of any vehicle and their contents, powered mobile equipment or Customer issued property used by Assigned Employees in connection with an order, except for workers' compensation claims of Assigned Employees;
5. Provide a DD254 (Contract Security Classification Specification form) to Kelly for any orders in which a security clearance is required for Assigned Employees to perform job duties and a new DD254 in the event any job duties change or our Assigned Employee is required to work on a different project;

6. Upon request, provide Kelly with information in its possession relating to any Assigned Employee, including, but not limited to, Customer timekeeping systems or other records;
7. Be responsible for the conduct of its own officers, employees, and agents; and
8. Comply with duties imposed on the recipient of staffing services by law, rule, or regulation, including:
 - a) providing Assigned Employees with suitable seating where required by law;
 - b) providing Kelly with adequate information regarding work by any Assigned Employee that is subject to the Service Contract Act; and,
 - c) using a timekeeping system that (i) complies with applicable federal and state legal requirements and (ii) accurately records in and out times and unpaid breaks of the Assigned Employees.

4. Insurance Including Workers' Compensation Coverage. Kelly will maintain during the term of this Agreement at least the following types and limits of insurance or other coverage:

- A. Workers' compensation on the Assigned Employees, in amounts no less than required by law;
- B. Employer's liability insurance with a limit of \$1,000,000;
- C. Commercial automobile liability insurance with a \$1,000,000 combined single limit on vehicles owned, leased, or rented by Kelly;
- D. Commercial General Liability insurance, including bodily injury, contractual liability, and property damage, with a \$1,000,000 combined single limit per occurrence; and
- E. Commercial blanket bond/ (Crime/Fidelity bond) with limits of \$3,000,000 per occurrence.

Kelly will provide Customer with certificates of this insurance coverage, upon request.

5. Billing.

- A. **Invoices.** Kelly will invoice Customer each week for all "Hours Worked" (as defined by the Fair Labor Standards Act of 1938 and applicable state law) by Assigned Employees at agreed-upon hourly bill rates. Exhibit A lists the rates Kelly will invoice Customer (and any reimbursable expenses). If the Customer's rates are not set out in Exhibit A, Kelly and Customer will agree on rates at the time of an order, which Kelly will record electronically in its systems. Kelly will add to Customer's invoices as a separate line item: i) any sales or use taxes that apply; and, ii) all costs and administrative fees associated with required background and drug screening. The services billed may be provided by Kelly Services Global, LLC or Kelly Services USA, LLC, affiliates of Kelly, or third-party staffing providers (collectively "Staffing Providers"). Kelly is acting solely as a collection agent on behalf of the Staffing Providers in such cases and bears no liability, except as that of collection agent to the Staffing Providers or their customers. Client will be allowed to view related documents governed by third-party.
 - B. **Adjustments.** Upon thirty (30) days' prior written notice, Customer agrees that pricing will be adjusted by Kelly annually and, additionally, to reflect increases in wage and related tax, benefit and other costs as the result of any legislative change, agency guidance or determination, order or action, by or under any applicable governmental authority, insurance or benefit program (including but not limited to, increases in costs for Kelly to comply with the provisions of recent laws or related guidance). Adjustments will be applied as of the effective date of the increased tax, benefit, or cost. Kelly will also adjust pricing for changes in sales, use, or gross receipts taxes. Such increases will be applied retroactively, if necessary. In addition, Customer agrees to be responsible for any adjustments to wages or benefits required relating to work performed subject to the Service Contract Act.
 - C. **Overtime.** Assigned Employees are presumed to be "nonexempt" employees – Kelly will pay overtime premiums (and bill Customer accordingly) in accordance with federal and state law and for additional overtime premiums requested by Customer. Kelly will charge Customer overtime rates for all overtime hours Customer requires or permits the Assigned Employees to work. Unless listed in Exhibit A, overtime rates will be calculated by applying to Kelly's bill rate the same overtime multiple as Kelly is required to apply to the Assigned Employee's pay rate. Kelly only will classify Assigned Employees as "exempt" from overtime pay under the Fair Labor Standards Act of 1938 if: (1) the Customer requests that Kelly do so; (2) the Customer signs Kelly's Customer Exempt Request and Agreement; and, (3) Kelly determines that the exemption is valid under applicable law and regulations, subject to the Customer providing Kelly with complete and accurate information concerning the position.
 - D. **Record Of Time Worked.** Customer agrees to review and approve (by signature or electronically) a record of time worked by Assigned Employees. If a Customer representative is unavailable, Kelly's representative responsible for the Customer placement (or other Kelly representative authorized by Customer) may approve the record on Customer's behalf.
- 6. Payment Terms.** Payment for services is due upon Customer's receipt of Kelly's invoice (Kelly acknowledges that Customer's processing of the invoice may take up to five (5) days).
- 7. Conversion and Transition of Assigned Employees.** Customer acknowledges that Kelly incurs substantial expenses for recruiting, testing, training and retaining its Assigned Employees and Customer agrees to obtain the services of each Assigned Employee only through an order with Kelly. If Customer wishes to obtain the services of an Assigned Employee by hiring them (a "conversion"), or by placement, arrangement, or contract from another source (a "transition"), Customer will compensate Kelly at the conversion rates in Exhibit A.
- 8. Issue Resolution and Indemnification.** Kelly and Customer expect to resolve any other issues that arise with respect to performance of this Agreement through business discussion and conciliation. In the unlikely event that resolution efforts are

unsuccessful, each party agrees to indemnify the other party (and its officers, directors, and employees) for claims, losses, penalties, and damages (and reasonable legal fees) to the extent they arise from the indemnifying party's violation of law, or material breach of this Agreement, including obligations listed in **Section 3**.

9. Indemnification Process. To obtain indemnification, a party must promptly notify the other party, cooperate in resolving the claim, and (when liability to third parties is involved) yield reasonable control of the claim's resolution to the other party. Neither party is obligated to provide or commit itself to indemnity while the underlying matter is still pending.

10. LIMITATION OF LIABILITY.

- A. **No Consequential or Indirect Damages.** IN NO EVENT SHALL EITHER PARTY BE LIABLE UNDER THIS AGREEMENT TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES. THIS INCLUDES ANY DAMAGES FOR BUSINESS INTERRUPTION, LOSS OF USE, DATA, REVENUE OR PROFIT, WHETHER IN CONTRACT OR TORT (INCLUDING NEGLIGENCE), REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR WHETHER PARTY WAS ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES.
- B. **Maximum Liability.** KELLY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) SHALL BE LIMITED TO PROVEN DIRECT DAMAGES UP TO A MAXIMUM OF \$10,000 PER OCCURRENCE.
- C. **Third Party Claims.** IN ADDITION TO THE LIMITATION OF LIABILITY IN SECTION 10(A), KELLY'S AGGREGATE LIABILITY TO THE CUSTOMER FOR THIRD PARTY CLAIMS, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) SHALL BE LIMITED TO THE EXTENT OF KELLY'S INDEMNIFICATION OBLIGATIONS IN SECTION 8.

11. Term. This Agreement will continue in force unless one party gives the other party at least fifteen (15) days' written notice of termination. Kelly may terminate this Agreement immediately for non-payment. Termination of this Agreement will end the staffing relationship, but this Agreement will continue to govern the parties' rights and obligations with respect to the business done before termination, including but not limited to conversion or transition of Assigned Employees.

12. Notices. Notices or communications required by this Agreement must be in writing and mailed (including electronic transmission) or, faxed to the person indicated in the signature block below.

13. Independent Contractor. Nothing in this Agreement makes Kelly an agent, partner or joint venturer of Customer.

14. Governing Law. The laws of the State of California will govern this Agreement, without regard to its conflicts of laws rules. In the event that a dispute arises from the interpretation or performance of this agreement, the venue for resolving this dispute shall be the Superior Court of Contra Costa County.

15. Force Majeure. Neither party will be responsible for failure or delay under this Agreement because of force majeure events or other causes beyond its control.

16. 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.

17. Entire Agreement. This Agreement (including any attachments) contains all of the terms between Customer and Kelly on the subject of staffing services for the jobs and locations specified; it replaces all agreements and representations on the subject. Modifications to this Agreement must be in writing signed and dated by both parties. Forms that may be used by the parties in their staffing relationship such as purchase orders, time cards, and invoice recitals will not supersede, supplement, modify, or control this Agreement.

Kensington Police Protection and Community Services
District

217 Arlington Ave, Kensington, CA 94707
tconstantouros@kppcsd.org


Signature

ANTHONY CONSTANTOUIROS
Printed Name

General Manager
Title

8/18/2019
Date Signed

KELLY SERVICES, INC.

Address for Notices:
999 W. Big Beaver Road
Troy, MI 48084
Attn: General Counsel

Lisa Norton

Signature

Lisa Norton

Printed Name

Recruiting Lead

Title

8/15/2019

Date Signed