

Glassboro Public Schools

TO: Mark Silverstein

FROM: Jennifer Johnson, Board Secretary
Danielle Sochor, Chief Academic Officer

DATE: October 11, 2019

RE: Substitute Teacher Contract with Insights (Attachment)

Recommend approval to contract with Insights Workforce Solutions, LLC as a professional service for substitute placement. This contract will be used in addition to the current substitute contract to ensure all efforts are made to provide substitutes for instruction when needed.

Contract review was completed by district attorney.



Insight Workforce Solutions

SUBSTITUTE PLACEMENT AGREEMENT

This Agreement entered into on October 14, 2019, ("Effective Date") by and between **Insight Workforce Solutions LLC**, a New Jersey limited liability company (the "**Company**") located at 523 Hollywood Ave, Cherry Hill, New Jersey 08002, and **Glassboro Board of Education** located at 560 Joseph Bowe Blvd, Glassboro, NJ 08028 (the "**District**").

Background

The Company is in the business of providing substitute personnel for school districts, as well as other related school district staffing services. The District desires to engage the services of the Company on the terms and conditions set forth in this Agreement.

NOW THEREFORE, intending to be legally bound and acknowledging the receipt of adequate consideration, the parties hereby agree as follows:

1. Provision of Substitute Staff. The Company shall be a contract provider of substitute staff listed in Exhibit "A" ("**Substitute Staff**") to fill positions at the request of the District on an as-needed basis using such request mechanism(s), policies, and procedures as may be established by the Company from time to time. The Company makes no guarantee that it will be able to fill all requests made by the District.

1.1 The District agrees that the Company shall be a contract provider of Substitute Staff to the District, and at the request of the District, to provide other substitute positions as defined by the District. All or any placement of Substitute Staff shall be made pursuant to this Agreement, and the processes and procedures established by the Company, be paid by the Company, with the District providing payment for said services by the Company in accordance with this Agreement.

1.2 The District may provide a list of Substitute Staff which the District has employed prior to the Agreement that the District desires to remain in the pool of Substitute Staff assigned by the Company to the District ("Employees"). The District shall provide a written list of such personnel and may update said list, by written addition or deletion of all changes, as appropriate. Employees shall be subject to the interview, training, background checks and certification requirements included elsewhere in the Agreement, and normal employee responsibilities attendant to employment. The Company will accept such persons for assignment to the District. For the first 90 days of operation, the Company will be indemnified by the District with respect to current district substitute staff compliance with the New Jersey Department of Education.

2. Treatment of Substitute Staff as Employees of the Company All Substitute Staff provided by the Company will be treated by the District as employees of the Company, and not as employees of the District, for all purposes, including but not limited to Federal and State income tax purposes. Without limiting the preceding sentence:

2.1 The Company shall maintain all necessary personnel and payroll records for the Substitute Staff;

2.2 The District shall not be responsible for the payment of the wages and fringe benefits (if any) of the Substitute Staff; The Company shall withhold applicable taxes from the wages of the Substitute Staff and shall be responsible for any payroll tax liabilities of an “employer” with respect to the Substitute Staff;

2.3 The Company shall provide applicable workers’ compensation insurance coverage for the Substitute Staff in such amounts as may be required by law;

2.4 Substitute Staff shall not be eligible for tenure with the District or be entitled to participate in any of the District’s employee benefit plans, including but not limited to health benefits, pension, 403(b), profit sharing, retirement, deferred compensation, welfare, insurance, disability, bonus, vacation pay, severance pay and other similar plans, programs and agreements, whether or not reduced to writing;

2.5. In order to provide certain Substitute Staff who are in the process of obtaining the required initial or renewal State certifications, if requested, the District shall allow Company access to District resources to credential Substitute Staff and shall assist the Company in getting Substitute Staff Credentialed as required in Section 3, below, on a timely basis; and

2.6. The Company shall be required to comply with all State and Federal Laws pertaining to employees, including, but not limited to the New Jersey Paid Sick Leave Act. The cost of compliance shall be the sole responsibility of the Company and in no event passed through to the District.

3. The Company’s Obligations

3.1 The Company will act in good faith to provide Substitute Staff who, if needed or applicable; (a) hold a current license and certification for the position(s) requested by the District; (b) have completed a criminal history check from the New Jersey Department of Education; (c) have appropriate inoculations and tuberculosis testing as required by the New Jersey Department of Education; and, (d) who shall render services in accordance with applicable laws and procedures of the State of New Jersey and this Agreement.

3.2 In selecting Substitute Staff, the Company shall apply such screening and evaluation criteria as it may determine in its sole discretion and as may be required by the applicable law of the jurisdiction in which the services of Substitute Staff will be performed. The

Company will conduct any additional screening that may be mutually agreed upon by the Company and the District, with an appropriate increase in the Company's fees, which shall be agreed to in writing prior to the Company conducting additional screening. If at any time the District or its Board of Education is unsatisfied with Substitute Staff, the District may preclude that substitute from coming back to the District upon written notification to the Company.

3.3 The Company seeks to provide Substitute Staff that are trained for the requested positions. The Company will provide training as required by the State general rules and procedures applicable to the position, and other pertinent matters prior to any assignment of said substitute staff to a District.

4. The District's Obligations. In connection with Substitute Staff provided by the Company pursuant to this Agreement, the District shall:

4.1 Supervise the professional performance of Substitute Staff using the same degree of diligence used to supervise its own employees;

4.2 Provide a safe and suitable workplace that complies with all applicable safety and health standards, statutes, and regulations;

4.3 Provide Substitute Staff with adequate information, training, and safety equipment with respect to hazardous substances and any inherent dangers of the workplace, including emergency procedures, school rules and protocols, policies and procedures regarding student disciplinary actions, and confidentiality of student records; further, the District will provide all Substitute Staff with any training appropriate to the needs, duties, responsibilities, or knowledge unique to the District or otherwise different than would generally be appropriate in other districts.

4.4 Ensure that Substitute Staff does not: (i) have sole custody of a single student; (ii) have sole responsibility for more than one classroom of students at any time; (iii) administer or maintain custody of any student medications; (iv) have custody of cash, negotiable valuables, merchandise, credit cards, check writing materials, keys or similar property, except for student food service money that may be collected in the normal course of business; and, (v) use any vehicle on behalf of the District;

4.5 Assign Substitute Staff only to tasks for which they have been requested, unless written consent has been given by the Company. Heavy labor, lifting, or physical activity is prohibited unless required and accepted in the job description.

4.6 Require Substitute Staff to perform services for the District only (i) during the normal school day, which for all Substitute Staff shall be no more than 7.6 hours with .5 hours for lunch and (ii) for the regular school year as currently defined by the District as of the Effective Date of this agreement.



4.7 Not assign Substitute Staff to travel or perform duties off the premises of the District where the Substitute Staff has been assigned by the Company pursuant to this Agreement;

4.8 Maintain appropriate password security and backup copies of all data if Substitute Staff is assigned duties in connection with the District's computer systems;

4.9 Maintain appropriate written internal control policies and procedures to ensure the confidentiality of all student records and appropriately limit the access of Substitute Staff to such records;

4.10 Not promise any Substitute Staff an increased rate of compensation or disclose to any Substitute Staff the compensation rates or fringe benefits of other personnel;

4.11 Comply with any restrictions imposed by the Company on the responsibilities assigned to any Substitute Staff;

4.12 Approve and sign forms supplied by the Company documenting the amount of time worked by Substitute Staff or, if representatives of the District are not available to approve and sign such forms, authorize such forms to be executed by representatives of the Company on behalf of the District;

4.13 Be responsible for keeping the Company promptly informed by email (if available) of all Substitute Staff changes and any changes in the District or building supervisory contact information;

4.14 Notify the Company either prior to 6:00 a.m. or three (3) hours prior to the start of the class, through the protocols established by the Company for such notice, of the need for Substitute Staff for a given day; however, the Company and the District recognize that the need for a substitute may occur after the above times and that in such cases the Company will use its best efforts to find a substitute for such District requests. The District shall not hold the Company responsible for any unfilled Substitute Staff requests received after the minimum notice period above;

4.15 Comply with all Company policies and procedures to accurately invoice the District. Process the daily record keeping and perform other tasks necessary for the Company to administer and track Substitute Staff, including but not limited to, sign in and out procedures and related records; and

4.16 The District shall be solely responsible to control staff absences and any budgetary impact resulting there from.

5. Indemnification and Limitations of Liability.

5.1 **Indemnification of the District by the Company.** The Company shall indemnify and hold the District, its Board and its agents, employees, and Board members harmless

from and against all claims or losses incurred, including reasonable attorney's fees, that are proximately caused by the sole acts or omissions of the Company, Substitute Staff, or other employees or authorized agents of the Company, or by the Company's breach of this Agreement, except that such indemnification shall not apply to any claims or losses for which the Company is entitled to indemnification by the District. In addition, the Company's indemnification for any and all claims pursuant to this Agreement shall be expressly limited to the insurance coverage that is paid to the Company for such claims, if any, under the Company's insurance policies required under this Agreement.

5.2 Indemnification of the Company by the District. The District shall indemnify and hold the Company harmless from and against all claims or losses incurred by the Company, including reasonable attorney's fees, (i) that are proximately caused by the acts or omissions of the District or its employees or authorized agents, or by the District's breach of this Agreement; or (ii) arise from any injury to Substitute Staff or other persons on the premises of the District or while performing services on behalf of the District, and not caused by the acts or omissions of the Company, Substitute Staff, or other employees or authorized agents of the Company.

5.3 Notification; Right to Defend. A party incurring any claim or loss for which indemnification may be provided pursuant to this Section 5 shall promptly notify the other party in writing. The recipient of such notice may, at its own cost and expense, thereupon assume the defense of any third-party claim using counsel reasonably satisfactory to the notifying party.

5.4 Limitation of Damages. Under no circumstances shall the Company be liable for special, indirect, consequential, punitive, expectancy, lost profit or goodwill damages, or for damages caused by the unsatisfactory performance of Substitute Staff that does not result in a finally adjudicated claim of damages against the District brought by a third party.

5.5 Complete Agreement. The parties agree that this Section 5 sets forth their complete agreement with respect to any possible indemnification claim, and waive their right to assert any common-law indemnification or contribution claim against the other.

6. Fees and Payment.

6.1. The Company's **Pricing Plan**, attached hereto as Addendum A and made a part of this Agreement, is accepted by the District. The Company shall submit to the District a weekly invoice showing in reasonable detail the services provided.

6.2 Changes to Pricing Plan. In the event that the District determines to increase the established pay rate for Substitute Staff from that specifically listed on Addendum A, or if the District determines to establish a new Substitute Staff classification or new pay rate to be paid to some or all of the Substitute Staff (e.g., for improved recruitment, retention or for other reasons) not identified on Addendum A, the billing rate to the District shall be determined by using the markup used on Addendum A. The District shall provide the Company advance written notice of its decision to increase existing pay rate, establish a new Substitute Staff

classification, or a new pay rate.

6.3 For multi-year Agreements or whenever this Agreement is extended and renewed, the Pricing Plan will be increased by the most recent Public Schools Contracts Law "Price Index".

6.4 Patient Protection and Affordable Care Act. The Company anticipates that if the requirements of Section 4.6 of this Agreement are satisfied, the Substitute Staff shall not qualify as a full-time employee as defined by the shared responsibility payment regulations set forth in 26 CFR § 54.4980H (the "Shared Responsibility Payment Rules"). However, for purposes of the shared responsibility payment provisions of the Patient Protection and Affordable Care Act of 2010, (the "PPACA") as codified in Section 4980H of the Internal Revenue Code, the Company shall be the common law employer of the Substitute Staff. As required by the PPACA, the Company shall track the hours of service performed by Substitute Staff using a look back measurement period as defined by the Shared Responsibility Payment Rules. In the event the Company is required to offer a member of the Substitute Staff group health plan coverage to ensure a payment under Code Section 4980H(a) is not due, the Company will offer to the affected member of the Substitute Staff minimum essential coverage during a stability period. In such event, the District agrees to reimburse the Company for its pro-rata share of the cost of such group health plan coverage, which pro-rata share shall be determined in accordance with the following formula:

Total cost of group health plan coverage per stability period
(total number of hours worked by a full-time member of the Substitute Staff at a position within the District during the look back measurement period / total number of hours worked by the full-time member of the Substitute Staff for the Company during the look back measurement period)

For purposes of this Section 6.4, the look back measurement period shall be the period beginning January 1 and ending December 31, and the stability period shall be the period immediately following the look back period beginning January 1 and ending December 31. Such costs shall be billed in advance of the stability period upon the Company's determination that a member of the Substitute Staff that worked for the District during the look back measurement period qualified as a full-time employee and shall be due, regardless of whether the member of the Substitute Staff takes any assignment within the District during the stability period. After the expiration of the stability period, all or an applicable percentage of excess advance payments applicable to the cost of such group health plan coverage from the District shall be refunded should the applicable member of the Substitute Staff decline group health plan coverage, terminate employment or disenroll from group health plan coverage during the stability period. The District also agrees to pay a pro-rata portion of any shared responsibility payment that is due under Code Section 4980H(b) if the applicable member of the Substitute Staff enrolls in health care coverage provided by a federal or state operated marketplace and is entitled to a premium tax credit or subsidy. Such pro-rata portion of the Code Section 4980H(b) shared responsibility payment shall be determined in accordance with the following formula:

Total cost of Code Section 4980(b) shared responsibility payment

(total number of hours worked by a full-time member of the Substitute Staff at a position within the District during the look back measurement period / total number of hours worked by the full-time member of the Substitute Staff for the Company during the look back measurement period).

The cost for the 4980H(b) shared responsibility payment shall be billed to the District as it becomes due.

6.5 Payment. The District shall pay the Company monthly in United States currency by check (regularly payable in the normal course of banking transactions) or electronic transfer monthly within three (3) days following the Board of Education Monthly Action Meeting (“Due Date”) for all invoices submitted at least one week prior to the Board of Education Action Meeting (or such other timeline as agreed to in Addendum A.) In the event that the District fails to pay any fee to the Company when due, the District shall be liable for the outstanding amounts. In the event the Company does not receive payment within thirty days of acceptance and approval of a payment request, interest shall accrue at the current rate of prime plus 3% per annum on outstanding amounts.

6.6 Sales and Use Tax. The District represents that it is currently exempt from any sales and use taxes or similar governmental charges or value added tax imposed with respect to the services provided by the Company. If any such taxes or charges are otherwise due or are imposed or become due, they will be the responsibility of the District.

7. Term. The term of this Agreement shall begin on October 14, 2019 and shall remain in effect through June 30, 2020 with four (4) one (1) year options to renew this Agreement under the terms herein. District will take required action to renew this Agreement hereto within thirty (30) days of the end date of the current term. Notwithstanding the preceding sentence, either party may terminate this Agreement if (i) the other party breaches a material provision of this Agreement, and such breach is not cured within thirty (30) days following written notice of breach; or, in the case of a breach that by the terms of the breach cannot be cured within thirty (30) days, the breaching party has not instituted measures to cure such breach within thirty (30) days and fully cured such breach within ninety (90) days. Further, the Company has the right to terminate this Agreement should any student physically or verbally assault or injure a Company’s employee, and the District does not respond to the incident to the Company’s satisfaction. In the event either party terminates this Agreement, the District shall pay the Company all outstanding amounts due for services provided as of the date of termination.

8. Insurance Coverage. Each party shall, at its own cost and expense, maintain insurance coverage reasonably appropriate for the activities it conducts and the risks it assumes. The insurance coverage maintained by the Company shall include:

8.1 Workers’ compensation coverage of such types and in such amounts as may be required by the laws of the jurisdiction in which the services of Substitute Staff are performed;

8.2 Commercial general liability coverage, including personal injury, blanket

contractual liability, and broad form property damage, with a \$2,000,000 combined single limit per occurrence;

8.3 Umbrella coverage with a \$3,000,000 combined single limit per occurrence.

9. Confidentiality. During the course of the business relationship, each party may be given access to proprietary or confidential information of the other, including, but not limited to, pricing policies, the identity and social security numbers of employees, and business policies and systems ("Confidential Information"). Each party shall hold Confidential Information of the other party in confidence, treating such Confidential Information with no less care than it treats its own, and shall not disclose such Confidential Information to any third party or use such Confidential Information for any purpose other than as contemplated by this Agreement. Upon termination of this Agreement, or sooner if requested by either party, each party shall return all Confidential Information of the other party in its possession, without retaining copies of such Confidential Information. This section shall not apply to information (i) that is in the public domain, or (ii) required to be disclosed by law or legal process.

9.1 Company acknowledges District's obligation to comply with the Open Public Records Act (N.J.S.A. 47:1A-1 et. seq.) and/or the Common Law right of access. Without limitation of the foregoing, District agrees to provide prompt notice to Company of any public records request pertaining to this Agreement or Company's services. To the extent permitted by applicable law, District shall further allow Company a reasonable opportunity to request redaction to any applicable materials and/or challenge any such request prior to District's response to any such request.

10. Miscellaneous

10.1 Amendments; Waivers; Severability. No amendment, modification, or waiver of any provision of this Agreement shall be binding unless in writing and signed by the party against whom the operation of such amendment, modification, or waiver is sought to be enforced. The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity of continuing force and effect of any other provision. The failure of the Company to insist, in any one or more instances, upon performance of any of the terms, covenants or conditions of this Agreement, or to exercise and right herein, shall not be construed as a waiver or relinquishment of such term, covenant, or right with respect to past or further performance.

10.2 Notices. Any notice or document required or permitted to be given under this Agreement shall be deemed to be given on the date such notice is (i) deposited in the United States mail, postage prepaid, certified mail, return receipt requested, (ii) deposited with a commercial overnight delivery service with delivery fees paid, or (iii) transmitted by facsimile or electronic mail with transmission acknowledgment, to the principal business address of the recipient or such other address or addresses as the parties may designate from time to time by notice satisfactory under this section. A copy of any notice to the Company shall be sent to the attention of the Company's president at the regular business address of the Company.

10.3 Governing Law. This Agreement shall be governed by the laws of New Jersey without giving effect to the principles of conflicts of laws. Each party hereby consents to the personal jurisdiction of the Federal or State court located in the District's County and agrees that all disputes arising from this Agreement shall be prosecuted in such courts. Each party hereby agrees that any such court shall have in personam jurisdiction over such party and consents to service of process by notice sent by regular mail to the address set forth above and/or by any means authorized by New Jersey law.

10.4 Language Construction. The language of this Agreement shall be construed in accordance with its fair meaning and not for or against any party. The parties acknowledge that each party and its counsel have reviewed and had the opportunity to participate in the drafting of this Agreement and, accordingly, that the rule of construction that would resolve ambiguities in favor of non-drafting parties shall not apply to the interpretation of this Agreement.

10.5 Force Majeure. Neither party shall be responsible for delays or failure to perform caused by acts of God (including fire, flood, storm, or other natural disturbances), war, civil war, riot, epidemic, acts of foreign enemies, terrorist activities, government sanction, strikes or other labor disputes (it being specifically understood that the existence of any picket line by a collective bargaining unit shall be considered as within this definition of force majeure), interruption or failure of electric, telephone or similar service, or other causes beyond such party's control.

10.6 Signature in Counterparts. This Agreement may be signed in counterparts, each of which shall be deemed to be a fully-executed original.

10.7 Signature by Facsimile. An original signature transmitted by facsimile shall be deemed to be original for purposes of this Agreement.

10.8 Assignment. No party to this Agreement shall assign his rights or duties hereunder without the prior written consent of the other parties, except that the Company may assign its rights and duties in connection with a sale or other disposition of all or substantially all of its business.

10.9 No Third Party Beneficiaries. Except as otherwise specifically provided in this Agreement, this Agreement is made for the sole benefit of the parties. No other persons shall have any rights or remedies by reason of this Agreement against any of the parties or shall be considered to be third party beneficiaries of this Agreement in any way.

10.10 Binding Effect. This Agreement shall inure to the benefit of the respective heirs, legal representatives and permitted assigns of each party, and shall be binding upon the heirs, legal representatives, successors, and assigns of each party.

10.11 Titles and Captions. All article, section, and paragraph titles and captions contained in this Agreement are for convenience only and are not deemed a part of the context hereof.



10.12 Pronouns and Plurals. All pronouns and any variations thereof are deemed to refer to the masculine, feminine, neuter, singular or plural as the identity of the person or persons may require.

10.13 Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to its subject matter and supersedes all prior discussions, agreements, understandings, and negotiations including the attached Affirmative Action Requirements. The District and Company agree that in the event that any provision of this Agreement shall be held invalid or unenforceable for any reason, such invalidity or unenforceability shall attach only to such provision and shall not affect nor render invalid any other provision of this Agreement.



[INTENTIONALLY LEFT BLANK; SIGNATURES ON FOLLOWING PAGE]



IN WITNESS WHEREOF, the parties have executed this Agreement on the date first set forth above.

**INSIGHT WORKFORCE SOLUTIONS
LLC**

By _____
Signature

Name and Title

GLASSBORO BOARD OF EDUCATION

By _____
Signature

Name and Title

Date _____



ADDENDUM A

Detailed Per Diem Pricing Plan

Job Description	Pay Rate	Bill Rate
Building Substitute	\$105.00	\$141.23
Long-Term Substitute	\$125.00	\$168.13

* The "Job Description" of substitute positions and the "Pay Rate" can be modified by the District and Company. The District reserves the right to modify rates and add service lines. A fee of 1.345 will be applied to all new or modified pay rates.

4815-4144-6057, v. 1