

EAST SIDE UNION HIGH SCHOOL DISTRICT

CONTRACT SERVICES AGREEMENT IRS GUIDELINES

Please complete questionnaire below before completing Contract Services form.

Contractor Name _____

Brief Description of Services _____

PART I	YES	NO
1. Has this category of worker already been classified an "employee" by the IRS? Administrators tutors nurses teachers/instructors cafeteria workers psychologists substitutes counselors intern psychologists school bus drivers examination monitors specialty teachers clerical staff proctors librarians athletic coaches individuals "filling in" on an interim basis		
2. Is this individual working as an employee prescribed by the Education Code? Education Code Sections 45100-45451 define what constitutes the classified service. Education Code Sections 44800-45060 define the certificated service. The IRS predisposes an employer/employee relationship when state law mandates such a relationship.		
3. Is the individual already an employee of the district in another capacity?		
4. Has the individual performed substantially the same services for the district as an employee in the past?		
5. Are there currently employees of the district doing substantially the same services as will be required of this individual?		
6. Does the district have the legal right to control the method of performance by this individual? Consider whether the District will train the individual or give instruction as to when, where, how, and in what order the work will be performed.		
7. Does the District require the individual to submit reports on the details of their work or work at a particular site? These factors indicate the District maintains control sufficient for an employer/employee relationship. However, it is not necessary that the District exercise this right, or have the expertise required to do so.		

If the answer to any of the above questions is "YES" --- STOP HERE !!!

Do not complete the rest of the questions. The individual is a district employee and must be paid and reported accordingly. Call Human Resources for further details.

If all of the above are "NO", continue...

PART II	YES	NO
8. Will all the work be performed by this individual? Consider whether or not the individual may designate someone else to do the work without the District's knowledge or approval.		
9. Does the district have a continuing relationship with this individual? Is this a "one shot" assignment, or will the District continue to use this individual in the future? This could be on an infrequent or irregular basis, but a continuous relationship exists.		
10. Can this relationship be terminated without the consent of both parties?		

If the answer to the question 8, 9, or 10 is "YES", there is a good possibility that an employment relationship exists. Questions 8 & 9 are indicators of district control that in conjunction with other factors imply an employment relationship.

11. Does the individual operate an independent trade or business that is available to the general public? A determining factor in judging independence is the performance of services to the general public. In evaluating this criteria, the District is considered to be a separate entity. Keep in mind: if the District is using this individual's services on a full-time basis, the individual is <u>not</u> available to the general public.		
12. Does the individual have a substantial investment in his/her business, i.e. maintains a facility, equipment, etc.? This is indicative of economic risk inherent in business enterprises. An independent contractor must be able to make a profit or sustain a loss.		

If either 11 or 12 are "**NO**", the individual is a district employee **STOP HERE** and process the individual through Human Resources and payroll.

If 11 and 12 are both "**YES**", continue...

13. Does the individual provide all materials and support services necessary for the performance of this service? The District should not be providing office space on a regular basis, clerical, secretarial, or other support for the individual such as materials, copying, printing, office supplies, etc. Any necessary assistance should be provided by the individual.		
14. Is this individual paid by the job or upon completion and acceptance of the work as a whole or milestones identified in the contract?		
15. Does the individual bear the cost of any travel and business expenses incurred to perform this service? Generally the individual will pay the cost of any travel and business expenses incurred to perform the work. However, some agreements may be made to provide for payment of airfare, mileage, etc. for consultants.		

If 11 and 12 are "**YES**", 13 through 15 should also be "**YES**" and are items that should be written into the Independent Contract.

This individual is an Independent Contractor. A "**YES**" on questions 13 through 15 supports the district's conclusion and substantiates a "reasonable basis" for treatment as independent contractor. While there is circumstances where the district may pay contractually provided expenses, these should be kept at a minimum to avoid giving the impression of an employment relationship.

By signing below, Contractor and Program Manager attest that they have reviewed District guidelines and certify that the information above is true and correct.

Contractor Signature_____ Date_____

Program Manager Signature_____ Date _____

Please attach questionnaire to completed Contract Services Agreement form and send to the Business Office.

EAST SIDE UNION HIGH SCHOOL DISTRICT

CONTRACT SERVICES AGREEMENT (No. _____)

TO: BUSINESS SERVICES

FROM: _____ Ext.# _____

SCHOOL/DEPT.

CONTACT PERSON

1. **PARTIES:** The East Side Union High School District (ESUHSD), whose address is 830 N. Capitol Avenue, San Jose, CA 95133, and the following named Contractor:

Contractor Name (First, Middle Initial, Last) _____

Address _____ CITY _____ ST _____ Zip _____

Telephone _____ Fax No. _____

Social Security Number _____ or Federal I.D. Number _____

Contractor's License # _____ Type _____ Expiration _____

mutually agree and promise as follows and as per terms and conditions set forth on the reverse side of this page (page 2):

2. **CONTRACT TERM:** Effective dates _____ to _____.

3. **CONTRACTOR'S OBLIGATION:** In consideration of the compensation, the Contractor shall provide the following services, materials, products, and/or reports. **Attach proposals and other documentation** if available.

4. **COMPENSATION:** In consideration of Contractor's provision of services as described above, ESUHSD shall pay Contractor upon completion of services, as follows:

Hourly Rate \$ _____/hour Total hours _____ **Total Fees \$** _____

Other (i.e. monthly, quarterly, annually): _____

5. **BUDGET CODE AND FUNDING SOURCE:**

FUNDING SOURCE: _____

FD XX	LOC XXX	PROG XXX	GOAL XXXX	FUNC XXXX	OBJT XXXX	RESC XXXX	YR X	MGR XXX	\$ AMOUNT

6. **APPROVALS:** These signatures attest the parties' agreement hereto:

East Side Union High School District:

School Site/Dept. Administrator _____ Date _____

Business Services _____ Date _____

Superintendent _____ Date _____

Board of Trustees _____ Date _____

Contractor:

Signature _____ Date _____

Printed Name _____ Title _____

CONTRACT TERMS AND CONDITIONS

1. **COMPENSATION:** In consideration of Contractor's provision of services as described, and subject to the payment provisions expressed herein, ESUHSD shall pay Contractor as agreed, upon Contractor's submission of a properly documented demand for payment which shall be submitted not later than 30 days from the end of the month in which the contract services were rendered, and upon approval of such demand by ESUHSD.
2. **TERMINATION:** This contract may be terminated by ESUHSD at its sole discretion, upon five-day advance written notice thereof to the Contractor, or cancelled immediately by written mutual consent.
3. **INDEPENDENT CONTRACTOR STATUS:** This contract is by and between two independent contractors and is not intended to and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture, or association. In executing this agreement, the Contractor certifies that no one who has or who will have any financial interest under this agreement, is an officer or employee of ESUHSD. Additionally, as the Contractor is not an ESUHSD employee, ESUHSD is not responsible for obtaining workers' compensation insurance coverage for the Contractor.
4. **COMPLETENESS OF AGREEMENT:** This agreement constitutes the entire understanding of the parties and any change or modification shall be in writing and signed by both parties hereto.
5. **INDEMNIFICATION:** The Contractor agrees and shall defend, indemnify, save, and hold harmless ESUHSD, its agents, officers and employees from any and all claims, costs and liability for any damages, from any cause whatsoever arising directly or indirectly from or connected with the operations or services of the Contractor, its agents, servants, employees or subcontractors hereunder, and any other person, firm or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this agreement and all claims and losses accruing or resulting to any person, firm, or corporation who may be injured or damaged by the Contractor in the performance of this agreement. Contractor will reimburse the ESUHSD for any expenditures, including reasonable attorney's fees, ESUHSD may make by the reason of the matters that are the subject of this indemnification, and if requested by ESUHSD, will defend any claims or litigation to which this indemnification provision applies at the sole cost and expense of the Contractor.
6. **INSURANCE:** The Contractor will maintain general liability insurance, including automobile coverage, in an amount as may be reasonably necessary to assure compliance with the indemnification provision, herein above. Additional insurance may be required by ESUHSD. The Contractor agrees to produce copies of the required policies of insurance upon request of ESUHSD. The requirements of this provision may be waived by ESUHSD; however, any waiver shall not affect the Contractor's liability to ESUHSD under the indemnification provision.
7. **NON-DISCRIMINATION/AFFIRMATIVE ACTION:** No discrimination shall be made in the employment of persons under this agreement because of the race, color, national origin, age, ancestry, physical handicap, religion, or sex of such person or any other basis protected by law.
8. **LICENSE AND AUTHORITY:** The Contractor warrants that he/she/it will maintain all necessary licenses, registrations, and certifications during the term of this agreement, and that, if other than a natural person, it is duly authorized to enter into this agreement by its governing or controlling body. Contractor shall provide evidence or copies of all necessary licenses, registrations and certifications upon ESUHSD's request.
9. **EQUIPMENT AND FACILITIES:** The Contractor will provide all necessary equipment and facilities to render his/her/its services pursuant to this agreement, unless the parties to this agreement specifically agree in writing that said equipment and facilities will be provided in a different manner.
10. **EXPENSES:** The Contractor shall be responsible for all costs and expenses incident to the performance of services for ESUHSD, including but not limited to: all costs of equipment provided by the Contractor, all fees, fines, licenses, bonds, or taxes required of or imposed against the Contractor, and all other of the Contractor's costs of doing business. ESUHSD shall not be responsible for any expenses incurred by the Contractor in performing services for ESUHSD except as provided by the agreement.
11. **TAX REPORTING/PAYMENT RESPONSIBILITIES:** ESUHSD shall provide an annual statement of compensation paid on the appropriate federal and/or state information forms. The Contractor is responsible for payment of any federal and/or state tax amounts due.
12. **ASSIGNMENT:** Without the written consent of ESUHSD, this agreement is not assignable by the Contractor, either in whole or in part.
13. **GOVERNING LAW AND LABOR CODE:** The validity of this agreement and any of its terms or provisions as well as the rights and duties of the parties hereunder shall be governed by the laws of the State of California. The Contractor shall be subject to and shall comply with all Federal, State, and Local laws and regulations applicable with respect to its performance under this contract, including but not limited to, licensing, employment and purchasing practices, and wages, hours and conditions of employment, including non-discrimination. Contractor shall comply with the applicable provisions of the Labor Code, Section 1720-1861, State of California, especially in regards to prevailing wages, copies of which are available at the District Office.
14. **AMBIGUITY:** The parties to this agreement, and each of them, hereby represent that the language contained herein is to be construed as jointly proposed and jointly accepted, and in the event of any subsequent determination of ambiguity, all parties shall be treated as equally responsible for such ambiguity.
FINGERPRINTING AND CRIMINAL RECORDS CHECK: Contractor shall comply with the provisions of Education Code Section 45125.1 regarding the submission of employee fingerprints to the California Department of Justice and the completion of criminal background investigations of its employees. Contractor shall not permit any employees to have any contact with District pupils until such time as Contractor has verified in writing to the governing board of the East Side Union High School District that such employee has not been convicted of a felony as defined in Education Code Section 45125.1. Contractor's responsibility shall extend to all employees, subcontractors, and employees of subcontractors regardless of whether such individuals are paid or unpaid, concurrently employed by the District, and/or acting as independent contractors of the Contractor. Verification of compliance with this section shall be provided in writing to the District prior to each individual's commencement of employment or participation in the project and prior to permitting contact with pupils.
If the Contractor believes that Education Code section 45125.1 does not require fingerprinting, Contractor shall take the appropriate steps to provide for the safety of any pupils that may come into contact with its employees.