



Name of Provider _____

**GUIDELINES FOR EMPLOYING
INDEPENDENT CONTRACT CONSULTANTS**

THIS FORM MUST BE COMPLETED AND APPROVED **PRIOR** TO ANY SERVICES BEING PERFORMED
OR PAYMENT WILL NOT BE AUTHORIZED.

**PART I. To be completed by the PUSD Program Manager/Principal requesting
the consultant services**

		Yes/No
1.	<p>Has this category of worker been classified as an “employee” by the IRS such as:</p> <ul style="list-style-type: none"> - Administrator - Athletic Coaches - Interim Positions - Bus Drivers - Clerical Staff - Cafeteria worker - Librarians - Nurses - Teachers - Sub Teachers - Specialty Teachers (art, poetry, music, etc.) <p>In addition, recent IRS school audits have classified the following as employee relationships:</p> <ul style="list-style-type: none"> - ASB Bookkeepers/Workers - Licensed Clinical Social Workers - Categorical Program Coordinators - SAT Prep class Teacher - Attendance/Outreach Consultants 	
2.	<p>Is the individual working as an employee as prescribed by the Education Code? Education Code sections 45100-45139/88000-88040 defines what constitutes the classified service. Education Code sections 44830-44929-87400-87488 defines certificated services. The IRS predisposes an employer/employee relationship when state law mandates such a relationship.</p>	
3.	<p>Is the individual an employee of the district in another capacity?</p>	
4.	<p>Has the individual performed substantially the same services for the district? As an employee of the past?</p> <p><i>(Watch for former employees who are returning to work.)</i></p>	

If the answer to **ANY** of the above questions is **YES** - - - - - **STOP HERE**

Do not complete the rest of the questions. The individual is an employee of the district and must be paid and reported accordingly. If all of the above are **NO** continue to **Part II**

PART II

Yes/No

5.	Are there currently employees of the district doing substantially the same work as will be required of the individual you are hiring?	
6.	Will the district have the legal right to control the method of performance by this individual? <i>(Consider whether the district will train the individual or give instruction as to how the job gets done rather than to the end result. Is the individual required to obtain approval before taking certain action? It doesn't matter if the employer allows freedom of action in the work. Just the fact that the employer has the legal right to control the method and result of the work is enough to show an employer-employee relationship.)</i>	
7.	Are the services, as being provided an integral part of district operations? <i>(Are the services provided necessary to the operations of the district programs, projects, etc? This indicates the district has an interest in the method of performance and implies maintenance of legal control.)</i>	
8.	Will all the work be performed by this individual? <i>(Consider whether or not the individual has the right to designate someone else to do the work without district approval.)</i>	
9.	Does the District have a continuing relationship with this individual: <i>(If an individual is engaged with the expectation that the relationship will continue indefinitely, rather than for a specific project or period, this is generally considered evidence of their intent to create an employment relationship.)</i>	
10.	Can this relationship be terminated without the consent of both parties? <i>(Independent contractors have contractual obligations to fill.)</i>	
11.	Does the individual operate an independent trade or business that is available to the general public? <i>(The individual should be able to provide a list of previous clients they served. NOTE: Possession of a business license or incorporation does not automatically satisfy this requirement. The determination must be made on the actual relationship between the district and the individual performing the work.)</i>	
12.	Will the individual provide all materials and support services necessary for the performance of the service? <i>(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.)</i>	
13.	Is the individual paid by the job OR upon completion and acceptance of the work as a whole OR milestones identified in the contract? <i>(Performance of a task for a flat fee is generally evidence of an independent contractor relationship, especially if the worker incurs the expense of performing the services. When payments are made (daily, weekly, or monthly) is not relevant.)</i>	
14.	Will the individual bear the cost of any travel and business expenses incurred to perform the work? <i>(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.)</i>	

If the answer to **ANY** of the questions in Part II is **YES** - - - - - **Program Manager/Principal may need to validate why this individual should be considered a consultant.**

Program Manager/Principal MUST complete: - Part I, II and Contract for Services Section II	Independent Contractor MUST complete: - Contract for Services Section I - Hold Harmless Agreement (page 5), if applicable - Payee Data Record (page 6)
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RETURN ALL PAGES TO HUMAN RESOURCES FOR PROCESSING

CONTRACT for SERVICES

(Attach completed Pages 1 & 2 to this Contract)

Prior to services being performed, all sections must be completed and signed. **Required paperwork, TB test and fingerprint requirements MUST be completed prior to services being rendered.**

SECTION I: TO BE COMPLETED BY THE PROVIDER

This CONTRACT made and entered into this ____ day of _____ 20__, by and between _____, hereinafter called the "PROVIDER" and the 'PLEASANTON UNIFIED SCHOOL DISTRICT, hereinafter called the "DISTRICT".

The parties do hereby contract and agree as follows:

1. In consideration of payment not to exceed the sum of \$ _____ to be paid to Provider by District, Provider shall provide the following:
2. Location: _____
3. Services to be performed: _____
4. _____
4. The term of this contract shall begin on _____ and be complete by _____.
5. This contract includes the terms and conditions attached as numbers 1 through 18 (page 4). The Provider, by executing this contract agrees to accept and comply with such terms and conditions.
6. Hold Harmless and Indemnification agreement (page 5) is only acceptable for individuals who are **NOT** licensed or incorporated. Others will need to provide proof of insurance upon completion of this contract.
7. All applicable laws and regulations of the Public Contract Code, Civil Code and Labor Code govern this Contract.

ACCEPTED BY: _____ Date _____
Proper Name of the Provider

Social Security No. or Federal Tax ID Number _____

Membership STRS PERS N/A Date of retirement from STRS/PERS _____

I understand PUSD will not be withholding any taxes, and I am subject to 1099 reporting requirements. I must complete the **Payee Data Record** form (page 5).

Signature: _____ Date: _____

SECTION II: TO BE COMPLETED BY THE PROGRAM MANAGER/PRINCIPAL REQUESTING SERVICES

Name: _____ Date: _____

Budget code: _____

Signature: _____ School/Department _____

Please note: Total contract over \$45K requires board approval.

SECTION III: TO BE COMPLETED BY HUMAN RESOURCES

Required paperwork, TB test and fingerprint requirements have been completed prior to services being rendered.

Fingerprinted Yes No N/A
TB test cleared Yes No N/A

Signature – Human Resources Date

For **INDEPENDENT CONTRACTOR**, HR must complete section III then send all pages to **Fiscal Services** for **FINAL** processing.

TERMS AND CONDITIONS

1. **LABOR AND MATERIALS:** The Provider shall furnish all labor, materials and services necessary for the completion of work described in this Contract.
2. **SUB-CONTRACTORS:** Sub-contractors, if any, engaged by the Provider for the service shall be subject to the approval of the District. Provider shall be held responsible for all operations of subcontractors and shall require them to maintain adequate worker's compensation and public liability insurance, and comply with Labor Code, Division 2, Part 7, and all other applicable laws pertaining to prevailing wages.
3. **SAFETY AND SECURITY:** It shall be the responsibility of the Provider to ascertain from, and comply with, the District's rules and regulations pertaining to safety, security, and driving on school grounds, particularly when students are present.
4. **DEFAULT BY PROVIDER:** Failure to comply with any of the terms and/or conditions of the Contract shall constitute default by the Provider.
5. **CONTRACT CHANGES:** No changes or alterations to this Contract shall be made without specific written prior approval by the District.
6. **WORKERS:**
 - a. Provider shall at all times enforce strict discipline and good order among employees and shall not employ on work any unfit person or anyone not skilled in work assigned.
 - b. Any person in the employ of the Provider as an employee or sub-contractor whom the District may deem incompetent or unfit shall be dismissed from work and shall not again be employed on it except with written consent of the District.
7. **ASSIGNMENT OF CONTRACT AND/OR PURCHASE ORDER:** The Provider shall not assign or transfer by operations of law or otherwise any or all of its rights, burdens, duties, or obligations without the prior written consent of the District.
8. **FORCE MAJEURE CLAUSE:** The parties to this Contract shall be excused from performance there under during the time and to the extent that they are prevented from obtaining, delivering or performing by act of God, fire, strike, loss or shortage of transportation facilities, lockout, commandeering of materials, products, plants or facilities by the government, when satisfactorily established that the non-performance is not due to the fault or neglect of the party performing.
9. **HOLD HARMLESS CLAUSE:** The Provider shall hold harmless and indemnify the District, its officers and employees from:
 - a. Any injury to person or property sustained by any person, firm or corporation, employed directly or indirectly by Provider upon or in connection with performance under this Contract or Purchase Order, however caused;
 - b. Any injury to person or property sustained by any person, firm or corporation, arising by any means whatsoever from the act, default, or omission of any sub-contractor, person, firm or corporation, directly or indirectly employed by the Provider in connection with performance under the contract and/or Purchase Order.
10. **INSURANCE:** The supplier shall maintain at all times adequate insurance to protect the District from claims under Worker's Compensation Acts, and from claims for damages for personal injury, including death, and damage to property, which may arise from operations under the Contract. The Provider is required to file with the District certificates of insurance naming the Pleasanton Unified School District, its Board, officers, employees, and agents as additional insured parties to the coverage, prior to the start of work for:
 - a. Worker's Compensation and Employer's Liability Insurance.
 - b. Broad form Comprehensive General Liability Insurance, occurrence coverage, with a combined single limit of liability not less than \$1,000,000.

For individuals who are not licensed professionals, a Hold Harmless and Indemnification Agreement may be submitted as an alternative to the insurance requirements and is subject to approval by the District
11. **PAYMENTS:** The District shall pay for services performed or materials delivered under this Contract upon completion of said work and upon presentation of invoice by the Provider. District representative will provide written approval and acceptance, and payment shall be made within a reasonable and proper time, normally within thirty (30) days.
12. **RELEASE AGAINST LIENS OR CLAIMS:** Provider shall promptly pay all claims of persons or firms furnishing labor, equipment, or materials used in performing the work hereunder. The District may require Provider to submit satisfactory evidence of payment and releases of all such claims. If there is any evidence of any unpaid claim, the District may withhold any payment until provider has furnished such evidence of payment and release, and shall indemnify and defend the District against any liability or loss arising from any such claim.
13. **PERMITS AND LICENSES:** The Provider and all employees or agents shall secure and maintain in force such certificates, licenses and permits as are required for the work and by law, in connection with the furnishing of materials, supplies or services herein listed.
14. **ANTI-DISCRIMINATION:** It is the Policy of the Pleasanton Unified School District Board of Education that, in connection with all work performed under Purchasing Contracts, there be no discrimination against any employee engaged in the work because of race, color, ancestry, sex, national origin, or religious creed, and therefore the Provider agrees to comply with applicable Federal and California laws including but not limited to the California Fair Employment Practices Act.
15. **LABOR CODE:** Provider shall comply with the applicable provisions of the Labor Code, Division 2, Part 7, Ch. 1, Article 1-5, including the payment of the general prevailing rate of per diem wages. Approved wage scales are on file in the District's Purchasing Office.
16. **NO SMOKING:** Pleasanton Unified School District has a NO SMOKING policy at all sites. Providers are responsible to make sure that no one smokes on school property.
17. **FINGERPRINTS:** The provider certifies that he or she is aware of the provisions of Education Code section 45122.1 and will comply with such provisions before commencing performance of the work of this contract.
18. **TERMINATION:** The District may terminate this agreement by providing thirty (30) days written notice of intent to terminate at any time and for any reason or for no reason. If this agreement is terminated, Provider shall be compensated for services rendered through the date of termination.



Pleasanton Unified School District

HOLD HARMLESS AND INDEMNIFICATION AGREEMENT

For non-licensed sole proprietor only

To the fullest extent allowable by law, I/We _____ (hereinafter "Service Provider") agree at all times to protect, indemnify, and hold the Pleasanton Unified School District (PUSD), its Board of Education members, officers, agent, employees and directors (hereinafter "Indemnified Parties), from and against any and all claims, demand, loss or liability (hereinafter "Claim"), or any nature or cause whatsoever, and whether actual or alleged, arising from or in any way connected with the service, including, but not limited to any Claim for personal injury, death, property damage, loss of profits, infringement upon intellectual property rights, or disclosure of confidential information which might be obtained by Service Provider; except where caused by the sole negligence or willful misconduct of the Indemnified Parties.

I/We further agree to be personally liable to Pleasanton Unified School District for all liabilities, claims, losses, judgments, damage, demands, expenses, fines, penalties, including reasonable attorneys' fees imposed or incurred by the District because of the Provider's service or personal action, with respect to liability for bodily injury or property damage or personal and advertising injury caused, in whole or in part, by acts or omissions or the acts or omissions of those acting on my/our behalf:

1. In the performance of the operations/service; or
2. In the sale or distribution of the products/services.
3. Failure to comply with all of the requirements contained in Education Code, §45125.1 (Fingerprint Clearance) and Education Code 49406.1(a) Tuberculosis Testing,
4. including, but not limited to, the requirement prohibiting the use of employees who may have contact with pupils who have been convicted of, or have charges pending for, a felony as defined in Education Code §45125.1.

Any Terms and conditions signed by the Service Provider with PUSD shall remain and apply.

I/We further agree to provide evidence of vehicle insurance and personal Health Insurance coverage as required under Covered California (Government Code 100503)

THE UNDERSIGNED HAS READ AND VOLUNTARILY SIGNS THE RELEASE AND WAIVER OF LIABILITY AND INDEMNITY AGREEMENT, and further agrees that no oral representation, statements of inducement apart from the foregoing written agreement have been made.

I HAVE READ THIS RELEASE.

Date

Signature of Provider

Print Name

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SECTION IV: TO BE COMPLETED BY FISCAL SERVICES AND PURCHASING DEPARTMENT

Name of Consultant: _____

Requested by: _____

Step 1:

Reviewed/Approved by: _____ Date: _____
Coordinator of Purchasing

Step 2:

Reviewed/Approved by: _____ Date: _____
Director of Fiscal Services

Step 3:

Upon approval from the Purchasing and Fiscal Services, forward a copy of page 7 to Human Resources

Step 4:

Purchasing Department will keep a copy of page 3 and original of page 5 and 6

Step 5:

All remaining forms to Accounts Payable for filing (pages 1, 2, 3, 4, and 7)