



# MURRIETA VALLEY UNIFIED SCHOOL DISTRICT INDEPENDENT CONTRACTOR AGREEMENT

This AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_\_\_ (“EFFECTIVE DATE”), between the **MURRIETA VALLEY UNIFIED SCHOOL DISTRICT**, hereinafter referred to as (“DISTRICT”), and \_\_\_\_\_ hereinafter referred to as “CONTRACTOR/CONSULTANT”; The District and CONTRACTOR shall be collectively referred to as the “PARTIES” throughout this AGREEMENT.

**WHEREAS**, the DISTRICT requires specialized services and/or advice in connection with certain financial, economic, accounting, engineering, administrative, facility repair, reconstruction or rehabilitation, entertainment, recreational or amusement matters where such services and advice are not available to the DISTRICT without cost either internally or from other public agencies; and

**WHEREAS**, CONTRACTOR is specially experienced and competent to provide to the District, certain specialized services and/or advice in one or more of the foregoing areas; and

**WHEREAS**, CONTRACTOR has indicated its willingness and commitment to provide its specialized services and/or advice to the DISTRICT on the terms hereafter set forth in this Agreement.

NOW, THEREFORE, the parties hereto agree as follows:

## **ARTICLE I SCOPE AND SERVICES TO BE PROVIDED BY CONTRACTOR**

1. Description of Work: CONTRACTOR shall provide to the DISTRICT on the terms herein set forth all labor and materials to complete the following services and/or services described on related Purchase Order:

\_\_\_\_\_  
(Describe Work to Be Done Under This Contract)

\_\_\_\_\_  
\_\_\_\_\_  
(Hereinafter called the “PROJECT”) upon the following described property:

\_\_\_\_\_  
(Insert Legal Description and/or Street Address If Known)

2. Term: This AGREEMENT shall be binding upon the PARTIES and will govern all services performed by CONTRACTOR, for the DISTRICT, from the date this AGREEMENT is executed until \_\_\_\_\_, 20\_\_\_\_ unless a Termination occurs pursuant to Article III of this AGREEMENT.

## **ARTICLE II CONTRACTOR'S SERVICES AND RESPONSIBILITIES**

1. CONTRACTOR's Certifications, Representations and Warranties. CONTRACTOR makes the following certifications, representations, and warranties for the benefit of the DISTRICT and CONTRACTOR acknowledges and agrees that the DISTRICT, in deciding to engage CONTRACTOR pursuant to this Agreement, is relying upon the truth and validity of the following certifications, representations and warranties and their effectiveness throughout the term of this Agreement and the course of CONTRACTOR's engagement hereunder:

a. CONTRACTOR is qualified in all respects to provide to the DISTRICT all of the services contemplated by this Agreement and, to the extent required by any applicable laws, CONTRACTOR has all such licenses and/or governmental approvals as would be required to carry out and perform for the benefit of the DISTRICT, such services as are called for hereunder.

b. CONTRACTOR, in providing the services and in otherwise carrying out its obligations to the DISTRICT under this Agreement, shall, at all times, comply with all applicable federal, state, and local laws, rules, regulations, and ordinances, including worker's compensation and equal protection and non-discrimination laws.

## **ARTICLE III TERMINATION**

1. This Agreement may be terminated by either party upon fourteen (14) days written notice to the other party in the event of a substantial failure of performance by such other party, including insolvency of CONTRACTOR; or if the DISTRICT should decide to

abandon or indefinitely postpone the services which CONTRACTOR is agreeing to provide pursuant to this Agreement.

2. In the event of a termination based upon abandonment or postponement by DISTRICT, the DISTRICT shall pay to the CONTRACTOR for all services performed and all expenses incurred under this Agreement supported by documentary evidence, including payroll records, and expense reports up until the date of the abandonment or postponement plus any sums due the CONTRACTOR for DISTRICT approved extra services. In ascertaining the services actually rendered hereunder up to the date of termination of this Agreement, consideration shall be given to both completed work and work in process of completion and to complete and incomplete drawings and other documents whether delivered to the DISTRICT or in the possession of the CONTRACTOR.

3. This Agreement may be terminated without cause by DISTRICT upon fourteen (14) days written notice to CONTRACTOR. In the event of a termination without cause, the DISTRICT shall pay CONTRACTOR for all services performed and all expenses incurred under this Agreement supported by documentary evidence, including payroll records, and expense reports up until the date of notice of termination plus any sums due the CONTRACTOR for Board approved extra services.

4. In the event of a dispute between the parties as to performance of the work or the interpretation of this Agreement, or payment or nonpayment for work performed or not performed, the parties shall attempt to resolve the dispute. Pending resolution of this dispute, CONTRACTOR agrees to continue the work diligently to completion. If the dispute is not resolved, CONTRACTOR agrees it will neither rescind the Agreement nor stop the progress of the work, but CONTRACTOR's sole remedy shall be to submit such controversy to determination by a court having competent jurisdiction of the dispute, after the services provided for in this Agreement have been completed, and not before.

## **ARTICLE IV REPORTS, PLANS, DRAWINGS, SPECIFICATIONS, RECORD DRAWINGS AND/OR OTHER DOCUMENTS**

1. The reports, plans, drawings, specifications, record drawings and/or other documents that are prepared, reproduced, maintained and/or managed by the CONTRACTOR or CONTRACTOR's consultants in accordance with this Agreement, shall be and remain the property of the DISTRICT (hereinafter “PROPERTY”). The DISTRICT may provide the CONTRACTOR with a written request for the return of its PROPERTY at any time. CONTRACTOR shall return the requested PROPERTY to the DISTRICT no later than three (3) days after receipt of the DISTRICT's written request for the PROPERTY.

## **ARTICLE V COMPENSATION TO THE CONTRACTOR**

1. **Compensation**. The DISTRICT agrees to pay the CONTRACTOR the sum **Not To Exceed \$ \_\_\_\_\_** Computed as follows: \$ \_\_\_\_\_ per \_\_\_\_\_ equals \$ \_\_\_\_\_. **Reimbursable Not To Exceed \$ \_\_\_\_\_**, for the services performed pursuant to this Agreement.

2. For services to be performed throughout the fiscal year, CONTRACTOR will attach an hourly rate schedule to this form and provide an invoice in duplicate for services completed referencing the Purchase Order number and send to Accounts Payable.

## **ARTICLE VI MISCELLANEOUS**

1. To the fullest extent permitted by law, CONTRACTOR agrees to indemnify, defend and hold DISTRICT entirely harmless from all liability arising out of:

a. Any and all claims under Workers' Compensation acts and other employee benefit acts with respect to CONTRACTOR's employees or CONTRACTOR's subcontractor's employees arising out of CONTRACTOR's work under this Agreement; and

b. Liability for damages for (1) death or bodily injury to person; (2) injury to, loss or theft of property; (3) any failure or alleged failure to comply with any provision of law or (4) any other loss, damage or expense arising under either (1), (2), or (3) above, sustained by the CONTRACTOR or any person, firm or corporation employed by the CONTRACTOR which may arise out of or result from CONTRACTOR's actions or inactions relating to this Agreement, except for liability resulting from the sole or active negligence, or willful misconduct of the DISTRICT, its officers, employees, agents or independent consultants who are directly employed by the DISTRICT;

c. Any loss, injury to or death or persons or damage to property caused by any act, neglect, default or omission of the CONTRACTOR, or any person, firm or corporation employed by the CONTRACTOR, either directly or by independent contract, including all damages due to loss or theft, sustained by any person, firm or corporation including the DISTRICT, arising out of, or in any way connected with the services performed by CONTRACTOR in accordance with this Agreement, including injury or damage either on or off DISTRICT property; but not for any loss, injury, death or damages caused by the sole or active negligence, or willful misconduct of the DISTRICT.

The CONTRACTOR, at CONTRACTOR's own expense, cost, and risk, shall defend any and all claims, actions, suits, or other proceedings, arising under Article VI, Paragraph 1(b), that may be brought or instituted against the DISTRICT, its officers, agents or employees, on any such claim or liability, and shall pay or satisfy any judgment that may be rendered against the DISTRICT, its officers, agents or employees in any action, suit or other proceedings as a result thereof.

2. CONTRACTOR shall purchase and maintain policies of insurance with an insurer or insurers, qualified to do business in the State of California and acceptable to DISTRICT which will protect CONTRACTOR and DISTRICT from claims which may arise out of or result from CONTRACTOR's actions or inactions relating to the Agreement, whether such actions or inactions be by themselves or by any subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. The aforementioned insurance shall include coverage for:

a. The CONTRACTOR shall carry Workers' Compensation and Employers Liability Insurance in accordance with the laws of the State of California.

b. Comprehensive general and auto liability insurance with limits of not less than FIVE HUNDRED THOUSAND DOLLARS (\$500,000) combined single limit, bodily injury and property damage liability per occurrence, including:

- 1. Owned, non-owned and hired vehicles;
2. Blanket contractual;
3. Broad form property damage;
4. Products/completed operations; and
5. Personal injury.

c. If applicable, the CONTRACTOR shall carry professional liability insurance, including contractual liability, with limits of \$1,000,000, per occurrence. Such insurance shall be maintained during the term of this Agreement and renewed for a period of at least five (5) years thereafter and/or at rates consistent with the time of execution of this Agreement adjusted for inflation. In the event that CONTRACTOR subcontracts any portion of CONTRACTOR's duties, CONTRACTOR shall require any such subcontractor to purchase and maintain insurance coverage as provided in this subparagraph. Failure to maintain professional liability insurance is a material breach of this Agreement and grounds for immediate termination.

d. Each policy of insurance required in (b) above shall name DISTRICT and its officers, agents and employees as additional insured; shall state that, with respect to the operations of CONTRACTOR hereunder, such policy is primary and any insurance carried by DISTRICT is excess and non-contributory with such primary insurance; shall state that not less than thirty (30) days' written notice shall be given to DISTRICT prior to cancellation; and, shall waive all rights of subrogation. CONTRACTOR shall notify DISTRICT in the event of material change in, or failure to renew, each policy. Prior to commencing work, CONTRACTOR shall deliver to DISTRICT certificates of insurance as evidence of compliance with the requirements herein. In the event CONTRACTOR fails to secure or maintain any policy of insurance required hereby, DISTRICT may, at its sole discretion, secure such policy of insurance in the name of and for the account of CONTRACTOR, and in such event CONTRACTOR shall reimburse DISTRICT upon demand for the cost thereof.

3. CONTRACTOR, in the performance of this Agreement, shall be and act as an independent contractor. CONTRACTOR understands and agrees that CONTRACTOR and all of CONTRACTOR's employees shall not be considered officers, employees or agents of the DISTRICT, and are not entitled to benefits of any kind or nature normally provided employees of the DISTRICT and/or to which DISTRICT's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. CONTRACTOR assumes the full responsibility for the acts and/or omissions of CONTRACTOR's employees or agents as they relate to the services to be provided under this Agreement. CONTRACTOR shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes for the respective CONTRACTOR's employees.

4. Pupil Safety and Fingerprinting. CONTRACTOR shall comply with all provisions of the Education Code which protect the safety of any pupil that may come in contact with employees of the CONTRACTOR. Pursuant to Education Code section 45125.1, CONTRACTOR shall conduct criminal background checks of ALL employees of CONTRACTOR assigned to the PROJECT site, and shall certify that no employees who have been convicted of serious or violent felonies, as specified in Education Code Section 45125.1, will have contact with pupils, by utilizing the General Certification Regarding Background Checks Form and the corresponding Attachment "A" which are on file at the Administrative Office of the DISTRICT. As part of such certification, CONTRACTOR must provide the District with a list of all employees providing services pursuant to this Agreement, and designate which sites such employees will be assigned. In performing the services set forth in this Agreement, CONTRACTOR shall not utilize any employees who are not included on the above-referenced list. At District's sole discretion, District may make a finding, as authorized under Education Code section 45125.1, that CONTRACTOR's employees will have only "limited contact" with pupils.

In accordance with Education Code Section 45125.2, a CONTRACTOR performing construction, reconstruction, rehabilitation or repair services to a school facility shall not be required to perform Section 45125.1 background checks of all employees assigned to the PROJECT site if such CONTRACTOR installs a physical barrier at the worksite to limit employee contact with pupils and/or provides continual supervision and monitoring of all employees of the CONTRACTOR by an employee of the CONTRACTOR whom the Department of Justice has ascertained has not been convicted of a violent or serious felony. Such CONTRACTOR shall certify to the District its compliance with one of the aforementioned alternatives under Education Code Section 45125.2 pertaining to pupil safety with the form entitled CONSTRUCTION CONTRACTOR CERTIFICATION

REGARDING BACKGROUND CHECKS which is on file at the Administrative Office of the DISTRICT.

Contractor's failure to comply with the law or Article VI, Paragraph 4 of this Agreement shall be considered a material breach of this Agreement upon where this Agreement may be terminated, at District's sole discretion, without any further compensation to Contractor.

5. Discipline. The CONTRACTOR shall enforce strict discipline and good order among the CONTRACTOR's and Subcontractor's employees, and other persons carrying out the Contract. The CONTRACTOR shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. As used in this subsection, "unfit" includes any person who the District concludes is improperly skilled for the task assigned to that person, who fails to comply with the requirements of this article, or who creates safety hazards which jeopardize other persons and/or property.

6. Noise, Drugs, Tobacco, and Alcohol. CONTRACTOR shall take all steps necessary to insure that employees of CONTRACTOR or any of its subcontractors' employees do not use, consume, or work under the influence of any alcohol, tobacco or illegal drugs while on the PROJECT. CONTRACTOR shall further prevent any of its employees or its subcontractor employees from playing any recorded music devices or radios or wearing any radio headphone devices for entertainment while working on the PROJECT. Likewise, CONTRACTOR shall prevent its employees or subcontractor's employees from bringing any animal onto the PROJECT. CONTRACTOR shall not violate any written school policies.

7. Activity Waivers. In the event CONTRACTOR is providing services to the DISTRICT for purposes of entertainment, recreational or amusement activities for schools or Child Care activities, then the DISTRICT may require the CONTRACTOR to obtain waivers from each participant in the activity releasing the DISTRICT from all liability for injuries, losses or damages arising out of this Agreement. A copy of a suggested waiver is on file at the Administrative Office of the DISTRICT.

8. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of any third party against either the DISTRICT or CONTRACTOR.

9. The DISTRICT and CONTRACTOR, respectively, bind themselves, their partners, officers, successors, assigns and legal representatives to the other party to this Agreement with respect to the terms of this Agreement. CONTRACTOR shall not assign this Agreement.

10. This Agreement shall be governed by the laws of the State of California.

11. This Agreement represents the entire Agreement between the DISTRICT and CONTRACTOR and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended or modified only by an agreement in writing signed by both the DISTRICT and the CONTRACTOR.

12. Time is of the essence with respect to all provisions of this Agreement.

13. All exhibits referenced herein and attached hereto shall be deemed incorporated into and made a part of this Agreement by each reference as though fully set forth in each instance in the text hereof.

The parties, through their authorized representatives, have executed this Agreement as of the day and year first written above.

CONTRACTOR: \_\_\_\_\_

Signature: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Email: \_\_\_\_\_

Tax Identification Number: \_\_\_\_\_

Contractor License Number (If Applicable): \_\_\_\_\_

DISTRICT: Murrieta Valley Unified School District

Site/Department: \_\_\_\_\_

Site/Department Approving

Official Signature: \_\_\_\_\_

Purchasing Agent

Signature: \_\_\_\_\_

Asst. Superintendent Business

Signature: \_\_\_\_\_

**GUIDELINES FOR EMPLOYING INDEPENDENT CONSULTANTS – Updated March 2018**

IRS Publication SWR 40 “Public Schools and Employment Taxes” lists workers that the IRS has already determined to be employees. These are individuals performing the duties of:

Administrator	Librarian	Teacher/Instructor
Athletic Coach	Nurse	Tutor
Cafeteria Worker	Psychologist	Individuals working on an interim basis “filling in”
Clerical Staff	Proctor	Specialty Teachers (art, poetry, music, etc.)
Counselor	School Bus Driver	Substitute Teacher/Instructor
Examination Monitor		

In addition, recent IRS school audits have classified the following as employee relationships:

ASB Worker	Categorical Program Consultant	SAT Prep class Teacher
Attendance/Outreach Consultant	Licensed Clinical Social Worker	

What the district calls the individual is irrelevant to the analysis of the employment relationship. The IRS looks at the facts and the relationship on a case-by-case basis.

All staff members recommending the employment of any independent contract consultants will be responsible for completing the following “Questionnaire for Hiring an Independent Contractor”.

**This form must accompany the Personal Services Agreement when forwarded to Business Services.**

**NAME OF PROPOSED CONSULTANT:** \_\_\_\_\_

**TYPE OF SERVICE TO BE PROVIDED:** \_\_\_\_\_

**DATES OF SERVICE:** \_\_\_\_\_

**REQUESTING ADMINISTRATOR:** \_\_\_\_\_

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**QUESTIONNAIRE FOR HIRING AN INDEPENDENT CONTRACTOR**

**PART I:**

1. **Has the IRS classified this category of worker as an “employee”?** \_\_\_YES \_\_\_NO  
 Refer to the above listings to determine if the individual you are contemplating establishing a contractual relationship with has been determined by the IRS to be properly classified as an employee.
  
2. **Is the individual working as an employee prescribed by the Ed. Code?** \_\_\_YES \_\_\_NO  
 Ed Code Sections 45100-45451 define classified service; Ed Code Sections 44800-45060 define certificated Service. The IRS predisposes an employer/employee relationship when state law mandates such a relationship.
  
3. **Is the individual an employee of the district in another capacity?** \_\_\_YES \_\_\_NO
  
4. **Has the individual performed substantially the same services for the district as an employee in the past?** \_\_\_YES \_\_\_NO
  
5. **Are there employees of the district currently doing substantially the same work as will be required of the individual you are hiring?** \_\_\_YES \_\_\_NO
  
6. **Will the district have the legal right the control the method of performance by this individual?** \_\_\_YES \_\_\_NO  
 Consider whether the district will train the individual or give instructions as to how the job is 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. 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.

7. Are the services, as being provided, an integral part of district operations?  YES  NO  
Are the services being provided necessary to the operations of the district's programs, projects, etc? This indicates the district has an interest in the method of performance and implies maintenance of legal control.

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If you answered "YES" to any of the above questions (#1-7) – STOP HERE. The person must be hired as an employee. Contact Human Resources for information on the hiring process.

If you answered "NO" to all of the above questions (#1 –7), please continue to PART II (below).

**PART II:**

8. Will this individual perform all the work?  YES  NO  
An independent consultant has the right to designate someone else to do the work without district approval.

9. Does the district have a continuing relationship with the individual?  YES  NO  
The expectation of a relationship that will continue indefinitely, rather than for a specific project or period is generally considered evidence of the intent to create an employment relationship.

10. Can this relationship be terminated without the consent of both parties?  YES  NO  
Independent contractors have contractual obligations to fill.

11. Will the district provide any materials or support services necessary for the performance of the service provided?  YES  NO  
The district should not provide office space on a regular basis, clerical, secretary or other support for the individual such as materials, copying, printing, office supplies, etc. Any necessary assistance should be provided by the individual.

12. Is the individual paid a fixed salary, an hourly rate, or based on a piece rate basis?  YES  NO  
Working for a flat fee is generally evidence of an independent contractor relationship, especially if the worker incurs the expense of performing the services. Payment schedule is not relevant.

13. \*Will the district bear the cost of any travel and business expenses incurred to perform the work?  YES\*  NO  
Generally an independent contractor pays the cost of travel and business expenses. However, some agreements may be made to provide for payment of airfare, mileage, etc. for consultants

14. \*Does the individual operate an independent trade or business that is available to the general public?  YES\*  NO  
The individual should be able to provide a list of previous clients. PLEASE NOTE: The possession of a business license or incorporation does not automatically satisfy this requirement. Determination is based on the actual relationship between the district and the individual.

15. \*Has the individual ever been a CalSTRS member?  YES  NO  
I understand it is a crime to fail to disclose a material fact or to make any knowingly false material statements for the purpose of altering a benefit administered by CalSTRS and it may result in up to one year in jail and fine up to \$5,000. Education Code 22010

<b>FOR MVUSD INTERNAL USE ONLY</b> Has the Payroll Department been notified? <input type="checkbox"/> YES <input type="checkbox"/> NO Date of notification: _____
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If you answered "YES" to any of the above questions (#1-15), the individual is to be hired as an employee.

Contact Human Resources for information on the hiring process. A "yes" answer on Q. 13, 14 or 15 does not necessarily mean the person has to be hired as an employee; please contact Linda Diaz in HR to clarify.

If you answered "NO" to all of the above questions (#1-15), the individual can be hired as an independent contractor.