

EMPLOYEE VS. INDEPENDENT CONTRACTOR QUICK REFERENCE

EMPLOYEE	INDEPENDENT CONTRACTOR
REQUIRED TO COMPLY WITH EMPLOYER'S INSTRUCTIONS ABOUT WHEN, WHERE AND HOW TO WORK	SET OWN HOURS; DETERMINES OWN SEQUENCE OF WORK
WORKS MAINLY FOR EMPLOYER	WORKS FOR GENERAL PUBLIC
HIRED THROUGH PERSONNEL AND PAID BY PAYROLL	HIRED THROUGH PURCHASING AND PAID THROUGH ACCOUNTS PAYABLE
SUBJECT TO TERMINATION; CAN QUIT WITHOUT LEGAL LIABILITY	CAN ONLY BE TERMINATED OR QUITTED BASED ON CONTRACT NOT BEING FULFILLED.
WORKS MAINLY AT EMPLOYER'S PREMISES	IS ESTABLISHED AS A BUSINESS OFF SITE
HAS A CONTINUOUS RELATIONSHIP	WORKS BY THE PROJECT
PERSONALLY DOES THE JOB	CAN HIRE ASSISTANTS
PERFORMS WORK WITHIN BARGAINING UNIT	WILL NOT PERFORM WORK WITHIN THE BARGAINING UNIT
PERFORMS SERVICES UNDER THE EMPLOYER'S NAME	PERFORMS SERVICES UNDER THE CONTRACTORS NAME
PAID A SALARY; REIMBURSED FOR EXPENSES; HAS FRINGE BENEFITS	PAID BY THE PROJECT; HAS OPPORTUNITY FOR PROFIT OR LOSS; NOT REIMBURSED FOR EXPENSES
FURNISHED TOOLS, EQUIPMENT, AND MATERIALS TO COMPLETE THE JOB	HAS A SUBSTANTIAL INVESTMENT IN TOOLS, EQUIPMENT, MATERIALS
IS TRAINED AND EDUCATED, SENT TO WORKSHOPS BY THE EMPLOYER	WORKS ON A PROJECT THAT IS NOT AN ESSENTIAL PART OF THE DISTRICT'S PURPOSE

INDEPENDENT CONTRACTOR ELIGIBILITY CHECKLIST

DOCUMENTS REQUIRED:

1. Independent Contractor Agreement (Only President/CEO or Vice Presidents have authority to sign contracts per Board Policy)
2. W-9 Form completed by Independent Contractor

ELIGIBILITY

- ☐ SET OWN HOURS; DETERMINES OWN SEQUENCE OF WORK
- ☐ IS AVAILABLE TO WORK FOR THE GENERAL PUBLIC
- ☐ WILL NOT PERFORM BARGAINING UNIT WORK
- ☐ HIRED THROUGH PURCHASING AND PAID THROUGH ACCOUNTS PAYABLE
- ☐ CAN ONLY BE TERMINATED OR QUITTED BASED ON CONTRACT NOT BEING FULFILLED.
- ☐ IS AN OFFSITE BUSINESS
- ☐ WORKS BY THE PROJECT
- ☐ ANY ADDITIONAL ASSISTANCE IS THE RESPONSIBILITY OF THE INDEPENDENT CONTRACTOR
- ☐ PERFORMS SERVICES UNDER THE CONTRACTORS NAME
- ☐ PAID BY THE PROJECT; NOT REIMBURSED FOR EXPENSES
- ☐ HAS A SUBSTANTIAL INVESTMENT IN TOOLS, EQUIPMENT, MATERIALS
- ☐ WORKS ON A PROJECT THAT IS NOT AN ESSENTIAL PART OF THE DISTRICT'S PURPOSE

Director, Human Resources Operations &
Employee Services

Date

Director, Purchasing, Print, & Mail

Date

The following items are in order to process Independent Contractors through Fiscal Services:

1. Independent Contractor Agreement (Only President/CEO or Vice Presidents have authority to sign contracts per Board Policy)
2. W-9 Form completed by Independent Contractor
3. Checklist with signature approval from Human Resources (HR will review work performed to determine eligibility of an Independent Contractor)
4. Invoice prepared by Independent Contractor
5. Request for Payment or Reimbursement Form with a copy of Board Agenda Item.
6. Submit items to area Vice President for Board Approval.

MT. SAN ANTONIO COLLEGE

INDEPENDENT CONTRACTOR AGREEMENT

This Independent Contractor Agreement (“Agreement”) between Mt. San Antonio College, a public educational agency (“College”) and _____ (“Independent Contractor”) shall be effective upon the execution date of Independent Contractor and College, whichever shall later occur. College and Independent Contractor are referred to herein individually as “Party” and collectively as “Parties.”

WHEREAS, College desires to obtain special services for _____

WHEREAS, Independent Contractor warrants and represents to College that Independent Contractor has the experience, expertise, and resources to successfully and effectively perform the Services as required by College and will provide the Services timely and in conformance with the laws of the State of California.

NOW, WHEREFORE, the Parties agree as follows:

ARTICLE I INDEPENDENT CONTRACTOR’S SERVICES AND RESPONSIBILITIES.

1. Independent Contractor shall timely and competently provide those Services set forth herein.
2. College must authorize Independent Contractor to begin performance.
3. Independent Contractor covenants with College to furnish the necessary professional skill and judgment in accordance with the level of care and skill exercised by members of the profession or occupation currently practicing under similar conditions and in similar locations. Independent Contractor shall use its best professional efforts to complete the Services in an expeditious and economical manner consistent with the interests and goals of College. Independent Contractor agrees it shall take all special precautions necessary to protect the independent Contractor's employees, College's employees, and members of the public from risk of harm arising out Independent Contractor's performance of the Services.
4. Independent Contractor shall hold and maintain during the term of this Agreement all applicable licenses, permits, and certificates necessary for the performance of Services under the Agreement and comply with all applicable federal, state, and local laws, statutes, regulations, rules, and ordinances, as well as College policies and procedures in the performance of the Services under this Agreement.
5. Independent Contractor shall fully complete the Internal Revenue Service W-9 Form or other required reporting form.

6. Independent Contractor consents to College's use of Independent Contractor's name in conjunction with the sale, use, performance, and distribution of the matters, for any purpose and in any medium, if applicable.

7. The Services performed hereunder are work made for hire and College shall own, in perpetuity and worldwide, all rights to and flowing from the work, including any work product, performed under this Agreement. Independent Contractor assigns to College any and all rights Independent Contractor could have, may have, or does have, in the work and/or the work product performed under this Agreement, and College shall have all right, title, and interest in said matters, including the right to secure and maintain the copyright, trademark, and/or patent of said matters in the name of the College. Independent Contractor consents to the use of Independent Contractor's name in conjunction with the sale, use, performance, and distribution of said matters, for any purpose and in any medium.

ARTICLE II COMPENSATION

1. College agrees to pay the Independent Contractor for Services satisfactorily rendered pursuant to this Agreement a total fee not to exceed \$_____. College shall pay Independent Contractor pursuant to the following schedule or basis of compensation: _____.

ARTICLE III TERM. TERMINATION

1. This Agreement shall commence on the effective date, with Independent Contractor's Services to commence on or about_____. All Services shall be completed by no later than_____at which time this Agreement shall expire, unless extended or modified by mutual written consent and ratification of College's governing board.

2. College may, at any time, with or without reason, terminate this Agreement and compensate Independent Contractor only for Services satisfactorily rendered to the date of termination. Written notice by College shall be sufficient to stop further performance of Service by Independent Contractor. Notice shall be deemed given when received by the Independent Contractor, or no later than three days after the day of mailing, whichever occurs first.

3. College may terminate Agreement without notice in total or in part if insufficient enrollment and/or participants have not officially registered in the presentation aforesaid mentioned or when it is determined by College to cancel/terminate presentation.

4. Upon termination of this Agreement for any reason (other than full and satisfactory completion of Services) Independent Contractor shall not be entitled to any unearned fees or costs and shall be liable for damages suffered by College due To Independent Contractor's failure to perform pursuant to this Agreement. Upon such termination, College shall have no continuing obligation to make any payments to Independent Contractor under this Agreement.

ARTICLE IV INDEMNITY AND INSURANCE

1. Independent Contractor agrees to indemnify and hold harmless College, its trustees, officers, agents, and employees from and against all damages, liabilities, and costs, in law or in equity, including attorneys' fees and costs, and other legal expenses, including litigation expenses, in any way

related to any actions or inaction of Independent Contractor or of any Officer, director, agent, or employee of Independent Contractor. Independent Contractor shall indemnify, and hold harmless College, its trustees, agents, and employees from and against all loss, cost, expense, royalties, claims for damages or liability, in law or in equity, including, without limitation, attorneys' fees, and other legal expenses, including litigation expenses, that may at any time arise for any infringement (or alleged infringement) of any patent, copyright, trade secret, trade name, trademark, or any other proprietary right of any person or entity in any way related to this Agreement.

2. College may require Independent Contractor to provide College with evidence of Insurance in the form of an Insurance Certificate and an Endorsement, with both documents naming the Mt. San Antonio Community College, its Board of Trustees, employees, and agents as additional insureds.

ARTICLE V INDEPENDENT CONTRACTOR

1. Independent Contractor, in the performance of this Agreement, will determine the method, details, and means of performing the Services, and will, at Independent Contractor's own expense, supply all labor, tools, materials, equipment, supplies, and items necessary to perform the Services. Independent Contractor has no authority to bind College. Independent Contractor understands and agrees that Independent Contractor, and all of Independent Contractor's employees and agents, shall not be considered officers, employees, or agents of College, and are not entitled to benefits of any kind or nature normally provided to employees of College or to which College's employees are normally entitled. Independent Contractor assumes the full responsibility for the acts and omissions of its employees and agents. Independent Contractor shall assume full responsibility for payment of all federal, state, and local taxes or contributions, with respect to Independent Contractor and its employees and agents.

ARTICLE VI MISCELLANEOUS PROVISIONS

1. An inducement to College for entering into this Agreement is the professional reputation and competence of Independent Contractor and its employees. Neither this Agreement, nor any interest therein, may be assigned by Independent Contractor without the prior written consent of College, which consent may be withheld in College's sole discretion.

2. This Agreement represents the entire and integrated Agreement between College and Independent Contractor and supersedes all prior negotiations, representations, or Agreements, either written or oral. This Agreement may be amended only by written instrument signed by both College and Independent Contractor.

3. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against College.

4. Time is of the essence for this Agreement.

5. College shall not be liable for any special, indirect, exemplary, punitive, consequential, or incidental damages, including, without limitation, lost revenues, anticipated revenues, or profits relating to the same arising from any claim relating directly or indirectly to this Agreement whether a claim for such damages is based on warranty, contract, or tort even if the Parties are advised of the likelihood or possibility of the same.

6. Independent Contractor, if an employee of another public agency, agrees that Independent Contractor will not receive salary or remuneration, other than vacation pay, as an employee of another public agency for the actual time in which Services are actually being performed pursuant to this Agreement.

7. The failure of College or Independent Contractor to seek redress for violation of, or to insist upon, the strict performance of any term or condition of this Agreement shall not be deemed a waiver by that Party of such term or condition, or prevent a subsequent similar act from again constituting a violation of such term or condition.

8. In the event of any dispute, arbitration, or litigation between the Parties arising out of or relating in any manner to this Agreement, including the necessity of either Party to defend any action which has been covered hereby or to prosecute any action to enforce this Agreement, the losing Party shall pay all reasonable costs and expenses including reasonable attorneys' fees of the prevailing Party and any judgment, decision, or award rendered against either of the Parties may specifically include such reasonable costs, expenses, and attorneys' fees of the prevailing Party.

9. Any notice or communication required or permitted to be given hereunder or by law shall be in writing and served personally, delivered by courier, or sent by United States certified mail, postage prepaid with return receipt requested, addressed to the other Party as follows:

In witness thereof, said parties have executed this Agreement as of the first date written below.

Independent Contractor:

Date

Independent Contractor (Signature)

Social Security Number or Employer ID

Street Address

Telephone Number

City, State, Zip Code

Email

Mt. SAC:

President or Designated Vice President (Signature)

Vice President of Human Resources

Date

Date