

## BUSINESS AND NON-INSTRUCTIONAL OPERATIONS

### CONSULTANTS

#### Independent Contractors

The management staff member requesting authorization to utilize the services of a consultant shall make the following determinations and complete noted forms marked with a \* pertinent to BP 3600:

1. **Consultant versus Employee** – The following common law rule shall be used to determine if the required services are most appropriately provided by an employee or a consultant.

A worker is an employee under the common law rule if the person for whom she/he works has the right to direct and control him/her way in the way he/she works. The employer need not actually exercise the control; it is sufficient that he/she has the right to do so. Where the employer does not possess that right, the individual involved is an independent contractor, not an employee.

There a number of factors that may aid in the determination of whether the requisite right of direction and control exists in a given situation. No one or small group of them is necessarily controlling. The factors are to be weighted against those that indicate an independent contractor status. Note that the relative importance of any one factor may vary depending on the occupation under consideration (Fill out Form BP 3600 (j)). The following is a list of some of the factors to be considered;

\*Work done on premises. An employee works on the premises of an employer or works on a route or at a location designated by an employer.

a. \*Tools and materials. An employee is furnished significant tools, materials, and other equipment by an employer.

b. \*Investment. An independent contractor has a significant investment in the facilities he/she uses in performing services for someone else.

c. \*Work for more than one person or firm. An independent contractor gives his/her services to two or more unrelated persons or firms at the same time.

d. \*Offers services to general public. An independent contractor makes his/her services available to the general public.

e. \*Resignation. An employee can quit his/her job at any time without incurring liability. An independent contractor usually agrees to complete a specific job and is responsible for its satisfactory completion or is legally obligated to make good for failure to complete it.

\*Case law has determined these factors to be of greatest significance.

f. Instructions. An employee must comply with instructions about when, where, and how to work. Even if no instructions are given, the control factor is present if the employer has the right to give instructions.

g. Training. An employee is trained to perform services in a particular manner. Independent contractors ordinarily use their methods and receive no training from the purchaser of their services.

- h. Integration. An employee's services are integrated into the business operations because the services are important to the success of continuation of the business, and accordingly the employee is subject to direction and control.
- i. Services rendered personally. An employee renders services personally, and the employer is interested in the methods as well as the results.
- j. Hiring assistants. An employee works for an employer who hires, supervises, and pays assistants. An independent contractor hires, supervises, and pays assistants under a contract that requires him/her to provide materials and labor and to be responsible only for the results.
- k. Continuing relationship. An employee has a continuing relationship with an employer. A continuing relationship may exist where work is performed at frequently recurring, although irregular, intervals.
- l. Set hours of work. An employee has set hours of work established by an employer. An independent contractor is the master of his/her own time.
- m. Full-time work. An employee normally works full time for an employer. An independent contractor can work when and for whom he/she chooses.
- n. Order or sequence set. An employee must perform services in the order or sequence set by an employer.
- o. Reports. An employee submits report to an employer, demonstrating the employee must account to the employer for his/her actions.
- p. Payments. An employee is paid by the hour, week, or month. An independent contractor is paid by the job or on a straight commission.
- q. Expenses. An employee's business and travel expenses are paid by an employer, and the employee is subject to regulation and control.
- r. Profit and loss. An independent contractor can make a profit or suffer a loss.
- s. Termination. An employee can be fired by an employer. An independent contractor cannot be fired so long as he/she produces results that meet the specifications of the contract.

2. **Required Licenses** – The consultant holds all licenses required to perform requested services.

**\*Form AR 3600 (b) IRS Professional Services-Classification Criteria**

**\*Form AR 3600 (c) or AR 3600 (d) for disclosure and non-disclosure requirements. Use Agreement for Consultant Services**

**\* AR 3600 (h) form Use Conflict of Interest.**

**\*(AR 3600 (i))Use Discrimination Clause**

## ORCUTT UNION SCHOOL DISTRICT

500 Dyer Street  
 Orcutt, CA 93455  
 (805) 938-8900

**\*IRS PROFESSIONAL SERVICES - CLASSIFICATION CRITERIA**

Note: This questionnaire must be completed for each *incident of hiring for unique services to be provided by individuals who are either currently employed or not employed by the district.*

Name: \_\_\_\_\_ Services/Job Title: \_\_\_\_\_

## EMPLOYEE/EMPLOYER RELATIONSHIP:

1. Is the individual with whom the District is entering into this agreement already employed by the District?  
 YES \_\_\_ NO \_\_\_ (If YES, disregard remaining questions. *Use a district timesheet to log in additional work hours.*)
2. Will the District tell the individual when, where, and how to work? YES \_\_\_ NO \_\_\_
3. Will the individual have a continuing relationship with the District? YES \_\_\_ NO \_\_\_
4. Will the individual offer their services exclusively to the District? YES \_\_\_ NO \_\_\_
5. Will the District set the hours the individual is to work? YES \_\_\_ NO \_\_\_
6. Will the District require the work to be accomplished on District property? YES \_\_\_ NO \_\_\_
7. Will the District provide the tools, materials/equipment needed to accomplish the work? YES \_\_\_ NO \_\_\_

NOTE: If the answer is YES to any three (3) of questions 2 through 7, an employer/employee relationship exists and Escape should be used noting this as a temporary employee position.



## INDEPENDENT CONTRACTOR RELATIONSHIP:

NOTE: If the answer is NO to four (4) of the above questions (2 through 7) A YES answer is necessary to the following two (2) questions to establish an individual as an independent contractor and the use of an *Agreement for Consultant/Independent Contractor Services* form AR 3600 (a) or (f):

- A. Is the individual customarily engaged in an independently established trade, occupation, profession, or business of the same nature as that involved in the service to be performed for the District: YES \_\_\_
- B. Does the individual customarily (1) work for others, (2) advertise, (3) provide their own tools, materials, equipment, supplies, (4) submit proposals or bids on projects for which they set their own fees, and (5) liable for the performance of the work? YES: \_\_\_

District Representative \_\_\_\_\_ Date \_\_\_\_\_

ORCUTT UNION SCHOOL DISTRICT  
500 Dyer Street  
Orcutt, CA 93455  
(805) 938-8900

AGREEMENT FOR CONSULTANT SERVICES  
(Nondisclosure Category)

Agreement Number \_\_\_\_\_

THIS AGREEMENT, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_ by and between the Orcutt Union School District, hereinafter referred to as the District, and

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hereinafter referred to as the Consultant.

WITNESSETH:

WHEREAS, the District is authorized by California Government Code Section 53060 to contract with an independent contractor for the furnishing to the District special services and advise in financial economic, legal, or administrative matters, if said contractor is specially trained, experienced, and competent to render the special consultant services set forth in this Agreement; and

WHEREAS, the District has determined that it is necessary that the special services set forth herein be provided, and that such services will assist the governing board in discharging its legal obligation and will supplement assistance by State and County authorities and not replace such assistance; and

WHEREAS, the Consultant has offered to provide to the District such special services;

NOW, THEREFORE, in consideration of their mutual promises, the parties hereto agree to enter into a fixed price contract, as follows:

1. The Consultant will serve as a resource associate by consulting with and assisting the District in the matters listed as follows:
2. In consideration of the services to be rendered by the Consultant, the District agrees to payment as follows:
3. While engaged in carrying out and complying with the terms of this Agreement, the Consultant is an independent contractor, and not an officer, agent, or employee of the District.
4. The Consultant further agrees that the District shall not be liable for any damage or injury to persons or property during the term hereof, caused or occasioned as the direct or proximate consequences of the act or omission of any person furnishing services hereunder, while acting in the course and scope hereof, and Consultant will indemnify and hold District harmless of and from all liability whatsoever on account of any such damage or injury. Consultant shall not, however, be liable for any damage or injury occasioned by and failure of District to comply with its obligations hereunder, or by reason of any negligence of District, its agents, servants, or employees.

5. The Consultant possesses no authority with respect to any district decision beyond the rendition of information, advise recommendation or counsel and, therefore, is not subject to disclosure requirement under the Conflict of Interest Code.
6. This Agreement, or any of its rights, obligations, provisions, or conditions, may not be assigned by either party without the written consent of the other party.
7. Payment for the work shall be made for all undisputed amounts in installment payments within thirty (30) days after Consultant submit an invoice to the district for work actually completed.

IN WITNESS WHEREOF, the parties hereto have set their hands on the day and year first above written at Orcutt, California.

\_\_\_\_\_  
Consultant

\_\_\_\_\_  
Superintendent or Assist. Supt., Business Svcs

Address \_\_\_\_\_

Telephone \_\_\_\_\_

Social Security No. \_\_\_\_/\_\_\_\_/\_\_\_\_

ORCUTT UNION SCHOOL DISTRICT  
500 Dyer Street  
Orcutt, CA 93455  
(805) 938-8900

AGREEMENT FOR CONSULTANT SERVICES  
(Disclosure Category)

Agreement Number \_\_\_\_\_

THIS AGREEMENT, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_ by and between the Orcutt Union School District, hereinafter referred to as the District, and

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WITNESSETH:

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3. While engaged in carrying out and complying with the terms of this Agreement, the Consultant is an independent contractor, and not an officer, agent, or employee of the District.
4. The Consultant further agrees that the District shall not be liable for any damage or injury to persons or property during the term hereof, caused or occasioned as the direct or proximate consequences of the act or omission of any person furnishing services hereunder, while acting in the course and scope hereof, and Consultant will indemnify and hold District harmless of and from all liability whatsoever on account of any such damage or injury. Consultant shall not, however, be liable for any damage or injury occasioned by and failure of District to comply with its obligations hereunder, or by reason of any negligence of District, its agents, servants, or employees.
5. For a specified length of time, from \_\_\_\_\_ to \_\_\_\_\_,

the Consultant: (1) will interact with district decision-makers on an on-going basis; and/or (2) whose participation involves a broad exercise of discretion; is, therefore, subject to disclosure under the conflict of Interest Code for the Orcutt Union School District under the appropriate disclosure categories listed on Exhibit B, 2030(B) E.

6. This Agreement, or any of its rights, obligations, provisions, or conditions, may not be assigned by either party without the written consent of the other party.
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IN WITNESS WHEREOF, the parties hereto have set their hands on the day and year first above written at Orcutt, California.

\_\_\_\_\_  
Consultant

\_\_\_\_\_  
Superintendent or Assist. Supt., Business Svcs

Address \_\_\_\_\_

Telephone \_\_\_\_\_

Social Security No. \_\_\_\_/\_\_\_\_/\_\_\_\_

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CONFLICT OF INTEREST CODE FOR THE ORCUTT SCHOOL DISTRICT  
TRUSTEES AND DESIGNATED DISTRICT EMPLOYEES

The current Conflict of Interest Code for the Orcutt Union School District requires that this sheet be attached to all consultant contracts.

The Code states "The disclosure, if any required of a consultant, will be determined on a case-by-case basis by the Superintendent or his/her designee. The determination of whether a particular consultant has or will have disclosure requirements is to be made in writing..."

The administrator under whose jurisdiction the consultant contract is entered into should complete the section below, and this completed, signed page must be affixed to all consultant contracts in the future.

The Consultant, \_\_\_\_\_,  
whose services are covered under Agreement \_\_\_\_\_, is  is not  subject to  
disclosure obligation under the Orcutt Union School District Conflict of Interest Code, 2030 BB.

Date: \_\_\_\_\_ Signed: \_\_\_\_\_  
District Administrator

Reference:

Board Bylaw 9270, Conflict of Interest Code for the Orcutt Union School District  
Government Code 81000 et seq.  
Government Code 87100  
Government Code 87300, 87307



DISCRIMINATION CLAUSE

**NONDISCRIMINATION. CONSULTANT** shall abide by the current provisions, and later revisions, of the United States Civil Rights Act of 1964, which prohibits discrimination against any service recipient on the basis of race, national origin or ancestry, age, religion, sex, marital status, political affiliation, or physical or mental condition. CONSULTANT shall comply with section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), pertaining to the prohibition of discrimination against qualified handicapped persons under any program or activity that receives or benefits from federal financial assistance.

**TERMINATION.** This Agreement may be terminated or amended in writing at any time by mutual consent of the parties hereto; or, upon thirty (30) days advance notice by either party. In the event of cancellation prior to completion of the specified services, all finished or unfinished documents, data, studies, and reports prepared by the Consultant under this Agreement shall, at the option of the District, become District's property and the Consultant shall be entitled to receive just and equitable compensation for any satisfactory work completed on such items.

Notwithstanding the above, the Consultant shall not be relieved of the liability to the District for damages sustained by the District by virtue of any breach of the contract by the Consultant, and the District may withhold any payments to the Consultant for the purpose of setoff until such time as the exact amount of damages due the District from the Consultant is determined.

\_\_\_\_\_  
Consultant

\_\_\_\_\_  
Superintendent or Assist. Supt., Business Svcs