

GUIDELINES FOR EMPLOYING INDEPENDENT CONTRACT CONSULTANTS

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

Administrator	School Bus Drivers
Cafeteria Worker	Clerical Staff
Counselors	Athletic Coaches
Examination Monitors	Tutors
Proctors	Nurses
Librarians	Psychologists
Teachers/Instructors	Individuals “filling in” on interim basis
Substitute Teachers/Instructors	Specialty Teachers (art, poetry, music, etc.)

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

- ASB Workers
- Licensed Clinical Social Workers
- Categorical Program Coordinators
- SAT Prep Class Teacher
- Attendance/Outreach Consultants

What SCCCD 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 an independent contract consultant are responsible for the completion of the “Questionnaire for Hiring Independent Contractors.”

If the individual in question is not being engaged to perform services in one of the above categories, you may use the questionnaire on the following page to analyze the employment relationship between SCCCD and the individual. The IRS regulations have been considered in developing the questionnaire.

If the individual is determined to be properly classified as an independent contractor, attach the following completed documents to the approved requisition:

- Independent Contractor Questionnaire (Completed by SCCCD Employee)
- Independent Contractor Agreement
- Tax Withholding Forms – 590 or 587
- W-9 Form

Please forward the documents to the District Office Purchasing Department. All other individuals are considered employees and should be referred to the Personnel Department.

STATE CENTER COMMUNITY COLLEGE DISTRICT (SCCCD)

Questionnaire for Engaging Independent Contract Consultants
in Accordance with IRS Regulations
MUST BE COMPLETED BY SCCCDC EMPLOYEE

PART I

1. Has this category of worker been classified as an “employee” by the IRS? Yes No

Refer to the Guidelines for Employing “Independent Contractor Consultants” for categories of jobs listed in IRS Publication SWR 40 and others identified during a recent IRS compliance audit 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 an employee of SCCCDC in another capacity? Yes No

3. Has the individual performed substantially the same services for SCCCDC as an employee in the past? Yes No

Watch for former employees who are returning to work at SCCCDC.

4. Are there currently employees of SCCCDC doing substantially the same work as will be required of the individual you are hiring? Yes No

5. Will SCCCDC have the legal right to control the method of performance by this individual? Yes No

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.

6. Are the services, as being provided, an integral part of SCCCDC operations? Yes No

Are the services provided necessary to the operations of SCCCDC programs, projects, etc.? This indicates SCCCDC has an interest in the method of performance and implies maintenance of legal control.

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 SCCCDC and must be paid and reported accordingly.

If all of the above are **NO**, continue to **PART II.**

PART II

7. Does the individual have the right to designate someone else to do the work without SCCCD approval? Yes No

8. Does the District have a continuing relationship with this individual? Yes No

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.

9. Can this relationship be terminated without the consent of both parties? Yes No

Independent contractors have contractual obligations to fill.

10. 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 they have 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 SCCCD and the individual performing the work.

11. Will the individual provide all materials and support services necessary for the performance of the service? Yes No

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.

12. Is the individual paid by the job OR upon completion and acceptance of the work as a whole OR milestones identified in the contract? Yes No

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.

13. Will the individual bear the cost of any travel and business expenses incurred to perform the work? Yes No

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.

➡ **After completing, please attach with the Independent Contractor Agreement, approved requisition, W-9, California 590, California 587 (if appropriate), and return to the District Office Purchasing Dept.**

Signature of Originator

Date

REPORTING REQUIREMENT CHANGES

ISSUE #1

State Residency of Independent Contractor

WHO?

This includes all California nonresident independent contractors (individuals, corporations, limited liability companies, and partnerships) who earn more than \$1,500 for services rendered to SCCCD in a calendar year.

WHAT?

These individuals will have 7% of their payment withheld unless they qualify for an adjustment.

WHEN?

This took effect for all out of state independent contractors as of **January 1, 2001**.

HOW?

The independent contractor (vendor) needs to file certain forms (under penalty of perjury) to determine if they are a resident of California. It is not the District's responsibility to make that determination, only to provide them with the forms to complete.

- W-9 Form – Taxpayer Identification Number Request. Complete form and submit to SCCCD. All independent contractors need to complete this form in order for the District to pay them for their services.
- California Form 590 – Used to determine if you are a resident or non-resident of California. Complete form and submit to SCCCD. All independent contractors need to complete this form to determine residency in California.
- California Form 587 – Used to determine how much of the payment to the vendor was earned in California and how much was earned outside California. Most contractors we “employ” earn 100% in California. Complete form and submit to SCCCD. All nonresident independent contractors need to complete this form to determine withholding allocation.

WHY?

To make certain that out of state independent contractors pay their fair share of California taxes.

REPORTING REQUIREMENT CHANGES

ISSUE #2

Revised Reporting Requirements for All Independent Contractors

WHO?

Includes independent contractors who are paid \$600 (**cumulatively district-wide**) or more in a calendar year or enter into a contract of \$600 or more in a calendar year.

WHAT?

SCCCD needs to report twice a month to the Employment Development Department (EDD) these individuals and the amounts paid or contract entered into.

WHEN?

This took effect for all independent contractors as of **January 1, 2001**.

HOW?

All independent contracts, W-9 Form, and independent contractor questionnaires need to be **submitted to and approved** by the DO **prior** to the independent contractor working for the District. W-9 Forms are forms that vendors provide to SCCCD. The information provided is essential for us to report information to the State of California. Information needs to be correct and the vendor completes the form under penalty of perjury.

- W-9 Form – Taxpayer Identification Number Request. Complete form and submit to SCCCD. All independent contractors need to complete this form in order for the District to pay them for their services.
- California Form 590 – Used to determine if you are a resident or non-resident of California. Complete form and submit to SCCCD. All independent contractors need to complete this form to determine residency in California. If the independent contractor is a nonresident of California, they will need to complete California Form 587 (see State Residency of Independent Contractors for more details).

WHY?

The State of California is trying to enforce child support payments from deadbeat parents.

INDEPENDENT CONTRACTOR AGREEMENT

THIS AGREEMENT is hereby entered into between the STATE CENTER COMMUNITY COLLEGE DISTRICT, hereinafter referred to as "District," and

CONTRACTOR
(As shown on tax records)

TAXPAYER I.D. NUMBER

Mailing Address

City State Zip

hereinafter referred as "Contractor." In consideration of the mutual promises herein, the parties agree as follows:

1. Contractor will render the following Services to District (describe in detail):

2. Term. Contractor shall commence providing services under this Agreement on

_____, 20___, and will diligently perform as required and complete performance by _____, 20___.

3. Compensation. District agrees to pay the Contractor for services satisfactorily

rendered pursuant to this Agreement a total fee not to exceed _____

(\$ _____). District shall pay Contractor such fee according to the following terms and conditions:

4. Expenses. District shall not be liable to Contractor for any costs or expenses paid or incurred by Contractor in performing services for District.

5. Independent Contractor. Contractor, in the performance of this Agreement, shall be and act as an independent contractor. Contractor understands and agrees that he/she and all of his/her employees shall not be considered officers, employees, or agents of the District, and are not entitled to benefits of any kind of 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 Workers' Compensation. Contractor assumes the full responsibility for the acts and/or omissions of his/her employee 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 but not limited to unemployment insurance, workers compensation insurance, social security and income taxes with respect to Contractor's employees. In accordance with the provisions of Labor Code section 3700, Contractor shall provide, at its sole cost and expense, workers' compensation insurance for all of its employees. In this respect, Contractor's signature on this contract shall indicate acceptance of the following certification under this contract/agreement:

"I am aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code and I will comply with those provisions before commencing performance of the work covered by this contract/agreement."

6. Materials. Contractor shall furnish, at his/her own expense, all labor, materials, equipment, supplies and other items necessary to complete the services to be provided pursuant to this Agreement, except as follows: _____

_____.

7. Disputes. In the event of a dispute between the District and the Contractor as to an interpretation of any of the requirements specified in the agreement, the decision of the District shall for the time being prevail and the Contractor, without delaying his or her service, shall proceed as directed by the District without prejudice to any final determination.

8. Copyright/Trademark/Patent. Contractor understands and agrees that all matters produced under this Agreement shall become the property of District and cannot be used without District's express written permission. District 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 matter in the name of the District.

9. Confidentiality. Contractor agrees to maintain in confidence and will not reveal or release any personally identifiable student information from educational records as defined under the provisions of FERPA (Family Educational Rights and Privacy Act of 1974) or confidential employee information which he or she may receive while performing services under this agreement.

10. Termination. District may at any time terminate this Agreement and compensate Contractor only for services satisfactorily rendered to the date of termination. Written notice by District shall be sufficient to stop further performance of services by Contractor. Notice shall be deemed given when received by the Contractor, or no later than three (3) days after the day of mailing, whichever is sooner. In the event Contractor fails to satisfactorily complete Contractor's responsibilities under this agreement, District shall be entitled to pursue appropriate remedies against Contractor pursuant to law.

11. Hold Harmless. Contractor agrees to and does hereby indemnify, hold harmless and defend the District and its officers, agents, and employees from every claim or demand of any kind made and every liability, loss, damage, or expense, of any nature whatsoever including reasonable attorney's fees arising out of the performance of this Agreement, except those caused by the District's negligence or intentional acts.

12. Assignment. The obligations of the Contractor pursuant to this Agreement shall not

be assigned by the Contractor, unless such assignment is approved and agreed to in writing by the District.

13. Compliance with Applicable Laws. The services completed herein must meet the approval of the District and shall be subject to the District's general right of inspection to secure the satisfactory completion thereof. Contractor agrees to comply with all federal, state and local laws, rules, regulations and ordinances that are now or may in the future become applicable to Contractor, Contractor's business, equipment, and personnel engaged in operations covered by this Agreement or accruing out of the performance of such operations.

14. Entire Agreement/Amendment. This Agreement and any exhibits attached hereto constitute the entire agreement between the parties hereto and supersede any prior or contemporaneous understanding or agreement with respect to the services contemplated, and may be amended only by a written amendment executed by both parties to the Agreement.

15. Nondiscrimination. Contractor agrees that it will not engage in unlawful discrimination in employment of persons because of race, color, age, religious creed, national origin, ancestry, physical handicap, medical condition, marital status, or sex of such persons.

16. Non Waiver. The failure of District or 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.

17. Notice. All notices or demands to be given under this Agreement by either party to the other shall be in writing and given either by: (a) personal service; or (b) deposited in the U.S. mail with First Class postage prepaid. Service shall be considered given when received if personally served or if mailed on the third day after deposit in any U.S. Post Office. The address to which notices or demands may be given by either party may be changed by written notice given in accordance with the notice provisions of this section. At the date of this Agreement, the addresses of the parties are as follows:

Vice Chancellor – Human Resources

State Center Community College District

1525 E. Weldon Ave

Fresno, CA 93704

Contractor Contact Information

18. Federal Funding. For federally funded agreements, Contractor understands and certifies that it is in compliance with Executive Orders 12459 and 12689, 29 CFR 95 Appendix A regarding “Debarment and Suspension” and “Rights to Inventions Made Under a Contract or Agreement”. Contractor further certifies that it will or will continue to provide a “Drug Free Workplace” by implementing the provisions of 29 CFR 98. Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the “Clean Air Act”, 42.U.S.C. 7401 et seq., and further agrees to complete Attachment E.1 –“Anti-Lobbying” Certification as required by 31 U.S.C. 1352, for contracts of \$100,000 or more. Further, Contractor grants access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

19. Severability. If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.

20. Governing Law. The terms and conditions of this Agreement shall be governed by the laws of the State of California with venue in Fresno County, California.

THIS AGREEMENT is entered into this _____ day of _____, 20__.

STATE CENTER COMMUNITY
COLLEGE DISTRICT

CONTRACTOR

By _____
Signature of Campus Administrator

By _____
Signature

Typed Name

Typed Name

Title

Title

Social Security or Tax Payer Identification Number

Approved as to Form
William A. Schofield, Director of Finance

Approved as to Legal Form
Gregory Taylor, General Counsel

Approved Julianna D. Mosier
Vice Chancellor – Human Resources