



SAN JOSE UNIFIED SCHOOL DISTRICT

INDEPENDENT CONTRACTOR AGREEMENT FOR SPECIAL SERVICES

CONTRACTOR FULL NAME _____

TAX I.D. NUMBER _____

SITE/DEPARTMENT _____
(Location)

PREPARED BY _____
(Name, title, and phone number)

PRINCIPAL/SJUSD ADMINISTRATOR _____
(Name and title)

SIGNATURE FROM BUDGET CONTROL ADMINISTRATOR _____

BOARD DATE _____

REQUISITION NUMBER _____

BUDGET NUMBER _____

FUNDING SOURCE _____

AGREEMENT TOTAL AMOUNT _____

The District employee that is providing the attached independent contractor agreement to the person or entity that will be providing special services to the District should first do the following:

1. Provide only the San José Unified School District's approved 2009-2010 independent agreement. The Independent Contract agreement should be completed in lieu of signing any vendor contract for services.
2. Review the insurance requirements for the person or entity and revise the insurance provisions of the agreement accordingly.
3. Review the forms under section 3 and determine which of those documents should be attached to the agreement.
4. Do not remove this cover sheet from the contract. If any revisions are requested, they need prior authorization by the Director of Purchasing & Contract Management.
5. The independent contract needs to be submitted into the Purchasing & Contract Management office four (4) business days prior to the Board Secretary's Deadline Date.

For Purchasing & Contract Management Staff Only

Received By: _____ **Date:** _____

No. of Pages Submitted: _____

CONTRACTOR: _____

TAX I.D. NUMBER _____

This Independent Contractor Agreement for Special Services ("Agreement") is made as of the ____ day of ____ in the year ____, between the San José Unified School District ("District") and _____ ("Contractor") (together, "Parties").

WHEREAS, the District is authorized by Section 53060 of the California Government Code to contract with and employ any persons for the furnishing of special services and advice in financial, economic, accounting, engineering, legal or administrative matters, if those persons are specially trained and experienced and competent to perform the special services required; and

WHEREAS, the District is authorized by Section 20111 of the California Public Contract Code to contract with and employ any persons for the furnishing of non-construction services, if the contract amount is no greater than the annually adjusted statutory limit, which is \$ _____, in _____; and

WHEREAS, the District is in need of those services and/or advice; and

WHEREAS, the Contractor is specially trained and experienced and competent to perform the services required by the District, and those services are needed on a limited basis;

NOW, THEREFORE, the Parties agree as follows:

1. **Services.** The Contractor shall furnish to the District the following services:

[OR] the Contractor shall provide the services as described in **Exhibit "A,"** attached hereto and incorporated herein by this reference ("Services" or "Work")

2. **Term.** Contractor shall commence providing services under this Agreement on _____, and will diligently perform as required and complete performance by _____.

3. **Submittal of Documents.** The Contractor shall not commence the Work under this Agreement until the Contractor has submitted and the District has approved the certificate(s) and affidavit(s), and the endorsement(s) of insurance required as indicated below:

	Signed Agreement
	Insurance Certificates and Endorsements
	W-9 Form
	Workers' Compensation Certificate
	Tuberculosis Clearance
	Fingerprinting/Criminal Background Investigation

Work cannot be rendered until all required documentation is submitted and final approval is received.

4. **Compensation.** District agrees to pay the Contractor for Services satisfactorily rendered pursuant to this Agreement a total fee not to exceed _____ Dollars (_____). District shall pay Contractor according to the following terms and conditions:

4.1. Payment for the Work shall be made for all undisputed amounts in installment payments within thirty (30) days after the Contractor submits an invoice to the District for Work actually completed. Contractor will only be paid after the SJUSD Board of Education has ratified/approved this Agreement.

4.2.

5. **Expenses.** District shall not be liable to Contractor for any costs or expenses paid or incurred by Contractor in performing Services for District, except as follows:

5.1.

6. **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, agents, partner, or joint venture 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 shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to Contractor's employees. In the performance of the Work herein contemplated, Contractor is an independent contractor or business entity, with the sole authority for controlling and directing the performance of the details of the Work, District being interested only in the results obtained.

7. **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:

7.1. _____

8. **Performance of Services.**

8.1 **Standard of Care.** Contractor represents that Contractor has the qualifications and ability to perform the Services in a professional manner, without the advice, control or supervision of the District. Contractor's Services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of his/her profession for services to California school districts.

8.2 **Meetings.** Contractor and District agree to participate in regular meetings on at least a monthly basis to discuss strategies, timetables, implementation of Services, and any other issues deemed relevant to the operation of Contractor's performance of Services unless District determines that regular meetings are unnecessary.

8.3 **District Approval.** The work completed herein must meet the approval of the District and shall be subject to the District's general right of inspection and supervision to secure the satisfactory completion thereof.

8.4 **New Project Approval.** Contractor and District recognize that Contractor's Services may include working on various projects for District. Contractor shall obtain the approval of District prior to the commencement of a new project.

9. **Originality Of Services.** Contractor agrees that all technologies, formulae, procedures, processes, methods, writings, ideas, dialogue, compositions, recordings, teleplays and video productions prepared for, written for, or submitted to the District and/or used in connection with this Agreement, shall be wholly original to Contractor and shall not be copied in whole or in part from any other source, except that submitted to Contractor by District as a basis for such Services.

10. *Applicable If Highlighted 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. Contractor consents to use of Contractor's name in conjunction with the sale, use, performance and distribution of the matters, for any purpose and in any medium.

11. **Audit.** Contractor shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of Contractor transacted under this Agreement. Contractor shall retain these books, records, and systems of account during the Term of this Agreement and for five (5) years thereafter. Contractor shall permit the District, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all billing statements, invoices, records, and other data related to the Services covered by this Agreement. Audit(s) may be performed at any time, provided that the District shall give reasonable prior notice to Contractor and shall conduct audit(s) during Contractor's normal business hours, unless Contractor otherwise consents.

12. **Termination.**

12.1. **Without Cause By District.** District may, at any time, with or without reason, 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 days after the day of mailing, whichever is sooner.

12.2. **Without Cause By Contractor.** Contractor may, upon thirty (30) days notice, with or without reason, terminate this Agreement. Upon this termination, District shall only be obligated to compensate Contractor for services satisfactorily rendered to the date of termination. Written notice by Contractor shall be sufficient to stop further performance of services to District. Contractor acknowledges that this thirty (30) day notice period is acceptable so that the District can attempt to procure the Services from another source.

12.3. **With Cause By District.** District may terminate this Agreement upon giving of written notice of intention to terminate for cause. Cause shall include:

12.3.1. material violation of this Agreement by the Contractor; or

12.3.2. any act by Contractor exposing the District to liability to others for personal injury or property damage; or

12.3.3. Contractor is adjudged a bankrupt, Contractor makes a general assignment for the benefit of creditors or a receiver is appointed on account of Contractor's insolvency.

Written notice by District shall contain the reasons for such intention to terminate and unless within three (3) calendar days after that notice the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, this Agreement shall upon the expiration of the three (3) calendar days cease and terminate. In the event of this termination, the District may secure the required services from another Contractor. If the expense, fees, and/or costs to the District exceeds the cost of providing the services pursuant to this Agreement, the Contractor shall immediately pay the excess expense, fees, and/or costs to the District upon the receipt of the District's notice of these expense, fees, and/or costs. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to District.

13. **Indemnification.** To the furthest extent permitted by California law, Contractor shall, at its sole expense, defend, indemnify, and hold harmless the District, the State of California, and their agents, representatives, officers, consultants, employees, trustees, and volunteers (the "indemnified parties") from any and all demands, losses, liabilities, claims, suits, and actions (the "claims") of any kind, nature, and description, including, but not limited to, personal injury, death, property damage, and consultants (and/or attorneys) fees and costs, directly or indirectly arising out of, connected with, or resulting from the performance of the Agreement or from any activity, work, or thing done, permitted, or suffered by the Contractor in conjunction with this Agreement, unless the claims are caused wholly by the sole negligence or willful misconduct of the indemnified parties. The District shall have the right to accept or reject any legal representation that Contractor proposes to defend the indemnified parties.

14. **Insurance.**

14.1. The Contractor shall procure and maintain at all times it performs any portion of the Services the following insurance with minimum limits equal to the amounts indicated below.

14.1.1. **Commercial General Liability and Automobile Liability Insurance.** Commercial General Liability Insurance and Any Automobile Liability Insurance that shall protect the Contractor, the District, and the State from all claims of bodily injury, property damage, personal injury, death, advertising injury, and medical payments arising from performing any portion of the Services. (Form CG 0001 and CA 0001) (Refer to chart below.)

14.1.2. **Workers' Compensation and Employers' Liability Insurance.** Workers' Compensation Insurance and Employers' Liability Insurance for all of its employees performing any portion of the Services. In accordance with provisions of section 3700 of the California Labor Code, the Contractor shall be required to secure workers' compensation coverage for its employees. If any class of employee or employees engaged in performing any portion of the Services under this Agreement are not protected under the Workers' Compensation Statute, adequate insurance coverage for the protection of any employee(s) not otherwise protected must be obtained before any of those employee(s) commence performing any portion of the Services. (Refer to chart below.)

14.1.3. **Professional Liability (Errors and Omissions).** Professional Liability (Errors and Omissions) Insurance as appropriate to the Contractor's profession. (Refer to chart below.)

Type of Coverage	Minimum Requirement
Commercial General Liability Insurance	(Including Bodily Injury, Personal Injury, Property Damage, Advertising Injury, and Medical Payments)
Each Occurrence	\$1,000,000
General Aggregate	\$2,000,000
Automobile Liability Insurance - Any Auto:	
Each Occurrence	\$1,000,000
General Aggregate	\$1,000,000
Professional Liability	\$1,000,000
Workers Compensation	Statutory Limits
Employer's Liability	\$1,000,000

14.2. **Proof of Carriage of Insurance.** The Contractor shall not commence performing any portion of the Services until all required insurance has been obtained and certificates indicating the required coverage have been delivered in duplicate to the District and approved by the District. Certificates and insurance policies shall include the following:

14.2.1. A clause stating: "This policy shall not be canceled or reduced in required limits of liability or amounts of insurance until notice has been mailed to the District stating date of cancellation or reduction. Date of cancellation or reduction shall not be less than thirty (30) days after date of mailing notice."

14.2.2. Language stating in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, to whom cancellation and reduction notice will be sent, and length of notice period. (If a contractor is contracting for multiple sites, have the certificate of insurance made out to San José Unified School District for the fiscal year.)

14.2.3. An endorsement stating that the District and the State and their agents, representatives, employees, trustees, officers, consultants, and volunteers are named additional insured under all policies except Workers' Compensation Insurance, Professional Liability, and Employers' Liability Insurance. An endorsement shall also state that Contractor's insurance policies shall be primary to any insurance or self-insurance maintained by District.

14.2.4. With the exception of professional liability insurance, if applicable, all policies shall be written on an occurrence form.

14.3. **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the District.

15. **Assignment.** The obligations of the Contractor pursuant to this Agreement shall not be assigned by the Contractor.

16. **Compliance With Laws.** Contractor shall observe and comply with all rules and regulations of the governing board of the District and all federal, state, and local laws, ordinances and regulations. Contractor shall give all notices required by any law, ordinance, rule and regulation bearing on conduct of the Work as indicated or specified. If Contractor observes that any of the Work required by this Agreement is at variance with any such laws, ordinance, rules or regulations, Contractor shall notify the District, in writing, and, at the sole option of the District, any necessary changes to the scope of the Work shall be made and this Agreement shall be appropriately amended in writing, or this Agreement shall be terminated effective upon Contractor's receipt of a written termination notice from the District. If Contractor performs any work that is in violation of any laws, ordinances, rules or regulations, without first notifying the District of the violation, Contractor shall bear all costs arising there-from.

17. **Certificates/Permits/Licenses.** Contractor and all Contractor's employees or agents shall secure and maintain in force such certificates, permits and licenses as are required by law in connection with the furnishing of services pursuant to this agreement.

18. **Employment With Public Agency.** Contractor, if an employee of another public agency, agrees that 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.

19. **Anti-Discrimination.** It is the policy of the District that in connection with all work performed under Contracts there be no discrimination against any employee engaged in the work because of race, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, or age and therefore the Contractor agrees to comply with applicable Federal and California laws including, but not limited to the California Fair Employment and Housing

Act beginning with Government Code Section 12900 and Labor Code Section 1735. In addition, the Contractor agrees to require like compliance by all its subcontractor(s).

20. **No Rights In Third Parties.** This Agreement does not create any rights in, or inure to the benefit of, any third party except as expressly provided herein.

21. **Fingerprinting of Employees.** The Fingerprinting/Criminal Background Investigation Certification must be completed and attached to this Agreement prior to Contractor’s performing of any portion of the Services.

22. **District’s Evaluation of Contractor and Contractor’s Employees and/or Subcontractors.** The District may evaluate the Contractor in any way the District is entitled pursuant to applicable law. The District’s evaluation may include, without limitation:

22.1. Requesting that District employee(s) evaluate the Contractor and the Contractor’s employees and subcontractors and each of their performance.

22.2. Announced and unannounced observance of Contractor, Contractor’s employee(s), and/or subcontractor(s).

23. **Limitation of District Liability.** Other than as provided in this Agreement, District’s financial obligations under this Agreement shall be limited to the payment of the compensation provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event shall District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement for the services performed in connection with this Agreement.

24. **Confidentiality.** The Contractor and all Contractor’s agents, personnel, employee(s), and/or subcontractor(s) shall maintain the confidentiality of all information received in the course of performing the Services. This requirement to maintain confidentiality shall extend beyond the termination of this Agreement.

25. **Notice.** Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served, and received if given in writing and either personally delivered or deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by overnight delivery service, or facsimile transmission, addressed as follows:

District

San José Unified School District
855 Lenzen Avenue
San José, CA 95126

ATTN.: Patrick Day
Director, Operations/ Purchasing &
Contract Management

Contractor

ATTN.: _____

Any notice personally given or sent by facsimile transmission shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service. Any notice given by mail shall be effective three (3) days after deposit in the United States mail.

26. **Integration/Entire Agreement of Parties.** This Agreement constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both Parties. This agreement is not valid until approved/ratified by San José Unified School District Board of Education. Work shall not be rendered until Agreement is approved.

27. **California Law.** This Agreement shall be governed by and the rights, duties and obligations of the Parties shall be determined and enforced in accordance with the laws of the State of California. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in Santa Clara County, California.

28. **Waiver.** The waiver by either party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.

29. **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.
30. **Authority to Bind Parties.** Neither party in the performance of any and all duties under this Agreement, except as otherwise provided in this Agreement, has any authority to bind the other to any agreements or undertakings.
31. **Attorney Fees/Costs.** Should litigation be necessary to enforce any terms or provisions of this Agreement, then each party shall bear its own litigation and collection expenses, witness fees, court costs and attorney's fees.
32. **Captions and Interpretations.** Paragraph headings in this Agreement are used solely for convenience, and shall be wholly disregarded in the construction of this Agreement. No provision of this Agreement shall be interpreted for or against a party because that party or its legal representative drafted such provision, and this Agreement shall be construed as if jointly prepared by the Parties.
33. **Calculations of Time.** For the purposes of this Agreement, "days" refers to calendar days unless otherwise specified.
34. **Signature Authority.** Each party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been properly authorized and empowered to enter into this Agreement.
35. **Counterparts.** This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.
36. **Incorporation of Recitals and Exhibits.** The Recitals and each exhibit attached hereto are hereby incorporated herein by reference.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date indicated below.

San José Unified School District

Contractor

Date: _____,

Date: _____,

Signature: _____

Signature: _____

Name: Patrick Day

Print Name: _____

Title: **Director, Operations/Purchasing & Contract Management**

Title: _____

Information regarding Contractor:

License No.: _____

Address: _____

Telephone: _____

Facsimile: _____

E-Mail: _____

Type of Business Entity:

_____ Corporation, State:

_____ Individual

_____ Partnership

_____ Limited Liability Company

_____ Sole Proprietorship

_____ Limited Partnership

_____ Other:

***Federal Code of Regulations sections 6041 and 6209 require non-corporate recipients of \$600.00 or more to furnish their taxpayer identification number to the payer. The regulations also provide that a penalty may be imposed for failure to furnish the taxpayer identification number. In order to comply with these regulations, the District requires your federal tax identification number or Social Security number, whichever is applicable.**



WORKERS' COMPENSATION CERTIFICATION

Labor Code Section 3700 in relevant part provides that every employer except the State shall secure the payment of compensation in one or more of the following ways:

- By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this State.
- By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to its employees.

I am aware of the provisions of Section 3700 of the Labor Code which require 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 such provisions before commencing the performance of the Work of this Agreement. (In accordance with Article 5 – commencing at Section 1860, Chapter 1, part 7, Division 2 of the Labor Code, the above certificate must be signed and filed with the District prior to performing any Work under this Agreement.).

Date: _____

Name of Contractor or Company: _____

Representative's Name and Title: _____

Signature: _____



TUBERCULOSIS CLEARANCE

The undersigned does hereby certify to the governing board of the District as follows:

I am a representative of the Contractor currently entering into this Agreement with the District and I am familiar with the facts herein certified, and am authorized and qualified to execute this certificate on behalf of Contractor. Contractor's responsibility for tuberculosis clearance extends to all of its employees, subcontractors, and employees of subcontractors coming into contact with District pupils regardless of whether they are designated as employees or acting as independent contractors of the Contractor.

Contractor certifies that at least one of the following items applies to the Services that are the subject of the Agreement:

The Contractor ensures that any person providing any portion of the services has submitted to an examination that he or she is free of active tuberculosis, by a physician or surgeon, within 60 days of Board approval of the contract, or if previous contractor to the District, within the last four years. If there is however a positive result, chest x-ray verification is required.

Upon the District's request, a complete and accurate list of Contractor's employees and of all of its subcontractors' employees, who may come in contact with District pupils during the course and scope of the agreement, will be required to be furnished - indicating the date of each person's examination.

Contractor's Services under the Agreement are to be provided at an unoccupied school site only and/or will not be done on any District property and no employee and/or subcontractor or supplier of any tier of Agreement shall come in contact with District pupils.

Date: _____

Name of Contractor or Company: _____

Representative's Name and Title: _____

Signature: _____



FINGERPRINTING/CRIMINAL BACKGROUND INVESTIGATION CERTIFICATION

One of the three boxes below must be checked, with the corresponding certification provided, and this form attached to the Independent Contractor Agreement for Special Services ("Agreement"):

[To be completed by authorized District employee only.] Contractor's employees will have only limited contact, if any, with District pupils and the District will take appropriate steps to protect the safety of any pupils that may come in contact with Contractor's employees so that the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 shall not apply to Contractor for the services under this Agreement. As an authorized District official, I am familiar with the facts herein certified, and am authorized to execute this certificate on behalf of the District. (Education Code § 45125.1 (c))

Date: _____

District Representative's Name and Title: _____

Signature: _____

The fingerprinting and criminal background investigation requirements of Education Code section 45125.1 apply to Contractor's services under this Agreement and Contractor certifies its compliance with these provisions as follows:

Contractor certifies that the Contractor has complied with the fingerprinting and criminal background investigation requirements of Education Code section 45125.1 with respect to all Contractor's employees, subcontractors, agents, and subcontractors' employees or agents ("Employees") regardless of whether those Employees are paid or unpaid, concurrently employed by the District, or acting as independent contractors of the Contractor, who may have contact with District pupils in the course of providing services pursuant to the Agreement, and the California Department of Justice has determined that none of those Employees has been convicted of a felony, as that term is defined in Education Code section 45122. 1. A complete and accurate list of all Employees who may come in contact with District pupils during the course and scope of the Agreement is attached hereto, or shall be provided to the District prior to any Employee having any contact with District pupils, and an updated list of all Employees who may come in contact with District pupils during the course and scope of the agreement shall be provided to the District within ten (10) days of District request.

Contractor's services under this Agreement shall be limited to the construction, reconstruction, rehabilitation, or repair of a school facility and although all Employees will have contact, other than limited contact, with District pupils, pursuant to Education Code section 45125.2 District shall ensure the safety of the pupils by at least one of the following as marked:

_____ The installation of a physical barrier at the worksite to limit contact with pupils.

_____ Continual supervision and monitoring of all Contractor's on-site employees of Contractor by an employee of Contractor, _____, whom the Department of Justice has ascertained has not been convicted of a violent or serious felony.

_____ Surveillance of Employees by District personnel. [To be completed by authorized District employee only.]

Date: _____

District Representative's Name and Title: _____

Signature: _____

I am a representative of the Contractor entering into this Agreement with the District and I am familiar with the facts herein certified, and am authorized and qualified to execute this certificate on behalf of Contractor.

Date: _____

Name of Contractor or Company: _____

Representative's Name and Title: _____

Signature: _____