

## SECTION 5.1 – CONTRACTUAL SERVICE AGREEMENTS

### **OVERVIEW:**

Occasionally it is necessary to purchase services from individuals through the use of a contractual agreement rather than through the payroll process. This type of contract is usually issued to individuals who offer specialized services outside of the scope of existing staff. Such individuals must be in the business of contracting out their services and must certify that they are “independent contractors.” **Employees of the district generally cannot be paid as an independent contractor.**

To be considered an independent contractor rather than an employee, the following tests should be met:

1. The individual is free from the type of direction and control the district would have on an employee, **and**
2. The individual holds themselves out to the public as providing contract services, **and**
3. The individual has met business registration and filing requirements, if any, with local, state, and federal agencies.

### **CONTRACT SERVICES vs. REGULAR PURCHASE REQUEST:**

The following are examples of how typical transactions may be handled. Remember that contractors must meet the three (3) criteria above to be considered independent, rather than an employee.

#### *Contract Services:*

- Disc jockeys
- Artists/performers
- Guest speakers, assembly speakers/presenters
- Musicians
- Security services of police officers

#### *Regular Purchase Request:*

- Subscription services
- Maintenance/service on equipment
- Maintenance/service on facilities

### **GUIDELINES AND CAUTIONS:**

All ASB service contracts must have prior approval of the ASB in accordance with district policy. This can be accomplished through the purchase request and establishment of a PO in BusinessPlus, along with the completed service contract.

Contractors who will have regularly scheduled, unsupervised access to children should have a criminal background check, including fingerprinting. Check with the purchasing office or the human resources office for assistance.

Be aware of possible conflicts of interest or beneficial interest situations.

### **COMPLETING THE CONTRACTUAL SERVICES AGREEMENT:**

- The [Contractual Services Agreement form](#) shall be completed in full and signed by the contractor and the district employee with supervisory authority for the contract arrangement. Details of the service to be provided, hourly or flat fees, and any other expenses (for example: travel, mileage, meals, printed materials) should be agreed upon and detailed on the contract.
- A [W-9](#) must be submitted for all contractual services. The [W-9](#) needs to be submitted only once per contractor unless there is a change in information or the IRS requires resubmission.
- The Federal Tax Identification or Social Security number must be provided. The Department of Revenue UBI number should be provided for all contracts, if possible, but is required for contracts in excess of \$12,000.
- Contractors are responsible for their own insurance. [The Contractual Services Agreement](#) includes an indemnification clause and insurance provisions. In instances where the contractor will be providing direct services to students or the general public on the district's behalf, they must provide the district with a certificate of insurance evidencing that they have at least \$1,000,000 combined single limit liability coverage.

### **PROCESSING THE CONTRACTUAL SERVICES AGREEMENT:**

- Enter the contract information online in BusinessPlus in the same way a regular purchase request is entered. Be sure to code the request to a "C" for contract on your purchase request. Refer to your [BusinessPlus manual](#) for instructions.
- Send all copies of the completed, signed contract to the purchasing office. Purchase requests for contracts will be processed after the completed contract is received.
- After the completion of service:
  - **Invoice. Every consultant must bill us for their services.** Submit the approved invoice to the accounting office for payment. The district [invoice form](#) may be used, however, it should be signed by the consultant/contractor.
  - Receive the service online in BusinessPlus as normal.

### **CONTRACT REVISIONS:**

- Contracts may be revised, but the revision must be issued for the same scope of work or project. Contact the purchasing office for assistance.

**DETERMINATION OF “EMPLOYEE vs. CONTRACTOR”:**

| <b>CRITERIA</b> |                                                                                                                                                                           | <b>EMPLOYEE</b> | <b>INDEPENDENT CONTRACTOR</b> |
|-----------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|-------------------------------|
| 1.              | Is the individual required to comply with instructions about when, where, and how to work?                                                                                | YES             | NO                            |
| 2.              | Is the individual trained by the employer to perform services in a particular manner?                                                                                     | YES             | NO                            |
| 3.              | Is the individual’s services integrated into the business and does the continuity of the business depend to an appreciable degree upon the performance of these services? | YES             | NO                            |
| 4.              | Are the services rendered personally by the individual without the ability to hire substitutes?                                                                           | YES             | NO                            |
| 5.              | Does the individual lack the authority to hire, supervise, and pay assistants without employer’s approval?                                                                | YES             | NO                            |
| 6.              | Is there a strong continuing relationship between the individual and the “employer”?                                                                                      | YES             | NO                            |
| 7.              | Has the “employer” established a set hours of work schedule for the individual?                                                                                           | YES             | NO                            |
| 8.              | Is the individual required to devote his full time to the business of the employer?                                                                                       | YES             | NO                            |
| 9.              | Is the individual doing work on the employer’s premises?                                                                                                                  | YES             | NO                            |
| 10.             | Must the individual perform the services in an order or sequence set by the employer?                                                                                     | YES             | NO                            |
| 11.             | Does the individual have to report in with a supervisor to account for his or her actions in doing the work?                                                              | YES             | NO                            |

| CRITERIA                                                                                                    | EMPLOYEE | INDEPENDENT CONTRACTOR |
|-------------------------------------------------------------------------------------------------------------|----------|------------------------|
| 12. Is the individual paid by the employer at regularly stated intervals, such as the hour, week, or month? | YES      | NO                     |
| 13. Does the employer pay the individual's travel expense?                                                  | YES      | NO                     |
| 14. Does the employer furnish the tools and materials used by the individual?                               | YES      | NO                     |
| 15. Does the individual lack a significant investment in facilities or equipment?                           | YES      | NO                     |
| 16. Does the individual work for only one firm at a time?                                                   | YES      | NO                     |
| 17. Does the individual fail to make his (her) services available to the general public?                    | YES      | NO                     |
| 18. Does the employer have the right to discharge the individual prematurely?                               | YES      | NO                     |
| 19. Does the employer have the right to terminate at any time without incurring liability?                  | YES      | NO                     |
| 20. Does the employer realize an economic profit or loss as a result of the individual's services?          | YES      | NO                     |
| 21. Does the individual have a business license number?                                                     | NO       | YES                    |

The list above is not all inclusive nor does it apply to every situation. The list above may be used as a general guide rather than a hard and fast rule. NOTE: Answering "YES" to one question does not mean the individual is an employee. There are times when a consultant performs services at our facility. For example, a safety consultant would have to inspect the facility to write a report (#9). Consultants usually provide written reports at the end of the project, but they do not have to report in day by day for approval of their work (#11).