

# Professional Services Contract

## Attachment B (Part 1)

(For Total Annual Payments of \$600 or more each tax year)

### INDEPENDENT CONTRACTOR EVALUATION CRITERIA TEST

NOTE: This test is based on the 20 factors used by the IRS to determine whether a worker should be classified as an independent contractor or an employee. In theory, the District should only be concerned with the results of the work, not the way in which it is performed. If you answer "yes" to all of the first four questions, then you likely fit the classification of an independent contractor. However, if you answer "yes" to any of questions 5 - 20, then your status may not be that of an independent contractor. This is a composite picture and not based on any single answer. Issues pertaining to "yes" responses (to questions 5-20) must be resolved with the hiring manager prior to commencing work.

Generally, an independent contractor would answer:

Review the generally accepted answers and circle any exceptions.

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|---|-----|
| 1. Will you make a profit or suffer a loss as result of the work aside from the money earned from the project? (This should involve real economic risk—no just the risk of not getting paid.)     | Yes |
| 2. Do you have an investment in the equipment and facilities used to do the work? (The greater the investment, the more likely independent contractor status.)                                    | Yes |
| 3. Do you work for more than one company at a time? (This tends to indicate independent contractor status, but isn't conclusive since employees can also work for more than one employer.)        | Yes |
| 4. Do you offer services to the general public?   | Yes |
| 5. Does the District have the right to give you instructions about when, where, and how to work? (Answering "yes" does not necessarily mean employee status.)                                     | No  |
| 6. Will the District train you to do the job in a particular way? (Independent contractors are already trained.)  | No  |
| 7. Are your services so important to the District that they have become a necessary part of District business? (This may show that you as a worker are subject to the District control.)          | No  |
| 8. Must you provide the services personally, as opposed to delegating tasks to someone else? (Answering "yes" does not necessarily mean employee status.)   | No  |
| 9. Will the District hire, supervise, and pay your assistants? (Independent contractors hire and pay their own staff.)  | No  |
| 10. Is there an ongoing relationship between you and the District? (A relationship can be considered ongoing if services are performed frequently, but irregularly.)                              | No  |
| 11. Does the District set your work hours? (Independent contractors are masters of their own time.)   | No  |
| 12. Must you spend all of your time on the District assignment for which you are being hired? (Independent contractors choose when and where they will work.)                                     | No  |
| 13. Must you perform the work on District premises, or do you have a choice of the location where the work must be performed? (Answering "yes" does not necessarily mean an employee status)      | No  |
| 14. Will the District have the right to determine the order in which services are performed? (Answering "yes" does not necessarily mean an employee status.)                                      | No  |
| 15. Do you have to give the District reports accounting for your actions? (This may show a lack of independence.)   | No  |
| 16. Are you paid by the hour, week or month? (Independent contractors are generally paid by the job or on commission, although industry practice, some are paid by the hour.)                     | No  |
| 17. Will the District pay your business or travel costs? (This tends to show control.)  | No  |
| 18. Will the District furnish you with equipment, tools or materials to do the work? (Independent contractors generally supply the materials for the job, and use their own tools and equipment.) | No  |
| 19. Can the District fire you? (An independent contractor can't be fired without subjecting the District to the risk of a breach of contract lawsuit.)  | No  |
| 20. Can you quit at any time, without incurring liability? (An independent contractor has a legal obligation to complete the contract.)   | No  |