

DECIDING BETWEEN A MEMORANDUM OF UNDERSTANDING OR INDEPENDENT CONTRACTOR AGREEMENT

	Berkeley Unified School District ROUTING FORM Contract, MOU and Amendment Approval
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All Independent Contractor Agreement, MOU and Amendment Forms should be **routed to Purchasing Department first for tracking**. Purchasing will send the documents to the appropriate departments for funding approval, fingerprint clearance and approval from the appropriate Division Head. You may contact Purchasing Department or Business Services to find out where your document is within the process.

Contract Vendor	
Contractor Name: [Click and Type Name of Contractor]	Contract Total Amount: \$[Click and Type]
General Requisition Attached: # [Click and Type]	Date: [Click and Type]
Originator / Requestor: [Click and Type]	Phone #: [Click and Type]

Attachments and Information required and submitted with this Routing Form			
Ind Contract Agreement	MOU	Amendment to Contract	Indicate Contract Type
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Attachment A - Description of Services
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Attachment B - Fingerprint Requirement/Waiver Request
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Attachment C - IRS form W9
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Attachment D - DE542 EDD Report of Independent Contractor
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Attachment E - Contractor Evidence of Insurance MUST BE ATTACHED
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Attachment F - Copies of all applicable licenses, registrations and certifications
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	General Requisition
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Board Memorandum (if total contract amount is or will be over \$50k)
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Copy of original Purchase Order - for amendments

This area for use <i>Only</i> by DISTRICT CENTRAL STAFF		
Division Head - for contracts over \$10,000		
Print Name _____	Signature _____	Date _____
Human Resources - for Fingerprinting (TB Clearance for After School Program Only)		
Print Name _____	Signature _____	Date _____
Fiscal Services - for Budget Review		
Print Name _____	Signature _____	Date _____
Deputy Superintendent/Superintendent - Final Approval		
Print Name _____	Signature _____	Date _____

Independent Contractor or Employee?

Before retaining an individual to perform a service as a consultant or independent contractor, discuss the work to be performed with the Assistant Superintendent of Human Resources to determine whether the service to be performed may be done by a "consultant".

An Independent Contractor:

- May work on a very limited basis, performing a task that district employees cannot do, i.e. giving a performance, conducting a workshop, etc.
- May not provide instruction to children during the school day on any regular basis.
- Must comply with the requirement of the IRS to be eligible for this status.

Oct. 2012

1. The identical routing form is used for a Memorandum of Understanding (MOU), Independent Contractor Agreement (ICA), or an Amendment to Contract. Check the correct column for required steps and documents for each.
2. Use the Memorandum of Understanding (MOU) for an agency or company that will be performing the work. The Independent Contractor Agreement (ICA) is to be used with an individual. Several differences in the contract:
 - Agencies are responsible for ensuring that their staff providing services are fingerprinted. Independent contractors may request a fingerprint waiver if they will have no contact with students, or they will not be in a classroom with students and will have limited contact.
 - An agency must provide proof of insurance. An independent contractor may request an insurance waiver if he/she is a sole proprietor, has worked for BUSD in the past and has received a good evaluation, and the contract amount is less than \$25,000.
3. Below are high-lighted areas for Requestors/Budget Administrators to complete or take note of:

**Berkeley Unified School District
MEMORANDUM OF UNDERSTANDING**

This Memorandum of Understanding ("MOU") is dated this _____ day of _____, 20____, by and between Berkeley Unified School District hereinafter referred to as BUSD and _____ hereinafter referred to as "CONTRACTOR" whose place of business is _____ for Professional Services.

This Memorandum of Understanding represents the services which "CONTRACTOR" will provide to the "BUSD" at _____ Berkeley, CA _____ during the _____ school year.

ARTICLE I: DESCRIPTION OF THE CONTRACTING AGENCY – Contractor

[\[Click Here and Type in Detailed Description of the Services that will be provided under this Contract\]](#)

ARTICLE II: STATEMENT OF SERVICES TO BE PROVIDED

[\[Click Here and Type in Detailed Description of the Services that will be provided under this Contract\]](#)

ARTICLE III: TERM OF SERVICES

Contractor shall commence work on _____, 20____. Work to be completed by _____ 20____.

ARTICLE IV: REQUIREMENTS OF THE BUSD

To support the delivery of quality educational services to students and the school, as part of this MOU, the BUSD agrees to the following:

[\[Click Here and Type in requirements and or timelines that the Contractor needs the site or Department to provide, if any\]](#)

ARTICLE V: TECHNICAL DIRECTION

Performance of the work under this MOU shall be subject to the direction of BUSD Principal/Manager. [\[Click Here and Type in the Name\]](#)

ARTICLE VI: FINGERPRINTING AND TB CLEARANCE

Education Code 45125.1 and 49406 and California Assembly Bill 346 indicate that employees of entities providing services on a school site must have a tuberculosis clearance and be fingerprinted by the California Department of Justice and FBI for a criminal records check and found not to have been convicted of a serious or violent felony. Accordingly, in the event that this MOU may involve contact with BUSD pupils, the Contractor shall comply with the provisions of Education Code section 45125.1 and California Assembly Bill 346 regarding the submission of employee fingerprints to the California Department of Justice and the FBI and the completion of criminal background investigations of its employees. The Contractor shall not permit any employee to have any contact with BUSD pupils until such time as the Contractor has verified in writing to the governing board of BUSD that the employee has not been convicted of a felony, as defined in Education Code section 45125.1. The Contractor's responsibility shall extend to all of its employees, subcontractors, agents, and all employees or agents of subcontractors regardless of whether those individuals are paid or unpaid, concurrently employed by BUSD, or acting as independent Contractors of the Contractor. Verification of compliance with this section and the Criminal Background Investigation Certification that may be required with this MOU, shall be provided in writing to BUSD prior to each individual's commencement of employment or performing any portion of the Services and prior to permitting contact with any student.

Contractor expressly agrees that: (1) Contractor and all of Contractor's employees working on the school site must submit or have submitted fingerprints in a manner authorized by the Department of Justice and FBI, together with the requisite fee as set forth in Education Code section 45125.1; (2) Contractor shall not permit any employee to come in contact with pupils until the Department of Justice and FBI have ascertained that the employee has not been convicted of a serious or violent felony. Contractor is required to fulfill these requirements at its own expense; (3) Contractor certifies herein that none of its employees who may come in contact with pupils have been convicted of a serious or violent felony.

**Berkeley Unified School District
MEMORANDUM OF UNDERSTANDING**

Contractor further expressly agrees that the following conditions shall apply to any work performed by the Contractor and/or Contractor's employees on a school site: (1) Contractor and Contractor's employees shall check in with the school site office each day immediately upon arriving at the school site; (2) Contractor and Contractor's employees shall inform school site office staff of their proposed activities and locations at the school site; (3) Once at such location, Contractor and Contractor's employees shall not change locations without informing the school site office prior to any such change in location; (4) Contractor and Contractor's employees shall not use pupil restroom facilities; and (5) if Contractor and/or Contractor's employees find themselves alone with a pupil, Contractor and Contractor's employees shall immediately contact the school site office and request that a member of the school staff be immediately assigned to the concerned work location.

INITIALS OF Contractor _____

ARTICLE VII: INSURANCE

a) 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 amount indicated below:

- i) **Commercial General Liability and Automobile Liability Insurance.** Commercial General Liability Insurance and 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 performing any portion of the Services. (Form CG 0001 and CA 0001) Commercial General Liability insurance shall include contractual liability, products liability, completed operations and broad form property damage coverage.
- ii) **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 MOU 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.
- iii) **Professional Liability (Errors and Omissions).** Professional Liability (Errors and Omissions) Insurance as appropriate to the Contractor's profession.

Type of Coverage	Minimum Requirement
Commercial General Liability Insurance , including Bodily Injury, Personal Injury, Property Damage, Contractual Liability, Products Liability, Completed Operations and Broad Form Property Damage, Advertising Injury, and Medical Payments	\$ 1,000,000
Each Occurrence	\$ 2,000,000
General Aggregate	
Automobile Liability Insurance - Any Auto	\$ 1,000,000
Each Occurrence	\$ 1,000,000
General Aggregate	
Professional Liability	\$ 1,000,000
Workers Compensation	Statutory Limits
Employer's Liability	\$ 1,000,000

b) **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's have been delivered in duplicate to the District and approved by the District. Certificates and insurance policies shall include the following:

**Memorandum of
Understanding (MOU)
Checklist**

- This section should provide a concise but accurate summary of the agency, its contact information and the scope of its work. It should match the information provided in the Description section of the Requisition.
- On the second page of the MOU, the agency must accept responsibility for ensuring that its employees to be sent to the school site will be fingerprinted and cleared. Be sure that the agency's responsible signatory initials this section.

**Berkeley Unified School District
MEMORANDUM OF UNDERSTANDING**

- i) 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."
 - ii) 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.
 - iii) An endorsement stating that the District and the State and their agents, representatives, employees, trustees, officers, consultants, and volunteers are named additional insureds 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.
 - iv) All policies shall be written on an occurrence form.
- c) **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.

ARTICLE VIII: DEFENSE AND INDEMNIFICATION

Contractor agrees to defend, indemnify and hold harmless BUSD, its Board, trustees, officers, agents, employees and volunteers from all claims, including active and passive claims, losses, costs, attorney fees and expenses arising out of any liability or claim of liability for personal injury, bodily injury to persons or death, contractual liability and damage to property sustained or claimed to have been sustained arising out of activities of the Contractor or its sub-Contractors, and any other person, firm or corporation furnishing or supplying services, materials or supplies in conjunction with the services of the Contractor, whether authorized by this MOU or not. Contractor further agrees to waive all rights of subrogation against BUSD. The provisions of this article do not apply to any damage or losses caused solely by the negligence or willful misconduct of BUSD or any of its agents or employees.

ARTICLE IX: COMPENSATION FOR SERVICES

- a) The BUSD agrees to pay Contractor a total of \$ [redacted] for the services described above. Complete the chart below to provide justification for the total contract cost. List the description of services, the number of staff providing services, hourly rates, and costs of materials to be provided.

Contract Cost Justification for MOU				
# staff / presenters	Description of services to be provided	Hourly/Daily Rate or cost	Qty	Total
[redacted]	[redacted]	\$ [redacted]	[redacted]	\$ [redacted]
[redacted]	[redacted]	\$ [redacted]	[redacted]	\$ [redacted]
Description of materials provided by Contractor (i.e. binders, workbooks, CDs/DVDs, etc.)		Cost	Qty	Total
[redacted]		\$ [redacted]	[redacted]	\$ [redacted]
[redacted]		\$ [redacted]	[redacted]	\$ [redacted]
If needed, provide additional detail justification below.			Total	\$ [redacted]

- b) The BUSD agrees to pay the Contractor the contracted amount in monthly payments. Each payment will be based on an invoice submitted by the Contractor on the last day of each month. The Invoice is to be generated by the Contractor on appropriate letterhead or form and shall include: description of services rendered during the invoice period, date and hours of services, hourly rates of staff or the specific services

- Pay particular attention to Article IX: Compensation for Services on page 3, in which you will provide a total and breakdown of the contractor's charges.
- The standard language in Section b of this Article outlines the terms of payment for extended contracts as "monthly payments" based on invoices submitted on the last day of each month. The language can be revised by the agency, but no contractor should expect payment up front or prior to services being rendered.

**Berkeley Unified School District
MEMORANDUM OF UNDERSTANDING**

ARTICLE XV: COPYRIGHT

Any written product produced as a result of this MOU shall be a work for hire and shall be the property of BUSD.

ARTICLE XVI: AMBIGUITY

The parties to this agreement, and each of them, hereby represent that the language contained herein is to be construed as jointly proposed and jointly accepted, and in the event of any subsequent determination of ambiguity, all parties shall be treated as equally responsible for such ambiguity.

ARTICLE XVII: ASSIGNMENT

Without the prior written consent of BUSD, this MOU is not assignable by the Contractor, either in whole or in part.

ARTICLE XVIII: GOVERNING LAW

The validity of this MOU and any of its terms or provisions as well as the rights and duties of the parties hereunder shall be governed by the laws of the state of California. Venue for all litigation relative to the formation, interpretation, and performance of this MOU shall be in Alameda County, California.

CONTRACTOR

Contractor / Agency Name: [redacted]
 Address: [redacted]
 Contractor's Contact Person: [redacted]
 Title: [redacted]
 Telephone: [redacted] e-mail: [redacted]
 Signature: [redacted] Date: [redacted]

BERKELEY UNIFIED SCHOOL DISTRICT

By Superintendent / Deputy: _____
 Signature: _____ Date: _____

- Please be sure that this section is complete and that the contact or responsible person has signed before attaching the MOU to the requisition, which should then be signed by you (the requestor or budget administrator).
- Make a copy of the entire package before forwarding to the District Office, either directly to Purchasing or to one of the special budget departments (such as BSEP or State and Federal).



Berkeley Unified School District
INDEPENDENT CONTRACTOR AGREEMENT

This Independent Contractor Agreement ("Agreement") is dated this _____ day of _____, 20____, by and between the Berkeley Unified School District, 2020 Bonar Street, Suite 217B, Berkeley, CA 94702 (hereinafter referred to as BUSD), and _____ (hereinafter referred to as Contractor), whose business address is _____.

In consideration of their mutual covenants, the parties hereto agree as follows: The services to be provided by Contractor pursuant to this Agreement ("Services"), including details regarding the contact that Contractor and its assigns will have with students, are described in

Attachment A - Description of Services – (MUST BE COMPLETED AND ATTACHED TO THIS DOCUMENT)

Contractor hereby verifies that he/she is specially trained or experienced and competent to provide the services required by this Agreement and acknowledges that BUSD has entered into this Agreement in reliance on the above verification.

In consideration of services provided, Contractor will submit invoices monthly at completion of contract and will be paid at the rate of \$_____ per Click Here and Type Hour or Day . The total contract amount will not exceed \$_____.

The work specified above will commence on _____ and will be complete by _____.

General Terms and Conditions

- 1) **Indemnification:** Contractor agrees to defend, indemnify and hold harmless BUSD, its Board, trustees, officers, agents, representatives, employees and volunteers from all claims, including active and passive claims, losses, costs, attorney fees and expenses arising out of any liability or claim of liability for personal injury, bodily injury to persons or death, contractual liability and/or damage to property sustained, or claimed to have been sustained, arising out of activities of the Contractor or its sub-Contractors, and/or any other person, firm or corporation furnishing or supplying services, materials or supplies in conjunction with the services of the Contractor, whether authorized by this Agreement or not. Contractor further agrees to waive all rights of subrogation against BUSD. The provisions of this article do not apply to any damage or losses caused solely by the negligence or willful misconduct of BUSD or any of its agents or employees.
- 2) **Insurance:** Contractor shall procure and maintain at all times it performs any portion of the Services the following insurance with minimum limits equal to the amount indicated below.
 - a) **Commercial General Liability and Automobile Liability Insurance.** Commercial General Liability Insurance and 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 performing any portion of the Services. (Form CG 0001 and CA 0001) Commercial General Liability insurance shall include contractual liability, products liability, completed operations and broad form property damage coverage.
 - b) **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.
 - c) **Professional Liability (Errors and Omissions).** Professional Liability (Errors and Omissions) Insurance as appropriate to the Contractor's profession.
 - i. **Type of Coverage & Minimum Requirement**
 - ii. **Commercial General Liability Insurance,** including Bodily Injury, Personal Injury, Property

Damage, Contractual Liability, Products Liability, Completed Operations and Broad Form Property Damage, Advertising Injury, and Medical Payments. Each Occurrence: \$ 1,000,000; General Aggregate: \$2,000,000

iii. **Automobile Liability Insurance -** Any Auto Each Occurrence: \$1,000,000; General Aggregate: \$1,000,000.

iv. **Professional Liability -** \$ 1,000,000; Workers Compensation: Statutory Limits; Employer's Liability: \$1,000,000

d) **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's have been delivered in duplicate to the District and approved by the District. Certificates and insurance policies shall include the following:

i. 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."

ii. 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.

iii. An endorsement stating that the District and the State and their agents, representatives, employees, trustees, officers, consultants, and volunteers are named additional insureds 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.

e) **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.

f) **Request for insurance waiver.** If insurance requirements are not appropriate for the type and scope of service being provided, a waiver may be requested. In order to qualify for a waiver of Berkeley Unified School District's requirement of insurance, it is necessary to satisfy the following conditions: **Contract amount is less than \$25,000, Contractor is a sole proprietor, Contractor has worked for BUSD in the past and has received a good evaluation on prior work and there have been no prior complaints, problems or injuries.**

CONTRACTOR INITIALS HERE TO INDICATE THAT CONTRACTOR MEETS ALL CRITERIA AND REQUESTS A WAIVER OF INSURANCE REQUIREMENTS. _____

DEPUTY SUPERINTENDENT INITIALS HERE INDICATES APPROVAL OF A WAIVER OF INSURANCE REQUIREMENTS. _____

3) **Limitation of BUSD Liability.** Other than as provided in this Agreement, BUSD'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 BUSD 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 or for the services performed in connection with this Agreement.

4) **Non-Discrimination:** Contractor shall ensure that no person employed by, associated with, or subcontracted to Contractor shall, on the basis of race, color, national origin, age, ancestry, religion, sex, handicap or sexual orientation, or other basis protected by law, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity at BUSD and shall ensure its, and its employees' and subcontractors' compliance 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.

5) **Interest of Contractor:** It is understood and agreed that this Agreement is not a contract of employment [in the sense that the relation of master and servant exists] between BUSD and Contractor. At all times the Contractor shall be deemed to be an independent contractor and is not authorized to bind BUSD to any contracts or other obligations. In executing this Agreement the Contractor certifies that no one who has or who will have any financial interest under this Agreement is an officer or employee of BUSD. Additionally, as the Contractor is not a BUSD employee, BUSD is not responsible for obtaining workers' compensation insurance coverage for the Contractor or its employees.

6) **Standard of Care:** 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.

Independent Contractor Agreement (ICA) Checklist

- Complete highlighted areas and be sure to include Attachment A, describing the independent contractor's services to be provided.
- If the Independent Contractor intends to request an insurance waiver, be sure that they initial this section after reading the guidelines thoroughly. The Deputy Superintendent must approve this request.

- subcontractor(s)
- 21) **Entire Agreement/Changes or Alterations:** 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.
 - 22) **Correspondence:** All notices relating to contract provisions should be sent by U.S. Mail to the parties at the addresses for each party indicated in this Agreement.
 - 23) **Termination:**
 - a) **For Cause:** BUSD may terminate this Agreement upon giving of written notice of intention to terminate for cause. Cause shall include:
 - i. material violation of this Agreement by the Contractor, or
 - ii. any act by Contractor exposing BUSD to liability to others for personal injury or property damage; or
 - iii. 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. If the expense, fees, and/or costs to BUSD exceed the cost of providing the service pursuant to this Agreement, the Contractor shall immediately pay the excess expense, fees, and/or costs to BUSD upon the receipt of BUSD'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 BUSD.
 - b) **Without Cause by BUSD:** BUSD 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 BUSD 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.
 - c) Upon termination, Contractor shall provide BUSD with all documents produced, maintained or collected by Contractor pursuant to this Agreement, whether or not such documents are final or draft documents.
 - 24) **Waiver:** No delay or omission by BUSD in exercising any right under this Agreement shall operate as a waiver of that or any other right and no single or partial exercise of any right shall preclude BUSD from any or further exercise of any right or remedy.
 - 25) **Headings:** All section headings contained herein are for clarification and convenience of reference only and are not intended to limit the scope of any provision of the Agreement.
 - 26) **Severability:** In the event any portion of this Agreement shall be finally determined by any court of competent jurisdiction to be invalid or unenforceable, such provision shall be deemed void and the remainder of this Agreement shall continue in full force and effect.
 - 27) **Ambiguity:** The parties to this Agreement, and each of them, hereby represent that the language contained herein is to be construed as jointly proposed and jointly accepted, and in the event of any subsequent determination of ambiguity, all parties shall be treated as equally responsible for such ambiguity.
 - 28) **Copyright:** Any written product produced as a result of this contract shall be a work for hire and shall be the property of BUSD.
 - 29) **Expenses:** The Contractor shall be responsible for all costs and expenses incident to the performance of services or BUSD, including but not limited to: all costs of equipment provided by the Contractor, all fees, fines, licenses, bonds and/or taxes required of or imposed against the Contractor, and all other of the Contractor's costs of doing business. BUSD shall be responsible for no expenses incurred by the Contractor in performing services for BUSD except as provided by this Agreement.
 - 30) **Confidentiality:** In the course of performing Consulting Services, the parties recognize that Consultant may come in contact with or become familiar with information which BUSD or its subsidiaries or affiliates may consider confidential. This information may include, but is not limited to, information pertaining to BUSD personnel and/or students. Consultant agrees to keep all such information confidential and not to discuss or divulge it to anyone other than appropriate BUSD personnel or their designees.
 - 31) **Fingerprinting of Contractor:** In the event that this Agreement may involve contact with BUSD pupils, the Contractor shall comply with the provisions of Education Code section 45125.1 and California Assembly Bill 346 regarding the submission of employee fingerprints to the California Department of Justice and the FBI, and the completion of criminal background investigations of its employees. (For Fingerprint Waiver Request and Approval see Attachment B)
 - 32) **Independent Contractor Status:** Contractor attests that he/she is engaged in a separately established bona fide business and is in fact an Independent Contractor in accordance with IRS and EDD requirements. Contractor understands and agrees that he/she and all of his/her employees shall not be considered officers, employees, agents, partners, or joint ventures of BUSD and are not entitled to benefits of any kind or nature normally provided employees of BUSD and/or to which BUSD's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation.

INITIALS OF CONTRACTOR

- 33) **Conflict Of Interest:** By signing this Agreement all parties acknowledge and assert that there is no known Conflict of Interest in the execution of this Agreement.
- 34) **Commencement of Work:** Contractor is not authorized and will not commence any work of this Agreement and BUSD will not assume legal, financial or any other obligation for work performed prior to the issuance of an authorizing purchase orders with reference to this Agreement.

This Agreement, including attachments, constitutes the entire understanding of the parties and any changes or modifications shall be in writing and signed by both parties.

Attachments:

- Attachment A - Independent Contractor Agreement Description of Services
- Attachment B - Fingerprint Requirements/Waiver Request
- Attachment C - IRS form W9
- Attachment D - DE542 EDD Report of Independent Contractor
- Attachment E - Contractor Evidence of Insurance
- Attachment F - Copies of all applicable licenses, registrations and certifications

CONTRACTOR (Corporation Yes No):

Contractor / Agency Name:

Address:

Contractor's Contact Person:

Title:

Telephone: e-mail:

Signature: Date:

BERKELEY UNIFIED SCHOOL DISTRICT

By Superintendent / Deputy: _____

Signature: _____ Date: _____

Be sure that the individual initials under item 32 on page 4, attesting that he/she is "in fact an Independent Contractor in accordance with IRS and EDD requirements. The contractor should also complete and attach a W-9 and DE542 (EDD Report of Independent Contractor).

The contractor should complete and sign this section before returning to the site requestor or budget administrator.



**Berkeley Unified School District
INDEPENDENT CONTRACTOR AGREEMENT
Attachment 'A' – Description of Services**

This document is an attachment to and made a part of, the BUSD Independent Contractor Agreement, between BUSD and [Click here and type name of Contractor](#) "Contractor" for the period [MM / DD / YYYY](#) to [MM / DD / YYYY](#), for [Click here and type in name of School Site or Location](#) [Click here and type in name of Program](#).

Indicated below are the specific description of services including, essential details of the scope of work, site/locations, milestones and timelines, materials, reports, products, (including details regarding the contact that Contractor and its assigns will have with students) to be provided:

DETAILED DESCRIPTION OF SERVICES TO BE PROVIDED:
[Click here and type in a detailed description of the services that will be provided under this contract](#)



**Berkeley Unified School District
INDEPENDENT CONTRACTOR AGREEMENT
Attachment 'B' – Fingerprint Requirement/Waiver Form**

Independent Contractors are required to report to the District's Human Resources Department to get fingerprinted prior to providing services for the District unless a fingerprint waiver is approved. Fingerprinting is only required once. If contractor will have no contact with students or will not be in the classroom, a waiver may be requested. Select one of the options below if a waiver is being requested:

- Contractor will have NO CONTACT with students and requests a waiver of fingerprinting requirements.
- OR -
- Contractor will not be in the classroom with students and will have limited contact.
[Click here and type in the details regarding the contact that the Contractor will have with students](#)

Contractor's responsibility for background 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 it has taken at least one of the following [check all that apply](#):

1. The Contractor has complied with the fingerprinting requirements of Education Code section 45125.1 and California Assembly Bill 346 with respect to all Contractor's employees and all of its subcontractors' employees who may have contact with District pupils in the course of providing services pursuant to the Contract, and the California Department of Justice and FBI 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 Contractor's employees, subcontractors and of all of its subcontractors and subcontractors' employees who may come in contact with District pupils during the course and scope of the Contract is attached hereto; and/or
2. Contractor certifies that its employees, subcontractors and employees, of subcontractors will have only limited contact with pupils, and requests that the District provide supervision of its employees, subcontractors and employees of subcontractors by District personnel while such employees are in contact with pupils.

I hereby certify to the governing board of the District that I am a representative of the Contractor currently under contract ("Contract") with the District; that I am familiar with the facts herein certified, and am authorized and qualified to execute this certificate on behalf of Contractor

Independent Contractor Name: _____
& Signature: _____ Date: _____

I certify the contractor meets the above criteria. I hereby agree to accompany Contractor employees, and employees of its subcontractors, while they are in the presence of students.

District Employee Program Administrator Name: [Click here and type in the name of the BUSD Employee that will administer this contract](#)

& Signature: _____ Date: _____

By Assistant Superintendent HR/ Deputy Superintendent
Signature: _____ Date: _____

- The contract must include a description of services in the form of Attachment A.
- In Attachment B, the contractor must certify that he/she has complied with fingerprinting requirements or request a waiver. The Contractor and Budget Administrator must both sign before submitting the packet to the District Office.

	<p>Berkeley Unified School District</p> <p>AMENDMENT NO. _____</p> <p>MOU or Independent Contractor Agreement</p>
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This Amendment is entered into between the Berkeley Unified School District (BUSD) and _____ (CONTRACTOR / AGENCY). BUSD entered into an Agreement with the CONTRACTOR/AGENCY for professional services on _____ and the parties agree to amend that Agreement as follows:

Must check and complete ONE of the options below.

CONTRACTOR /AGENCY AGREE TO PROVIDE THE FOLLOWING AMENDED SERVICES. This provision may only be changed if there is also a change to the Services as specified in the original Contract Provide Full description of expected results, such as services, materials, products, and/or reports; attach additional pages as necessary.)
 Example: Original purchase order was miscalculated for monthly pick up service and addition pick-ups were requested for 2011-2012.

Term of contract is extended / reduced as follows:

Original Contract Term: _____, 201____ to _____, 201____

New Contract Term: _____, 201____ to _____, 201____

Compensation:

The contract amount was \$ _____
 The amended contract price is now \$ _____

Remaining Provisions: All other provisions of the Agreement, and prior Amendment(s) if any, shall remain unchanged and in full force and effect as originally stated.

Amendment History: This contract has previously been amended as follows:

No.	Date	General Description of Reason for Amendment	Amount of Increase (Decrease)
			\$
			\$
			\$

OR There are no previous amendments to this Amendment. (Check if appropriate.)

COPY OF ORIGINAL PURCHASE ORDER MUST BE ATTACHED.

Approval: This Agreement is not effective and no payment shall be made to Contractor until it is approved. Approval requires signature by the Deputy Superintendent (or his/her designee).

Berkeley Unified School District

Contractor

By: _____
 Javetta Cleveland, Deputy Superintendent

By: _____

Best Practices for an Amendment to Contract

1. When you are extending the terms of your contract or changing the amount of the contract, complete this form and attach it to a requisition.
2. The requisition will be for the amount of the amendment, but the Contract Total Amount on the Routing Form should be for the total contract amount (including the original and the amendment).
3. Be aware that if the amendment puts your total contract above \$10,000, the requisition will need to be submitted to the Board for approval. Allow additional time for this step.