

**SANTA CLARA UNIFIED SCHOOL DISTRICT  
INDEPENDENT CONSULTANT AGREEMENT**

---

This Independent Consultant Agreement ("Agreement") is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between the Santa Clara Unified School District ("District") and \_\_\_\_\_ ("Consultant"), (together, "Parties").

**RECITALS**

WHEREAS, Government Code section 53060 authorizes District to contract with and employ any person for the furnishing of special services and advice in financial, economic, accounting, legal, or administrative matters if such person is specially trained and experienced and competent to perform the special services required;

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

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

WHEREAS, Consultant is free from the control and direction of District in connection with the performance of the Services (as defined below), both under the Agreement and in fact; Consultant's Services are outside the usual course of District's business; and Consultant is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the Services.

NOW, THEREFORE, the Parties agree as follows:

**TERMS**

1. **Services.** Consultant shall provide \_\_\_\_\_ services as further described in **Attachment A**, attached hereto and incorporated herein by this reference ("Services").
2. **Term.** Consultant shall commence providing services under this Agreement on \_\_\_\_\_, 20\_\_, and will diligently perform as required and complete performance by \_\_\_\_\_, 20\_\_, unless this Agreement is terminated and/or otherwise cancelled prior to that time.
3. **Validity of Agreement.** This Agreement shall not be a valid contract until it is executed by both Parties, and approved or ratified by the District's Board of Trustees. Should Consultant begin performing Services in advance of approval by the Board of Trustees, any Services so performed in advance of the approval date will be provided at the Consultant's risk.
4. **Submittal of Documents.** Consultant shall not commence the Services under this Agreement until Consultant has submitted and District has approved the certificate(s) and affidavit(s), and the endorsement(s) of insurance required as indicated below:
  - Signed Agreement
  - Scope of Work
  - Workers' Compensation Certification
  - Fingerprint/Criminal Background Certification
  - Certificate of Insurance
  - W-9 Form
  - Tuberculosis Clearance
  - Conflict of Interest
  - IRS Guidelines
  - APPENDIX 1: COVID-19 Vaccine Certification

5. **Compensation.** District agrees to pay Consultant for services satisfactorily rendered pursuant to this Agreement a total fee not to exceed \_\_\_\_\_ Dollars (\_\_\_\_\_). District shall pay Consultant according to the following terms and conditions:
- 5.1. Payment for the Services shall be made for all undisputed amounts based upon the delivery of the work product as determined by District. Payment shall be made within thirty (30) days after Consultant submits an invoice to District for Services actually completed and after District's written approval of the Services, or the portion of the Services for which payment is to be made.
- 5.2. **Expenses.** District shall not be liable to Consultant for any costs or expenses paid or incurred by Consultant in performing services for District.
6. **Materials.** Consultant shall furnish, at its own expense, all labor, materials, equipment, supplies and other items necessary to complete the services to be provided pursuant to this Agreement. Notwithstanding the foregoing, District shall not be responsible for any damages to persons or property as a result of the use, misuse or failure of any Equipment used by Consultant or Consultant's agents, personnel, employee(s), and/or subConsultant(s), even if such Equipment is furnished, rented or loaned to Consultant by the District.
7. **Audit.** Consultant shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of Consultant transacted under this Agreement. Consultant shall retain these books, records, and systems of account during the Term of this Agreement and for five (5) years thereafter. Consultant shall permit 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 District shall give reasonable prior notice to Consultant and shall conduct audit(s) during Consultant's normal business hours, unless Consultant otherwise consents.
8. **Independent Consultant.** Consultant, in the performance of this Agreement, shall be and act as an independent Consultant. Consultant represents and warrants that: (A) Consultant is free from the control and direction of District in connection with the performance of the Services, both under the Agreement and in fact; (B) Consultant's Services are outside the usual course of District's business; and (C) Consultant is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the Services.

Consultant understands and agrees that it and all of its employees shall not be considered officers, employees, agents, partner, or joint venture of District, and are not entitled to benefits of any kind or nature normally provided employees of District and/or to which District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Workers' Compensation. Consultant 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 Consultant's employees. By checking the applicable box below, Consultant hereby represents and warrants to District the following:

- Consultant is and shall be a resident of the State of California or is otherwise exempt from withholding. To the extent an exemption is sought, Consultant will provide District with appropriate evidence including, without limitation, FTB Form 590. Consultant shall still be responsible for payment of all state and federal taxes.

- Consultant is not a resident of the State of California or otherwise not exempt from withholding, and Consultant authorizes District to withhold from all payments made to Consultant under this Agreement all taxes required to be withheld by law. (See, e.g., California Revenue & Taxation Code section 18661 et seq.)

## 9. Performance of Services.

- 9.1. **Standard of Care.** Consultant represents that Consultant has the qualifications and ability to perform the Services in a professional manner, without the advice, control or supervision of the District. Consultant's services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of its profession for services to California school districts.
- 9.2. **Certificates/Permits/Licenses/Registration.** Consultant and all Consultant's employees or agents shall secure and maintain in force such certificates, permits, licenses and registration as are required by law in connection with the furnishing of Services pursuant to this Agreement.
- 9.3. **Safety and Security.** Consultant is responsible for maintaining safety in the performance of this Agreement. Consultant shall be responsible to ascertain from the District the rules and regulations pertaining to safety, security, and driving on school grounds, particularly when children are present.
- 9.4. **District Approval.** The Services provided herein must meet the approval of the District. District may evaluate Consultant in any way District is entitled pursuant to applicable law, including, without limitation, announced and unannounced observance of Consultant, Consultant's employee(s), and/or subconsultant(s).

## 10. Termination.

- 10.1. **For Convenience by District.** District may, at any time, with or without reason, terminate this Agreement and compensate Consultant only for services satisfactorily rendered to the date of termination. Written notice by District shall be sufficient to stop further performance of services by Consultant. Notice shall be deemed given when received by Consultant or no later than three (3) calendar days after the day of mailing, whichever is sooner.
- 10.2. **With Cause by District.** District may terminate this Agreement upon giving written notice of intention to terminate for cause. Cause shall include:
  - 10.2.1. material violation of this Agreement by Consultant; or
  - 10.2.2. any act by a Consultant exposing District to liability to others for personal injury or property damage.

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 Consultant. If the expense, fees, and/or costs to District exceed the cost of providing the service pursuant to this Agreement, Consultant shall immediately pay the excess expense, fees, and/or costs to District upon the receipt of 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 the District.

10.3. Upon termination, Consultant shall provide the District with all documents produced, maintained or collected by Consultant pursuant to this Agreement, whether or not such documents are final or draft documents.

11. **Indemnification.** To the furthest extent permitted by California law, Consultant shall indemnify and hold harmless District, its Governing Board, agents, representatives, officers, consultants, employees, trustees, and volunteers (the "Indemnified Parties") from any and all claims arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of Consultant. Consultant shall, to the furthest extent permitted by California law, defend the Indemnified Parties at Consultant's own expense, from any and all Claim(s) and allegations relating thereto with counsel approved by District where such approval is not to be unreasonably withheld.

12. **Insurance.**

12.1. Consultant 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 in Attachment D.

12.1.1. **Commercial General Liability and Automobile Liability Insurance.**

Commercial General Liability Insurance and Any Auto Automobile Liability Insurance that shall protect Consultant, 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, or forms substantially similar, if approved by District.)

12.1.2. **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. 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. That policy shall provide employers' liability coverage per accident for bodily injury or disease.

12.1.3. **Professional Liability (Errors and Omissions).** Professional Liability Insurance as appropriate to Consultant's profession, coverage to continue through completion of construction plus two (2) years thereafter.

12.1.4. **Abuse and Molestation Insurance.** Abuse and Molestation Insurance shall protect the Consultant and the District from all claims of bodily injury (including emotional distress), personal injury, or advertising injury because of sexual abuse, molestation, or exploitation arising out of negligent hiring, training, and supervising practices by Consultant.

12.2. **Proof of Insurance.** Consultant 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 District and approved by District. Certificates and insurance policies shall include the following:

- 12.2.1. 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.
- 12.2.2. An endorsement for each policy stating that coverage shall not be canceled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the District.
- 12.2.3. An endorsement stating that the District and its Governing Board, 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. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the Additional Insureds.
- 12.2.4. An endorsement stating that Consultant's insurance policies shall be primary to any insurance or self-insurance maintained by District.
- 12.2.5. An endorsement stating that there shall be a waiver of any subrogation against the District and its respective elected officials, officers, employees, agents, representatives, Consultants, trustees, and volunteers.
- 12.2.6. All policies except the Professional Liability, Workers' Compensation, and Employers' Liability Insurance Policies shall be written on an occurrence form.
- 12.2.7. Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

12.3. **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.

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

13.1. **COVID-19 Vaccination and Testing Requirements**

*Vaccination Requirements*

Consultant shall fill out, sign, date and submit to the District before services begin, the COVID-19 Vaccination/Testing Certification Form, attached hereto as Appendix 1. The completed COVID-19 Vaccination/Testing Certification Form must be received by the District before services begin.

According to the August 11, 2021, California Department of Public Health ("CDPH") State Public Health Officer Order ("Order"), a person is "fully vaccinated" for COVID-19 if two weeks or more have passed since they have received the second dose in a 2-dose series (Pfizer-BioNTech or Moderna or vaccine authorized by the World Health

Organization), or two weeks or more have passed since they received a single-dose vaccine (Johnson and Johnson[J&J]/Janssen).

Pursuant to the CDPH Guidance for Vaccine Records Guidelines & Standards, Consultant shall only accept the following as proof of vaccination:

- (a) COVID-19 Vaccination Record Card (issued by the Department of Health and Human Services Centers for Disease Control & Prevention or WHO Yellow Card) which includes name of person vaccinated, type of vaccine provided and date last dose administered);
- (b) a photo of a Vaccination Record Card as a separate document;
- (c) a photo of a Vaccination Record Card stored on a phone or electronic device;
- (d) documentation of COVID-19 vaccination from a health care provider;
- (e) digital record that includes a QR code that when scanned by a SMART Health Card reader displays to the reader name, date of birth, vaccine dates and vaccine type; or
- (f) documentation of vaccination from other contracted employers who follow these vaccination records guidelines and standards.

In the absence of knowledge to the contrary, the Consultant may accept the documentation presented in (a) through (f) above as valid.

Consultant shall have a plan in place for tracking verified Consultant personnel vaccination status. Records of vaccination verification must be made available, upon request, to the local health jurisdiction for purposes of case investigation.

Consultant personnel, including any and all tiers of subConsultant, supplier, and any other personnel entering the Project site, who are not fully vaccinated, or for whom vaccine status is unknown or documentation is not provided, must be considered unvaccinated.

#### *Weekly Testing Requirements*

Consultant shall ensure that Consultant personnel, including any and all tiers of subConsultant, supplier, and any other worker entering the Project site, who are unvaccinated or who are not fully vaccinated are required to undergo diagnostic screening testing, as specified below:

- (a) Consultant personnel may be tested with either antigen or molecular tests to satisfy this requirement, but unvaccinated or incompletely vaccinated workers must be tested at least once weekly with either PCR testing or antigen testing. Any PCR (molecular) or antigen test used must either have Emergency Use Authorization by the U.S. Food and Drug Administration or be operating per the Laboratory Developed Test requirements by the U.S. Centers for Medicare and Medicaid Services.
- (b) Unvaccinated or not fully vaccinated Consultant personnel must also observe all other infection control requirements, and are not exempted from the testing requirement even if they have a medical contraindication to vaccination, since they are still potentially able to spread the illness. Previous history of COVID-19 from which the individual recovered more than 90 days earlier, or a previous positive antibody test for COVID-19, do not waive this requirement for testing.

Consultant shall have a plan in place for tracking test results and conducting workplace contact tracing, and must report results to local public health departments, if applicable.

*Mandatory Compliance with Federal, State and Local Laws*

Consultant shall continue to comply with all applicable federal, state and local laws regarding COVID-19. Further, except to the extent the Order provides otherwise, Consultant and Consultant personnel shall continue to comply with all other applicable terms in the CDPH's State Public Health Officer Orders.

14. **Employment with Public Agency.** Consultant, if an employee of another public agency, agrees that Consultant 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.
15. **Anti-Discrimination.** Consultant herein agrees to comply with the provisions of the California Fair Employment and Housing Act as set forth in part 2.8 of division 3 of the California Government Code, commencing at section 12900; the Federal Civil Rights Act of 1964, as set forth in Public Law 88-352, and all amendments thereto; Executive Order 11246; and all administrative rules and regulations found to be applicable to Consultant and all of its subconsultants. In addition, Consultant agrees to require compliance by all of its subconsultant(s).
16. **Fingerprinting.** The Fingerprinting/Criminal Background Investigation Certification must be completed and attached to this Agreement prior to Consultant's performing any portion of the Services. Although District has determined that fingerprinting is not applicable to this Agreement, Consultant expressly acknowledges that the following conditions shall apply to any work performed by Consultant and/or Consultant's employees on a school site:
  - 16.1. All site visits shall be arranged through the District;
  - 16.2. Consultant and Consultant's employees shall inform District of their proposed activities and location at the school site, allowing District time to arrange site visits without a disruption to the educational process;
  - 16.3. Consultant and/or Consultant's employees shall check in with the school office each day immediately upon arriving at the school site;
  - 16.4. Once at such location, Consultant and Consultant's employees shall not change locations without contacting the District;
  - 16.5. Consultant and Consultant's employees shall not use student restroom facilities; and
  - 16.6. If Consultant and Consultant's employees find themselves alone with a student, Consultant and Consultant's employees shall immediately contact the school office and request that a member of the school staff be assigned to the work location.
17. **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.
18. **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.

19. **Confidentiality.** Consultant and all Consultant’s agents, personnel, employee(s), and/or subconsultant(s) shall maintain the confidentiality of all information received in the course of performing the Services. Consultant understands that student records are confidential and agrees to comply with all state and federal laws concerning the maintenance and disclosure of student records. This requirement to maintain confidentiality shall extend beyond the termination of this Agreement.
20. **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 or electronic mail, addressed as follows:

<p><b><u>District:</u></b></p> <p>Santa Clara Unified School District  1889 Lawrence Road  Santa Clara, CA 95051  Phone: (408) 423-2000  Email: contracts@scusd.net  ATTN: Chief Business Official</p>	<p><b><u>Consultant:</u></b></p> <p>_____</p> <p>_____</p> <p>Phone: _____</p> <p>Email: _____</p> <p>ATTN: _____</p>
--	---

Any notice personally given or sent by facsimile transmission or electronic mail 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) calendar days after deposit in the United States mail.

21. **Disputes.** In the event of a dispute between the parties as to performance of the Services, the interpretation of this Agreement, or payment or nonpayment for work performed or not performed, the parties shall attempt to resolve the dispute in good faith. Pending resolution of the dispute, Consultant agrees it will neither rescind the Agreement nor stop the performance of the Services, but will allow determination by the court of the State of California, in the county in which District’s administration office is located, having competent jurisdiction of the dispute. Disputes may be determined by mediation if mutually agreeable, otherwise by litigation. Notice of the demand for mediation of a dispute shall be filed in writing with the other party to the Agreement. The demand for mediation shall be made within a reasonable time after written notice of the dispute has been provided to the other party, but in no case longer than ninety (90) days after initial written notice. If a claim, or any portion thereof, remains in dispute upon satisfaction of all applicable dispute resolution requirements, Consultant shall comply with all claims presentation requirements as provided in Chapter 1 (commencing with section 900) and Chapter 2 (commencing with section 910) of Part 3 of Division 3.6 of Title 1 of Government Code as a condition precedent to Consultant’s right to bring a civil action against District. For purposes of those provisions, the running of the time within which a claim must be presented to District shall be tolled from the time Consultant submits its written claim until the time the claim is denied, including any time utilized by any applicable meet and confer process.
22. **Attorney’s 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.
23. **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.

24. **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 the county in which District's administrative offices are located.
25. **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.
26. **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.
27. **Assignment.** The obligations of Consultant pursuant to this Agreement shall not be assigned by Consultant.
28. **Provisions Required By Law Deemed Inserted.** Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included therein.
29. **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.
30. **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.
31. **Calculation of Time.** For the purposes of this Agreement, "days" refers to calendar days unless otherwise specified.
32. **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.
33. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. A facsimile or electronic signature shall be deemed to be the equivalent of the actual original signature. All counterparts so executed shall constitute one Agreement binding all the Parties hereto.
34. **Incorporation of Recitals and Exhibits.** The Recitals and each exhibit attached hereto are hereby incorporated herein by reference.

*[SIGNATURES ON FOLLOWING PAGE]*

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

Dated: _____, 20__	Dated: _____, 20__
<b>Santa Clara Unified School District</b>	_____
By: _____	By: _____
Print Name: Mark A. Schiel	Print Name: _____
Print Title: Chief Business Official	Print Title: _____

**ATTACHMENT A: DESCRIPTION OF SERVICES / PROPOSED STATEMENT OF WORK**

Select if document is attached

Description of Services to be performed:

**ATTACHMENT B: WORKERS' COMPENSATION CERTIFICATION**

Not Applicable

Approved by: \_\_\_\_\_

Labor Code Section 3700 in relevant part provides:

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 satisfactory proof 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 Services of this Agreement.

Date: \_\_\_\_\_

Name of Consultant: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name and Title: \_\_\_\_\_

(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 Services under this Agreement.)

**ATTACHMENT C: FINGERPRINT AND CRIMINAL BACKGROUND CHECK CERTIFICATION  
(NON-CONSTRUCTION CONTRACTS)**

***In accordance with the Department of Justice fingerprint and criminal background investigation requirements of Education Code section 45125.1 et seq.***

With respect to the [Insert Name of Agreement] ("Agreement") between the Santa Clara Unified School District ("District") and \_\_\_\_\_ ("Contracting Party"):

*One of the boxes below must be checked with regard to Contracting Party and Contracting Party's personnel (officers, principals, paid or unpaid employees, volunteers, agents, subtenants and subcontractors of Contracting Party who will provide services under the Agreement) ("Contracting Party's Personnel") and the arrangements verified by an authorized representative of District prior to commencement of the Agreement.*

- Fingerprinting/Background Check requirements do not apply because Contracting Party/Contracting Party's Personnel will not have any interaction with District pupils based on the type of service being provided, the location at which services will be provided, or for other reason (Specify):  
\_\_\_\_\_

- Contracting Party/Contracting Party's Personnel qualify for a waiver of fingerprint/criminal background check requirements on the following basis:

- The services provided by Contracting Party/Contracting Party's Personnel are for an emergency or exceptional situation, such as when pupil health or safety is endangered or when repairs are needed to make school facilities safe and habitable. [Ed. Code, §45125.1(b)]

- Contracting Party/Contracting Party's Personnel will have no interaction with District pupils that is not under the immediate supervision and control of the pupil's parent/guardian. Enter details of parental supervision:  
\_\_\_\_\_  
\_\_\_\_\_

- Contracting Party/Contracting Party's Personnel will have no interaction with pupils that is not under the immediate supervision and control of a District employee who has been properly fingerprinted and undergone background checks. Enter details of District employee supervision arrangements:  
\_\_\_\_\_  
\_\_\_\_\_

- Contracting Party is a sole proprietor who may interact with District pupils not under the immediate supervision of a pupil's parent, guardian or District employee, and in accordance with the fingerprinting requirements of Education Code section 45125.1(h), hereby agrees to the District's preparation and submission of fingerprints so that the California Department of Justice may determine (A) that Contracting Party has not been convicted of a felony, as that term is defined in Education Code section 45122.1 and/or (B) that the prohibition does not apply to an employee as provided by Education Code section 45125.1(e)(2) or (3). No work or action under the Agreement shall commence until the Department of Justice ascertains that Contracting Party has not been convicted of a felony as defined in Government Code Section 45122.1.

- Contracting Party is not a sole proprietor and has complied with the fingerprinting requirements of Education Code section 45125.1 with respect to all Contracting Party’s Personnel who may interact with District pupils not under the immediate supervision of a pupil’s parent, guardian or District employee during the term of the Agreement, and the California Department of Justice has determined (A) that none of Contracting Party’s Personnel has been convicted of a felony, as that term is defined in Education Code section 45122.1 and/or (B) that the prohibition does not apply to an employee as provided by Education Code section 45125.1(e)(2) or (3). When the Contracting Party performs the criminal background check, it shall immediately provide any subsequent arrest and conviction information it receives to the District pursuant to the subsequent arrest service. A complete and accurate list of Contracting Party’s Personnel who may come in contact with District pupils during the course and scope of the Agreement is attached hereto. No work or action under the Agreement shall commence until the Department of Justice ascertains that none of Contracting Party’s Personnel has been convicted of a felony as defined in Government Code Section 45122.1.

**CONTRACTING PARTY CERTIFICATION**

I am a representative of the Contracting Party 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 the Contracting Party. By signing below, I certify that the information contained on this certification form is accurate. I understand that it is Contracting Party’s sole responsibility to maintain, update, and provide the District with current “Fingerprint and Criminal Background Check Certification” information for all Contracting Party’s Personnel throughout the duration of the Agreement. **A list of Contracting Party’s Personnel is attached hereto as Attachment A.**

Date: \_\_\_\_\_

Contracting Party: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ATTACHMENT "A"**

**Contracting Party's Personnel**

**Name/Company:** \_\_\_\_\_

**Name/Company:** \_\_\_\_\_

**Name/Company:** \_\_\_\_\_

**Name/Company:** \_\_\_\_\_

**Name/Company:** \_\_\_\_\_

**Name/Company:** \_\_\_\_\_

**Name/Company:** \_\_\_\_\_

**Name/Company:** \_\_\_\_\_

**Name/Company:** \_\_\_\_\_

**Name/Company:** \_\_\_\_\_

**Name/Company:** \_\_\_\_\_

**Name/Company:** \_\_\_\_\_

**Name/Company:** \_\_\_\_\_

**Name/Company:** \_\_\_\_\_

**Name/Company:** \_\_\_\_\_

**Name/Company:** \_\_\_\_\_

**Name/Company:** \_\_\_\_\_

If further space is required for the list of personnel, attach additional copies of this page.

**ATTACHMENT D: CERTIFICATE OF INSURANCE**

Certificate of Insurance is waived. Approved by: \_\_\_\_\_

[INSERT CERTIFICATE OF INSURANCE IN LIEU OF THIS PAGE]

The Consultant shall procure and maintain at all times it performs any portion of the Services the insurance coverage as specified in Table 1.1: Minimum Insurance Requirements per Consultant Type.

The Contract shall provide a copy of the Certificate of Insurance and endorsements with Santa Clara Unified School District as the Certificate Holder.

Table 1.1: Minimum Insurance Requirements per Consultant Type

Type of Contractor	Recommended Coverage	Per Occurrence / Aggregate Limits	Certificate of Insurance	Additional Insured
Consultants/Professional Providers: Architects Auditors Engineers Attorneys Physicians Technology Providers	General Liability	\$1,000,000 / \$2,000,000	x	x
	Automobile Liability	\$1,000,000	x	
	Professional Liability (other Physician)	\$1,000,000 / \$2,000,000	x	
	Medical Malpractice (physicians, dentist, etc.)	\$1,000,000 / \$2,000,000	x	
	Worker's Compensation	Statutory	x	
	Cyber Security and Privacy	\$1,000,000 / \$2,000,000	x	
	Cyber Liability Tech E&O	\$1,000,000 / \$2,000,000	x	
	Employers Liability	\$1,000,000	included	
	Sexual Abuse or Molestation	\$1,000,000 / \$2,000,000	x	
Suppliers and/or Vendors	General Liability	\$1,000,000 / \$2,000,000	x	x
	Automobile Liability	\$1,000,000	x	
	Worker's Compensation	Statutory	x	
	Cyber Security and Privacy	\$1,000,000 / \$2,000,000	x	
	Employers Liability	\$1,000,000	included	
Bus Contractors and/or Charter Bus	General Liability	\$1,000,000 / \$2,000,000	x	x
	Automobile Liability	10,000,000	x	
	Worker's Compensation	Statutory	x	
	Employers Liability	\$1,000,000	included	
	Sexual Abuse or Molestation	\$1,000,000 / \$2,000,000	x	
Security Personnel	General Liability	\$1,000,000 / \$2,000,000	x	x
	Automobile Liability	\$1,000,000	x	
	Worker's Compensation	Statutory	x	
	Employers Liability	\$1,000,000	included	
	Sexual Abuse or Molestation	\$1,000,000 / \$2,000,000	x	



**ATTACHMENT E: W-9 FORM**

Select if vendor is active with Santa Clara Unified School District and has a valid W-9 on file.

[INSERT W-9 FORM IN LIEU OF THIS PAGE]

**ATTACHMENT F: TUBERCULOSIS CLEARANCE**

Not Applicable: Services are virtual/remote (never on District property)

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

I am a representative of the Consultant 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 Consultant.

Consultant's responsibility for tuberculosis clearance extends to all of its employees, subconsultants, and employees of subconsultants coming into contact with District pupils regardless of whether they are designated as employees or acting as independent Consultants of the Consultant.

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

The Consultant ensures that any person providing any portion of the Services has submitted to an examination within the past two (2) years to determine that he or she is free of active tuberculosis, by a physician or surgeon. A complete and accurate list of Consultant's employees and of all of its subconsultants' employees who may come in contact with District pupils during the course and scope of the Agreement is attached hereto;

Consultant'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 subconsultant or supplier of any tier of Agreement shall come in contact with District pupils.

\_\_\_\_\_  
Consultant

\_\_\_\_\_  
Representative

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**ATTACHMENT G: CONFLICT OF INTEREST**

Board Policy 3600 of the Santa Clara Unified School District provides in part: "Independent Consultants shall submit a written conflict of interest statement disclosing financial interests as determined necessary by the Superintendent or designee, depending on the range of duties to be performed by the consultant. The Superintendent or designee shall consider this statement when deciding whether to recommend approval of the contract." The Superintendent has determined that all persons seeking to serve as a consultant to the District shall fill out truthfully, sign, date and submit this Conflict of Interest Statement prior to performing any consultant work or services for the District.

I, hereby certify the following:

1. I am not an employee of the District.
2. Within the past year I have not been a member of the District Board of Trustees of the District.
3. Neither I nor any member of my immediate family (includes parent, spouse, domestic partner, or child) or member or resident of my household is a member of the District's Citizens Bond Oversight Committee for the District's current Measure bond programs.
4. Within the past year I have not provided or made, and will not provide or make, any promise of any gift of any kind (money, meals, goods, services, entertainment tickets, etc.), in-kind services, commission, or fully or partially expense-paid trips to any District Board Member or District employee whose responsibilities include the selection of District consultants or the evaluation, supervision or oversight of District consultants (a "Responsible Employee")
5. I do not employ or retain, and will not employ or retain, any current District Responsible Employee as a consultant, independent Consultant or employee during the term of my consultancy agreement with the District.
6. I am authorized to make, and do make, this certification on behalf of ("Consultant").

The foregoing certifications are true and correct. I make this certification under penalty of perjury under the laws of the State of California.

\_\_\_\_\_  
Consultant

\_\_\_\_\_  
Representative

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

## ATTACHMENT H: IRS GUIDELINES

PART 1				YES	NO
1. Has this category of worker already been classified an "employee" by the IRS?				<input type="checkbox"/>	<input type="checkbox"/>
Administrators Teachers/Instructors Substitutes Psychologists Clerical Staff Tutors	School Bus Drivers Athletic Coaches Cafeteria Workers Counselors Librarians Proctors	Examination Monitors Proctors Nurses Intern Psychologists Specialty Teachers	Individuals "filling in" on an interim basis		
2. Is this individual working as an employee prescribed by the Education Code? Education Code Sections 45100-45451 define what constitutes the classified service. Education Code Sections 44800-45060 define the certificated service. The IRS predisposes an employer/employee relationship when state law mandates such a relationship.				<input type="checkbox"/>	<input type="checkbox"/>
3. Is the individual already an employee of the district in another capacity?				<input type="checkbox"/>	<input type="checkbox"/>
4. Has the individual performed substantially the same services for the district as an employee in the past?				<input type="checkbox"/>	<input type="checkbox"/>
5. Are there currently employees of the district doing substantially the same services as will be required of this individual?				<input type="checkbox"/>	<input type="checkbox"/>
6. Does the district have the legal right to control the method of performance by this individual? Consider whether the District will train the individual or give instruction as to when, where, how, and in what order the work will be performed.				<input type="checkbox"/>	<input type="checkbox"/>
7. Does the District require the individual to submit reports on the details of their work or work at a particular site? These factors indicate the District maintains control sufficient for an employer/employee relationship. However, it is not necessary that the District exercise this right, or have the expertise required to do so.				<input type="checkbox"/>	<input type="checkbox"/>

If the answer to any of the above questions is **"YES" STOP! Do not complete** the rest of the questions. The individual is a district employee and must be paid and reported accordingly. Call Human Resources for further details. If all of the above are "NO", Continue...

PART 2		YES	NO
8. Will all the work be performed by this individual? Consider whether or not the individual may designate someone else to do the work without the District's knowledge or approval.		<input type="checkbox"/>	<input type="checkbox"/>
9. Does the district have a continuing relationship with this individual? Is this a "one shot" assignment, or will the District continue to use this individual in the future? This could be on an infrequent or irregular basis, but a continuous relationship exists.		<input type="checkbox"/>	<input type="checkbox"/>
10. Can this relationship be terminated without the consent of both parties?		<input type="checkbox"/>	<input type="checkbox"/>

If the answer to the question 8, 9, or 10 is "YES", there is a good possibility that an employment relationship exists. Questions 8 & 9 are indicators of district control that in conjunction with other factors imply an employment relationship.

PART 3	YES	NO
11. Does the individual operate an independent trade or business that is available to the general public? A determining factor in judging independence is the performance of services to the general public. In evaluating this criteria, the District is considered to be a separate entity. Keep in mind: if the District is using this individual's services on a full-time basis, the individual is not available to the general public.	<input type="checkbox"/>	<input type="checkbox"/>
12. Does the individual have a substantial investment in his/her business, i.e. maintains a facility, equipment, etc.? This is indicative of economic risk inherent in business enterprises. An independent Consultant must be able to make a profit or sustain a loss.	<input type="checkbox"/>	<input type="checkbox"/>

If either 11 or 12 are "NO", the individual is a district employee **STOP HERE** and process the individual through Human Resources and payroll. If 11 and 12 are both "YES", Continue...

PART 4	YES	NO
13. Does the individual provide all materials and support services necessary for the performance of this service? 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.	<input type="checkbox"/>	<input type="checkbox"/>
14. Is this individual paid by the job or upon completion and acceptance of the work as a whole or milestones identified in the contract?	<input type="checkbox"/>	<input type="checkbox"/>
15. Does the individual bear the cost of any travel and business expenses incurred to perform this service? 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.	<input type="checkbox"/>	<input type="checkbox"/>

If 11 and 12 are "YES", 13 through 15 should also be "YES" and are items that should be written into the Contract Agreement. This individual is an Independent Consultant. A "YES" on questions 13 through 15 supports the district's conclusion and substantiates a "reasonable basis" for treatment as independent Consultant. While there are circumstances where the district may pay contractually provided expenses, these should be kept at a minimum to avoid giving the impression of an employment relationship.

By signing below, the consultant and the District Representative attest that they have reviewed district guidelines and certify that the information above is true and correct.

**Consultant**

---

Representative	Title	Signature	Date
----------------	-------	-----------	------

**District**

---

Representative	Title	Signature	Date
----------------	-------	-----------	------

**APPENDIX 1: COVID-19 VACCINATION / TESTING CERTIFICATION**

**Consultant:**

The California Department of Public Health (“CDPH”) requires, pursuant to its August 11, 2021, Order (“Order”), that all public and private schools serving students in transitional kindergarten through grade twelve, unless exempt, are required to verify the vaccine status of all K-12 school workers, effective October 15, 2021. Further, pursuant to the Order, all such schools are required to verify that all workers are either fully vaccinated or undergo weekly diagnostic testing.

In light of these CDPH requirements, Consultant certifies that the following entity:

\_\_\_\_\_ has verified that the Consultant personnel providing services at District’s Project site(s):

<input type="checkbox"/>	Have all been fully vaccinated in accordance with the CDPH Order.
<input type="checkbox"/>	Have not all been fully vaccinated, but those who are unvaccinated or not fully vaccinated undergo weekly diagnostic testing in accordance with the CDPH Order.
<input type="checkbox"/>	Services are virtual/remote (never on District property)

Consultant understands that the District’s Project site will need to comply with the CDPH Order’s COVID-19 requirements for fully vaccinated personnel or unvaccinated personnel. Personnel who are not fully vaccinated or decline to state their vaccination status will be treated as unvaccinated, and Consultant will comply with the CDPH Order, and all applicable state and local laws for vaccinated and unvaccinated personnel.

**CERTIFICATION**

I, \_\_\_\_\_, certify that I am Consultant’s \_\_\_\_\_ and that I have made a diligent effort to ascertain the facts with regard to the representations made herein.

Date: \_\_\_\_\_

Name of Consultant: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name / Title: \_\_\_\_\_