

**BERKELEY UNIFIED SCHOOL DISTRICT
PERSONNEL COMMISSION OF THE MERIT SYSTEM
THURSDAY, MARCH 4, 2010, 4:00 P.M.**

AGENDA

1835 Allston Way
Berkeley, CA 94703
(Administrative Annex Conf. Room)

- | | | |
|--|--|-------------------------------|
| 1. Call to Order | | INFORMATION |
| 2. Commissioner Roll Call | | INFORMATION |
| Shirley Van Bourg, Chair | <input type="checkbox"/> present <input type="checkbox"/> absent | |
| Dan Lee, Vice-Chair | <input type="checkbox"/> present <input type="checkbox"/> absent | |
| Degui Montrice Goodman | <input type="checkbox"/> present <input type="checkbox"/> absent | |
| 3. Move to Closed Session | 4:00P.M. | ACTION |
| a. Third Commissioner | | |
| b. Personnel Matter | | |
| 4. Report from Closed Session | 5:30 P.M. | INFORMATION |
| 5. Approval of Agenda | | ACTION |
| 6. Approval of Minutes | | ACTION 1-5 |
| a. Personnel Commission Meeting of February 4, 2010 | | |
| 7. Public Comments | | INFORMATION |
| 8. Reports | | INFORMATION |
| a. Collective Bargaining Units' Comments | | |
| b. Secretary's Comments | | |
| 1. Current Recruitment Report | | |
| c. Commissioners' Comments | | |
| 9. Approve the Following Eligibility Lists: | | DISCUSSION/ACTION 6-8 |
| a. Parent Liaison/Rec. and Culture Facilitator – Bilingual (Open) | | |
| b. Custodian II (Promotional) | | |
| c. School Safety Officer (Open), Extend Eligibility list | | |
| d. Instructional Specialist P.E. (to be Provided at Commission's meeting) | | |
| 10. Review Independent Contractor Agreement to Ensure Compliance with Ed Code 45103 | | |
| Placed on Agenda by BCCE | | DISCUSSION/ACTION 9-20 |

11. Review Appointments of Provisional (50.300), limited Term, (60.300.1), and Temporary Appointments to Ensure Compliance with Ed Code and Merit Rules

Placed on Agenda by BCCE

DISCUSSION/ACTION 21-23

12. Review BUSD Hazardous Communication Program for Commission's Role and Implementation

Placed on Agenda by BCCE

DISCUSSION/ACTION

13. Public Comments

INFORMATION

14. Adjournment

BY 7:00 P.M.

Personnel Commission of the Merit System Minutes
Thursday, February 4, 2010
BUSD Admin Annex Conf. Room
2134 Martin Luther King Jr. Way– Open Session
Berkeley, CA 94703

Personnel Commission Members

Shirley Van Bourg, Chairwoman
Dan Lee, Commissioner
Degui Montrice Goodman, Commissioner

1. Call to Order

Chairwoman Van Bourg called the meeting to order at 3:30

2. Commissioner Roll Call

Roll call was taken by Francisco Martinez, Director of Classified Personnel and Secretary of the Personnel Commission.

Present: Commissioner Shirley Van Bourg and Commissioner Dan Lee

3. Move to Closed Session

a. Selection of Third Commissioner

4. Report from Closed Session

No report from Closed Session

Commissioner Degui Montrice Goodman was present for open session

5. Approve Agenda

Motion: approve agenda

Unanimously approved

6. Approval of Minutes

a. Personnel Commission Meeting of January 14, 2010

Corrections (November 5, 2009 meeting): Item #6 (b), Approval of November 5, 2009 minutes, line 3, "Director Martinez" changed to "Paula Phillips." Item #11, Agenda Item Requests, delete second sentence, add line: "Ms. Diggs-Ray's main concern was that the application process was not being followed."

Motion: To approve minutes from November 5, 2009 meeting as corrected.

Unanimously approved

Motion: To approve minutes from January 14, 2010 meeting.

Unanimously approved

7. Public Comments

Denise Diggs-Ray, BCCE, stated that BCCE had not been consulted in regards to the creation of the bilingual job descriptions. BCCE will be submitting a request for an appeal hearing for Rafael Adames. BCCE members are concerned that they are being subjected to different application deadlines then external applicants.

8. Reports

a. Collective Bargaining Units' Comments

Ms. Denise Diggs-Ray requested that time is allowed for Ms. Paula Phillips, BCCE President to arrive to give BCCE's report.

b. Secretary's Comments

1. Current Recruitment Report

Filled Positions

Instructional Assistant -Cragmont

Clerical Assistant III- BAS

The district projects to cut about 1.9 million dollars from the budget. The cuts are projected to come from the central offices at the school district. Director Martinez stated that internal and external applicants are subject to the same closing dates and application timelines. Director Martinez reviewed the rehiring of Maria Soria. He stated that she was rehired under the re-employment rights of the BCCE contract and that she was rehired at the highest FTE available.

c. Commissioners' Comments

There were no comments from the Commissioners

9. Approval of Eligibility Lists

a. Instructional Assistant ECE (promotional)

b. Instructional Assistant ECE (open/combined)

Paula Phillips, BCCE President, believed that Ms. Maria Soria should be given bumping rights. Director Martinez stated that she does not have bumping rights. Ms. Soria had re-employment rights.

- c. Instructional Technician EDP (open/combined)
- e. Instructional Specialist Dance (open)

Motion: to approve eligibility list (a, b,c & e)

Unanimously approved

- d. Senior Accountant

Paula Phillips, BCCE, stated that an employee was disqualified from the exam due to allegations of cheating. Ms. Phillips requested that the employee be given the right to appeal. Mr. Martinez will send the employee a letter informing the employee of their appeal rights.

List (d) Senior Accountant was not approved

10. Classification Study

All three commissioners were in agreement to vacate the current Classification Study. They requested a new study be conducted with both parts of the study done by the same company and that a timeline be placed on the study to not exceed one year.

Motion: To start a new Classification Study with a specified timeline.

Unanimously approved

11. Bilingual Classification - Secretary

Paula Phillips, BCCE President, is opposed to the classification because the district had not met with the Union regarding the introduction of bilingual classifications. The BCCE contract (6.10) states that the District shall meet and consult with the Union prior to changing existing job descriptions or creating a new classification. Chairwoman Van Bourg stated that the Commission could not move forward being that the contract supersedes Merit Rules.

12. Review Goals and Mission of the Personnel Commission

This item was placed on the agenda by BCCE. Denise Diggs-Ray, BCCE, requested clarification of the goals and mission of the Merit Commission. BCCE requested the district website be updated with a clear mission statement to share with employees.

13. Establish Requirements for Typing Certifications for Permanent Employees

This item was placed on the agenda by BCCE. Paula Phillips, BCCE, requested language be added to job postings for current employees who may need to

submit documentation in support of their application. Ms. Phillips also requested a tracking system for documentation submitted by employees.

14. Review Professional Expert Assignments to Ensure Compliance with Ed Code and Merit Rule 30.100.4

This item was placed on the agenda by BCCE. Professional Experts can be hired on a temporary/emergency basis. Whenever feasible, Professional Expert positions shall be advertised so that existing classified employees will have the opportunity to know about the position and apply if they so desire. Evidence of professional qualifications must be presented to the Commission at the time the written request for appointment is made.

Motion: Require that Professional Expert assignments come before the Personnel Commission for authorization

Unanimously approved

15. Review and Provide Clarification of Duties/Responsibilities (Classified Personnel and Personnel Services Directors)

This item was placed on Agenda by BCCE. Paula Phillips, BCCE, requested a matrix of the duties for both the Personnel Services Director and Director of Classified Personnel. Ms. Phillips felt that her members were confused as to which director they should contact for personnel issues that arise.

Commissioner Goodman suggested that BCCE list what they are asking for clarity on to expedite the process.

16. Review Independent Contractor Agreement to Ensure Compliance with Ed Code 45103

This item was placed on Agenda by BCCE. Item tabled till March 4, 2010 meeting. Chairman Goodman requested a copy of the current Independent Contractors Agreement.

17. Review Appointments of Provisional (50.300), Limited Term (60.300.1), and Temporary Appointments to Ensure Compliance with Ed Code and Merit Rules

This item was placed on the Agenda by BCCE. Item tabled till March 4, 2010 meeting.

18. Review BUSD Hazardous Communication Program for Commission's Role and Implementation

This item was placed on the Agenda by BCCE. Item tabled till March 4, 2010 meeting.

19. Public Comments

20. Adjournment

Meeting adjourned at 7:02 p.m.

Motion Summary

Motion: To approve agenda

Unanimously approved

Motion: to approve November 5, 2009 minutes as corrected

Unanimously approved

Motion: to approve January 14, 2010 minutes

Unanimously approved

Motion: to approve eligibility list (a, b, c & e)

Instructional Assistant ECE (promotional)

Instructional Assistant ECE (open/combined)

Instructional Technician EDP (open/combined)

Instructional Specialist Dance (open)

Unanimously approved

Motion: To start a new Classification Study with great protections

Unanimously approved

Motion: Require that Professional Expert assignments come before the Personnel Commission for authorization.

Unanimously approved

BERKELEY UNIFIED SCHOOL DISTRICT

MERIT SYSTEM

Eligibility List for: **PARENT LIAISON/ RECREATION & CULTURAL
FACILITATOR- BILINGUAL (Spanish/English) (Open)**

Written Examination: **January 27, 2010**
Performance Evaluation: **n/a**
Technical/General Fitness Oral: **February 24, 2010**

Lists established by Personnel Commission: **March 4, 2010** to expire **March 4, 2011**

	<u>Date Certified To Position</u>	<u>Effective Date of Appointment</u>
1. Pacheco, Carol	_____	_____
2. Trowbridge, Christine	_____	_____
3. Amezcua, Leticia	_____	_____
4. Valenzuela, Eduardo	_____	_____

BERKELEY UNIFIED SCHOOL DISTRICT

MERIT SYSTEM

Eligibility List for: **CUSTODIAN II – (Promotional)**

Written Examination: **February 2, 2010**

Performance Evaluation: **n/a**

Technical/General Fitness Oral: **February 12, 2010**

Lists established by Personnel Commission: **March 4, 2010 to expire March 4, 2011**

	<u>Date Certified To Position</u>	<u>Effective Date of Appointment</u>
1. Campbell, Michael	_____	_____
2. Shareef, Ismail	_____	_____

BERKELEY UNIFIED SCHOOL DISTRICT

MERIT SYSTEM

Eligibility List for: **SCHOOL SAFETY OFFICER – (Open)**

Written Examination: **January 23, 2009**

Performance Evaluation: **n/a**

Technical/General Fitness Oral: **January 30, 2009**

Lists established by Personnel Commission: **February 5, 2009 to expire February 5, 2010**

Extend eligibility list for one year from: February 5, 2010 to expire February 5, 2011

	<u>Date Certified To Position</u>	<u>Effective Date of Appointment</u>
1. Frison, Nikia	_____	_____
2. Dyson, Angel	_____	_____



Berkeley Unified School District INDEPENDENT CONTRACTOR AGREEMENT

This agreement is made and entered into between the Berkeley Unified School District, 2134 Martin Luther King Jr. Way, Berkeley, CA 94704 (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:

Description of services to be provided by **Contractor**, including details regarding the contact that **Contractor** and its assigns will have with students, are described in

Attachment A - Description of Services.

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. **Contractor Initial** _____

In consideration of services provided, **Contractor** will submit invoices monthly at completion of contract and will be paid at the rate of \$ _____ per _____ (hour / day/ job/ specify). 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:** The **Contractor** agrees to defend, indemnify and hold harmless **BUSD**, its Board, 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 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 of **BUSD** or any of its agents or employees.
- 2) **Insurance:** **Contractor** shall procure and maintain, during the term of this Agreement, policies of insurance with insurers and coverage forms satisfactory to **BUSD** and with a minimum A.M. Best rating of A/VII as follows: Commercial General Liability of \$1,000,000 minimum limit per occurrence incl. Contractual Liability, Products \$2,000,000 minimum general aggregate and Completed Operations and Broad Form Property Damage; Automobile Liability of \$1,000,000 minimum limit per occurrence; Workers' Compensation California Statutory Limits; Employers' Liability of \$1,000,000 minimum limit. **Contractor** shall provide to **BUSD** evidence of the required insurance by issuance of an original Certificate of Insurance prior to the beginning of the term of this Agreement. Such certificate shall contain a 30 days written notice of cancellation or reduction in coverage. Any lapse of insurance coverage required by this Agreement shall be a breach of the Agreement and grounds for immediate termination of this Agreement by **BUSD**. The Berkeley Unified School District, its Board, officers, agents and employees shall be named an Additional Insured, by separate endorsement, to **Contractor's** General Liability and Automobile Liability policies. Any insurance or self-insurance maintained by **Contractor** shall be primary and any insurance or self-insurance maintained by **BUSD** shall be non-contributing. **BUSD** may, at its discretion, require additional coverage or higher limits based upon the nature of the services provided. The coverage and limits required shall not in any way limit the liability of the **Contractor**.
- 3) **Non-Discrimination:** No qualified person shall, on the basis of race, color, national origin, age, ancestry, religion, or 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**.
- 4) **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**.
- 5) **License and Authority:** The **Contractor** warrants that he/she/it will maintain all necessary licenses, registrations, and certifications during the term of this agreement, and that, he/she/it is duly authorized to enter into this agreement by its governing or controlling body. Evidence or copies of all necessary licenses, registrations and certifications must accompany this agreement.

- 6) **Equipment and Facilities:** The **Contractor** will provide all necessary equipment and facilities to render his/her/it services pursuant to this agreement, unless the parties to this agreement specifically agree in writing that said equipment and facilities will be provided in a different manner.
- 7) **Employment of Additional Workers by Contractor:** The **Contractor** may, at the **Contractor's** own expense, employ additional workers or sub-Contractors as necessary for the completion of this agreement and shall maintain workers' compensation insurance as required by state law. **BUSD** shall not control, direct, or supervise the **Contractor's** additional workers or sub-Contractors in the performance of those services. The **Contractor** assumes full and sole responsibility for the payment of all compensation and expenses of these additional workers or sub-contractors and for all state and federal income tax, unemployment insurance, social security, disability insurance, and other applicable withholdings. The **Contractor** shall not hire employees of **BUSD** for performance of this agreement unless such employment does not conflict with **BUSD's** personnel policies as determined by **BUSD**.
- 8) **Assignment:** Without the prior written consent of **BUSD**, this agreement is not assignable by the **Contractor**, either in whole or in part.
- 9) **Successors and Assigns:** Subject to the provision regarding assignment, this agreement shall be binding on the heirs, executors, administrators, successors, and assign of the respective parties.
- 10) **Time:** Time is of the essence in this assignment.
- 11) **Attorney's Fees:** If any action at law or in equity is brought to enforce or interpret the provisions of this agreement, the prevailing party shall be entitled to reasonable attorney's fees in addition to any other relief to which he/she/it may be entitled.
- 12) **Governing Law:** The validity of this agreement 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 Agreement shall be in Alameda County, California.
- 13) **Arbitration:** All disputes, controversies, or claims arising out of or relating to this contract shall be subject to binding arbitration in accordance with the applicable rules of the American Arbitration Association then in effect.
- 14) **Withholding:** **BUSD** shall not withhold or set aside any money on behalf of the **Contractor** for Federal Income Tax, State Income Tax, Social Security Tax, Unemployment Insurance, Disability Insurance, or any other federal or state fund whatsoever. It shall be the sole responsibility of the **Contractor** to account for all of the above.
- 15) **Invoices:** **Contractor** will submit invoices for payment to: Berkeley Unified School District, Accounts Payable, 2134 Martin Luther King Jr. Way, Berkeley, CA 94704-1180.
- 16) **Changes or Alterations:** No changes, alterations, or variations of any kind to this agreement are authorized without the prior written consent of **BUSD**.
- 17) **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.
- 18) **Termination:** **BUSD** may terminate this agreement and be relieved of the payment of any consideration to the **Contractor** should the **Contractor** fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination, **BUSD** may proceed with the work in any manner deemed proper by **BUSD**. The cost to **BUSD** shall be deducted from any sum due the **Contractor** under this agreement, and the balance, if any, shall be paid the **Contractor** on demand.
- 19) **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.
- 20) **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.
- 21) **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.
- 22) **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.
- 23) **Copyright:** Any written product produced as a result of this contract shall be a work for hire and shall be the property of **BUSD**.
- 24) **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 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.
- 25) **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** (specify) _____ systems. 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.
- 26) **Fingerprinting:** By executing this Agreement, **Contractor** acknowledges that the Education Code requires that employees of entities providing certain services to **BUSD** must be fingerprinted by the California Department of Justice for a criminal records check, unless **BUSD** determines that the **Contractor** and **Contractor's** employees will have limited contact with pupils.
 - a) **BUSD** determination of fingerprinting requirement application:
BUSD has considered the totality of the circumstances concerning Contractor services and has determined that the Contractor and the Contractor's employees:
 Are **Are not** subject to the fingerprinting requirements of Education Code, section 45125.1 and/or 45125.2 and Paragraph (b) and (c) below, is applicable. **BUSD Initial** _____
 - b) **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, 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 has ascertained that the employee has not been convicted of a serious or violent felony; (3) **Contractor** shall certify in writing to the Governing Board of the **BUSD** that none of its employees who may come in contact with pupils have been convicted of a serious of violent felony; and (4) **Contractor** shall provide to the Governing Board of the **BUSD** a list

of names of its employees who may come in contact with pupils. The **Contractor** is required to fulfill these requirements at its own expense.

- c) **Contractor** 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 office each day immediately upon arriving at the school site; (2) **Contractor** and **Contractor's** employees shall inform school 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 contacting the school office; (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 office and request that a member of the school staff be assigned to the work location.
- 27) **Independent Contractor Status:** **Contractor** attests that he/she is engaged in a separately established bona fide business and is in fact an Independent **Contractor**. **Contractor initial** _____
- 28) **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.
- 29) **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 with reference 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 - Independent Contractor Status Checklist
- Attachment C - IRS form W9
- Attachment D - DE542 EDD Report of Independent Contractor
- Attachment E - Contractor Evidence of Insurance - see General Terms and Conditions, item 2, for requirements
- Attachment F - Copies of all applicable licenses, registrations and certifications - see General Terms and Conditions, item 5, for requirements

Contractor (Corporation Yes No):

Name _____
 Address _____

 Phone _____
 Signature _____
 Date _____

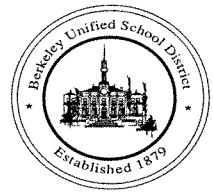
Deputy Superintendent:

Name Javetta Cleveland
 Address 2134 Martin Luther King Jr. Way
Berkeley, CA 94704
 Phone ()
 Signature _____
 Date _____

Funding Source	<input type="checkbox"/> Budgeted Approved	Purchase Order Number / Date
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Reference documents:

- State of California EDD information sheet DE231 provided as a courtesy to **Contractor**
- IRS Independent **Contractor** Brochure P1779 provided as a courtesy to **Contractor**



**AMENDMENT NO. _____ TO
 INDEPENDENT CONTRACTORS OR MOU AGREEMENT**

This Amendment is entered into between the Berkeley Unified School District (BUSD) and _____

BUSD entered into an Agreement with the **CONTRACTOR/ AGENCY** for professional services on _____, and the parties agree to amend that Agreement as follows:

1. Services: (Check and complete ONE of the options below.)

CONTRACTOR /AGENCY AGREE TO PROVIDE THE FOLLOWING AMENDED SERVICES. (Provide Full description of expected _____ results, such as services, materials, products, and/or reports; attach additional pages as necessary.)

The scope of work is attached as Exhibit A (incorporated by reference to the extent that it is subordinate to and not inconsistent with this Agreement).

OR The Scope of work is unchanged. Student Contact in Prior Engagement Yes _____ No _____

COPY OF ORIGINAL PURCHASE ORDER MUST BE ATTACHED.

2. Terms: (Check and complete ONE of the options below.)

The contract term is extended by an additional _____, and the amended _____ expiration date is.
OR The contract term is unchanged. .

3. Compensation: (Check and complete ONE of the options below. This provision may only be changed if there is also a change to the above Services OR Terms of the Contract)

The original contract price is amended to increase in the amount of \$ _____, and
 The amended contract price is now _____ (**\$ _____ .00**)
OR The contract term is unchanged.

4. 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.

5. 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.)

6. 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: _____

Date: _____

Date: _____

Requisition No

P. O. No.



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 Contractor for the period / / to / / , for
(site/location) (prog ram).

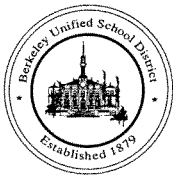
Indicated below are the specific description of services including, essential details of the scope of work, site/locations, milestones and timelines, materials, reports, products, (including details regarding the contact that Contractor and its assigns will have with students) is as follows:

Independent Contractor Name: _____

& Signature: _____ Date: _____

Program Administrator Name: _____

& Signature: _____ Date: _____



Berkeley Unified School District
INDEPENDENT CONTRACTOR AGREEMENT
Attachment 'B' - Status Checklist

Independent Contractors who are not legal corporations should complete this Checklist. Carefully review the following statements and verify, with a √ (check mark) next to each item that is true. If any of the Common Law Factors of Employee Status listed below cannot be checked as “true,” it is possible that the worker should not be classified as an independent contractor.

FINANCIAL CONTROL

- The Contractor is engaged in a separately established bona fide business and can make business decisions that would enable him or her to earn a profit or incur a financial loss. (Investment of the Contractor’s time is not sufficient to show a risk of loss).
- The terms and method of payment will be specific to the number of hours/days, piece rate, or by the job and defined in a written agreement.
- The Contractor will supply the instrumentalities, tools, and the place of work for the person doing the work. The Contractors investment in his/her trade is real, essential and adequate. The Contractor will not be reimbursed for business expenses.
- The Contractor is responsible for paying his/her own income and self employment taxes.

BEHAVIORAL CONTROL

- Contractor has the skill required to perform the services and accomplish the desired result.
- The Independent Contractor Agreement will define the scope of work and deliverables but the Contractor will not receive extensive instructions on how work is to be done.
- The Contractor will have substantial extent of actual control over the manner and means of performing the services.
- The Contractor has the right to discharge a worker at will.
- Contractor will not receive and does not require training on procedures or methods for performing the services.

RELATIONSHIP OF THE PARTIES

- The Contractor and BUSD are not creating the relationship of employer and employee.
- The length of service is not continuous in nature but will be for a specific period of time as defined in a written agreement.
- The services being performed are not for the benefit or convenience of the Contractor as an individual.
- The work to be done by the Contractor is of an occupation for services that are usually provided in the local area by contractors, independent of direct client supervision.
- The service is not part of the regular business/curriculum of BUSD.
- The Contractor is engaged in a separately established bona fide business with has his/her own office, trade equipment and materials.

If you are unsure of your work status, you should refer to **IRS Independent Contractor Brochure P1779, State of California EDD Information Sheet DE231** or contact a professional tax consultant.

Contractor IS IS NOT a retired BUSD Employee & Contractor IS IS NOT a current BUSD Employee

Independent Contractor Name	Signature	Date
Budget / Program Administrator	Signature	Date



FINGERPRINT EXEMPTION REQUEST

Berkeley Unified School District may exempt independent contractors and their employees from the District's fingerprinting requirements only if such contractors meet one of the conditions detailed below in accordance with Education Code Section 45125.1. Please initial the appropriate exemption:

A. NO CONTACT WITH STUDENTS EXEMPTION: Initial: _____

1. The contractor and its employees will not have any contact with the pupils

B. LIMITED CONTACT WITH STUDENTS EXEMPTION: Initial _____ *

1. The contractor and its employees will have only limited contact with pupils: and

2. The Contractor and its employees will be supervised by District staff while on school grounds

Contractor Name: _____

Address: _____

Tax ID/Social Security No. _____

I certify the contractor meets the above criteria.

Site/Department Administrator's Signature: _____ Date _____

If contractor will be supervised, indicate employee name who will supervise the Contractor.

Name: _____ Position: _____

* District Employee Certification is required if Item B was initialed.

I hereby agree to accompany the Contractor while they are in the presence of students.

District Employee Signature: _____ Date _____

DISTRICT USE ONLY

APPROVAL BY DEPUTY SUPERINTENDENT REQUIRED

APPROVED _____ DENIED _____ DISPUTE _____

Requisition No. _____



INSURANCE WAIVER REQUEST FORM

INSTRUCTIONS

1. 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 is for less than \$50,000
 - Sole Proprietor
 - Worked with BUSD in past
 - Good evaluation on prior work
 - No prior complaints, problems, injuries from prior contracts
2. Complete the form below.
3. Attach this Waiver Request Form to the original Contract for Professional Services so it is processed along with the Contract.

GENERAL LIABILITY **ERRORS/OMMISSIONS** **AUTOMOBILE**
 (Please check each one applicable)

Contractor name: _____

Tax ID/Social Security No. _____

I/We request a waiver of the insurance requirement(s) as indicated above. I/we certify that I/we meet the above criteria.

Date: _____ District Employee Signature: _____

For District Use Only

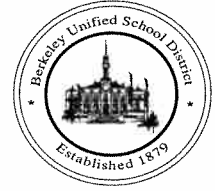
Requisition Number:	P. O. Number:
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Deputy Superintendent Approval Required:

Approved		Date
X _____	X _____	20 _____

BERKELEY UNIFIED SCHOOL DISTRICT

2134 Martin Luther King Jr. Way., Berkeley, CA 94704



**PROFESSIONAL SERVICE CONTRACT
CONTRACT/MOU INFORMATION WORKSHEET**

Labor	Number of staff or presenters	Description Of Service Provided (Use additional sheets if needed)	Hourly Rate	Qty (Hours, each, etc.)	Total
					\$
					\$
					\$
Materials		Description of Materials Provided (Binders, workbooks, manipulatives, Compact Discs/DVD's etc.)	Costs	QTY	Total
					\$
					\$
					\$
					\$
					\$
Location(s) where services will be provided					\$ <input style="width: 100px; height: 20px;" type="text"/>
Flat Fee Contract (Check One)	Yes No	If yes, provide detailed justification below (use extra pages if needed):			

BUSD INSTRUCTIONS FOR

HIRING AN INDEPENDENT CONTRACTOR (*CONSULTANT*)

INDEPENDENT CONTRACTOR (CONSULTANT) OR EMPLOYEE?

Before retaining an independent contractor or consultant, read these instructions, and review the Independent Contractor Status Checklist carefully. If any of the common law factors of employee status cannot be checked as "true," it is probable that the worker should be classified as an employee, not as an independent contractor. All Independent Contractors must comply with the requirements of the IRS to be eligible for this status.

An Independent Contractor (consultant) may work only on a very limited basis, performing a task that district employees cannot do: i.e. giving a performance, conducting a workshop, etc. If the individual is to provide instruction to children during the school day on any regular basis, he/she would be considered an employee (certificated or classified).

BEFORE RETAINING AN INDEPENDENT CONTRACTOR

These instructions must be followed and you must have the authorization of a fully executed contract and a BUSD purchase order prior to commencement of work.

➤ The Contractor:

- Completes and sign the Independent Contractor Agreement;
- Complete and sign Attachment A - Independent Contractor Agreement Detailed Scope of Work;
- Complete and sign Attachment B - Independent Contractor Status Checklist (if the Contractor is not a corporation);
- Complete and sign Attachment C - IRS form W9;
- Complete the Service Provider section of Attachment D - DE542 Report of Independent Contractor;
- Before commencing work, submit Attachment E - Evidence of Insurance (see General Terms and Conditions); or complete insurance waiver request form.
- If applicable, provide Attachment F - copies of licenses, registrations or certifications required by the scope of work.
- Report to Human Resources for fingerprinting

➤ You:

- Provide the Contractor with copies of State of California EDD Information Sheet DE231 and IRS Independent Contractor Brochure P1779;
- Fill in the Independent Contractor Agreement completely, (including "Attachment A - Independent Contractor Agreement Detailed Scope of Work");
- Complete and attach a BUSD Purchase Requisition and "Contract and MOU Routing Form" and submit with Independent Contractor Agreement and attachments ('A' through 'F') to the Principal / Budget Administrator for approval.

➤ The Principal / Budget Administrator:

- Apply the appropriate funding account codes onto the Purchase Requisition;
- Review the Agreement; fill in the program name, sign Agreement and Attachment A.

MAKING SURE YOUR CONSULTANT IS PAID

Independent Contractors are to submit their invoice for payment according to terms specified in the Agreement. The invoice must be signed and approved for payment by the Budget Administrator (typically the Principal). The signed invoice is then submitted to the Accounts Payable office for payment. Consultants should never be promised a check on the day they work and the District will not cut a check in advance of the work being performed.

Berkeley Unified School District Contract/MOU and Amendments Approval - ROUTING FORM

The following steps are necessary to properly expedite processing CONTRACT, Memorandum of Understanding (MOU) or Amendment:

1. Prior to vendor providing services, complete the MOU (for services to be provided by agencies) - or - INDEPENDENT CONTRACTOR Agreement (for services to be provided by individual). Concurrently, send INDEPENDENT CONTRACTOR to Human Resources for to get fingerprinted.
2. Create a General Requisition. Site Budget Manager must sign requisition. If MOU or CONTRACT is funded by a categorical program, the categorical program staff (i.e. BSEP or State and Federal) must also sign off on the Requisition.
3. Do not sign contract. Only the Deputy Superintendent or Superintendent is authorized to sign contracts on behalf of the District.
4. **Complete this Routing Form and attach to General Requisition and Contract/MOU or Amendment Form.**
5. If Contract/MOU or Amendment will not exceed \$10,000 during the year – Independent Contract be sent directly to Human Resources. MOU to be sent directly to Fiscal Services. The Division Head sign off is not required.
6. If Contract or MOU or Amendment will be between \$10,000 and \$50,000 during the year - Route to the respective Division Head for approval. The Division Head will sign the Routing form and forward INDEPENDENT CONTRACT to Human Resources. The Division Head will forward MOUs directly to Fiscal Services. MOUs do not require sign off by Human Resources.
7. Please note, Contracts over \$10,000 require board approval. Purchasing will place contracts between \$10,000 and \$50,000 on a list for board approval. A separate Board memorandum must be prepared for contracts over \$50,000.
8. Vendor may begin services after board approval and a Purchase Order has been issued.

Contractor/Vendor Information

Contractor/Agency Name .

Requisition #: Contract Total Amount

Contractor's Contact Person:

Title:

Division Head Approval

Neil Smith

Print Name of Division Head	Signature	Date
(MOUs & Contracts \$10,000 and over)		

Human Resources Approval- For Fingerprint Clearance

n/a

Assistant Superintendent, Human Resources	Signature	Date
All Independent Contractors Only		

Budget Approval

Pauline Follansbee

Print Name - Fiscal Services Budget Approval	Signature	Date

Final Approval

Javetta Cleveland

Deputy Superintendent/Superintendent	Signature	Date

MOU	Independent Contract Agmt	Amendment Form	Attachments
√	√	√	<input type="checkbox"/> Requisition
√	√	√	<input type="checkbox"/> Board Memorandum (if over \$50k)
	√		<input type="checkbox"/> Fingerprint Exemption Request (if exemption is requested)
	√		<input type="checkbox"/> Insurance Waiver Request (if waiver is requested)
	√		<input type="checkbox"/> Attachment A - INDEPENDENT CONTRACTOR Agreement Description of Services
	√		<input type="checkbox"/> Attachment B - INDEPENDENT CONTRACTOR Status Checklist
	√		<input type="checkbox"/> Attachment C - IRS form W9
	√		<input type="checkbox"/> Attachment D - DE542 EDD Report of INDEPENDENT CONTRACTOR
	√		<input type="checkbox"/> Attachment E - Contractor Evidence of Insurance
	√		<input type="checkbox"/> Attachment F - Copies of all applicable licenses, registrations and certifications

45103. (a) The governing board of any school district shall employ persons for positions not requiring certification qualifications. The governing board shall, except where Article 6 (commencing with Section 45240) or Section 45318 applies, classify all of these employees and positions. The employees and positions shall be known as the classified service.

(b) (1) Substitute and short-term employees, employed and paid for less than 75 percent of a school year, shall not be a part of the classified service.

(2) Apprentices and professional experts employed on a temporary basis for a specific project, regardless of length of employment, shall not be a part of the classified service.

(3) Full-time students employed part time, and part-time students employed part time in any college workstudy program, or in a work experience **education** program conducted by a community college district pursuant to Article 7 (commencing with Section 51760) of Chapter 5 of Part 28 and that is financed by state or federal funds, shall not be a part of the classified service.

(4) Part-time playground positions shall not be a part of the classified service, where the employee is not otherwise employed in a classified position. Part-time playground positions shall be considered a part of the classified service when the employee in the position also works in the same school district in a classified position.

(c) Unless otherwise permitted, a person whose position does not require certification qualifications shall not be employed by a governing board, except as authorized by this section.

(d) As used in this section:

(1) "Substitute employee" means any person employed to replace any classified employee who is temporarily absent from duty. In addition, if the district is then engaged in a procedure to hire a permanent employee to fill a vacancy in any classified position, the governing board may fill the vacancy through the employment, for not more than 60 calendar days, of one or more substitute employees, except to the extent that a collective bargaining agreement then in effect provides for a different period of time.

(2) "Short-term employee" means any person who is employed to perform a service for the district, upon the completion of which, the service required or similar services will not be extended or needed on a continuing basis. Before employing a short-term employee, the governing board, at a regularly scheduled board meeting, shall specify the service required to be performed by the employee pursuant to the definition of "classification" in subdivision (a) of Section

45101, and shall certify the ending date of the service. The ending date may be shortened or extended by the governing board, but shall not extend beyond 75 percent of a school year.

(3) "Seventy-five percent of a school year" means 195 working days, including holidays, sick leave, vacation and other leaves of absence, irrespective of number of hours worked per day.

(e) Employment of either full-time or part-time students in any college workstudy program, or in a work experience education program shall not result in the displacement of classified personnel or impair existing contracts for services.

(f) This section shall apply only to districts not incorporating the merit system as outlined in Article 6 (commencing with Section 45240).

50.300 **PROVISIONAL APPOINTMENTS (EC 45287) 50.300.1**

50.300.1 Restrictions

- A. The appointing authority may make a provisional appointment when the Personnel Director certifies that:
 - 1. No eligibility list exists for the class or
 - 2. An eligibility list exists, but there is an insufficient number of available eligibles (i.e., less than 3) and the appointing authority refused to appoint an available eligible.

- B. An employee may receive a provisional appointment or appointments which may accumulate to a total of 90 working days, after which a 90-calendar-day interval shall elapse during which he/she shall be ineligible to serve in any full-time provisional capacity.

- C. No person shall be employed in provisional capacities under a given Governing Board for a total of more than 126 working days in any one fiscal year, except that when no one is available on an appropriate eligibility list for a part-time position as defined in Section 45256, successive 90-working-day provisional appointments may be made to the part-time position for a total of more than 126 working days in a fiscal year.

- D. Insofar as possible, provisional appointees shall be required to meet the minimum qualifications for the class of the appointment as stated in the class specifications.

- E. Notwithstanding Rules A and B above, the Commission may extend the 90-working-day provisional appointment for a period not to exceed 36 additional working days provided: (EC 45288)
 - A. An examination for the class was completed during the initial 90 work days of the employee's provisional assignment.

 - B. Satisfactory evidence is presented indicating:
 - a. Adequate recruitment effort has been and is being made.

 - b. Extension of this provisional assignment is necessary to carry on vital functions of the District.

 - c. The position cannot be satisfactorily filled by use of the eligibility list or other employment lists or procedures such as reinstatement, transfer, or other appropriate eligibility lists.

- F. Provisional employees are entitled to all fringe benefits accorded other classified employees.

50.300.2 Terminating Provisional Appointments

- A. The services of a provisional appointee shall be terminated within 15 working days after the date on which an eligibility list has been established, provided that this 15-day period does not extend beyond the 90-working-day provisional assignment or the additional 36 working days if authorized by Rule 50.300. IE.
- B. A provisional appointment may be terminated at any time, at the discretion of the appointing power.

50.300.3 Emergency Appointments (EC 45290)

- A. If it should become necessary in time of emergency to fill positions in the classified service to prevent the stoppage of public business, the Board of Education, through its authorized Department Heads, may make emergency appointments, without reference to eligibility lists, for a period not to exceed 15 working days.
- B. When such emergency appointments are made, it shall be the duty of the Board of Education to notify the Personnel Director in writing, naming the appointee or appointees, date of appointment, and nature of duties performed, and giving a statement justifying the emergency nature of such appointments.

60.300 LIMITED-TERM EMPLOYMENT

60.300.1 Types of Limited-term Appointments

- A. A substitute assignment may be made not to exceed in duration the authorized absence of the regular employee, but it need not coincide with the dates of that absence. Also a substitute assignment may be made in a lower class related to that of the absent employee if the assigned duties are reduced in level accordingly.
- B. The appointing authority may establish positions the duration of which is six months or less; such positions shall be designed "limited-term." Such positions are subject to classification by the Personnel Commission, except that the Personnel Director may classify them subject to later ratification if the good of the service demands expeditious action.

60.300.2 Rights and Benefits

- A. Regular employees who are serving in limited-term appointments while retaining regular status in another class shall continue to earn and be granted all rights and benefits of a regular employee.
- B. All other limited-term employees shall be granted only those benefits provided by law, such as paid holidays and bereavement leave. No seniority or credit toward completion of probation or any other benefit shall accrue from service in a limited-term appointment, except as provided under Paragraph A of this rule.

60.300.3 Terminations

- A. Limited-term appointments shall be subject to termination at any time except during an assigned shift.
- B. Limited-term employees may be dismissed for cause, which cause shall be made known to them and to the Personnel Director in writing. The Personnel Director may remove the employee's name from the special list for limited-term appointments, if his/her investigation supports such an action.