

Employee vs. Independent Contractor Determination

Name of Independent Contractor: _____

Prior to entering into any agreement for services, it is incumbent upon City staff to ensure that the relationship and scope of services do not represent an employer-employee situation. Each time a department contemplates an agreement for services, the following information must be reviewed and the checklist completed. This document must be retained in the department's files at: G:/Div/A-RECREATION SERVICES/RECREATION CENTERS/Contracts, and **the document must be submitted with the agreement to a Service Area Coordinator for review and approval.**

When contemplating an agreement for services, an independent contractor is a person or business entity which:

- is free from the City's right to direct and control.
- is responsible to the City only for the contracted result of the work, not the manner or method used to accomplish the work.
- controls how the service is provided, who provides it, and the means of accomplishing it.
- sets his/her own prices for goods and fees for service.
- can terminate agreement while not terminating his/her business.
- can terminate agreement while not creating an unemployment situation.
- has customers and prospective customers as a result of advertising and being known by the public as a legitimate business.
- provides goods and/or services to the public of their own choosing.

Below is a checklist comparing employee considerations with those of an independent contractor. **Check all that apply in each box.**

EMPLOYEE	INDEPENDENT CONTRACTOR
☐ Is directed and controlled by City.	☐ Is independent of City.
☐ Does tasks in the manner City requests.	☐ Does tasks in his/her own way.
☐ Does not have a financial investment in the work they are providing for City.	☐ Assumes the costs associated with doing the work for City.
☐ City provides tools, equipment, and skills training.	☐ Comes to the job with all necessary tools, equipment, and skills.
☐ The individual works under City's business license.	☐ The individual obtains his or her own business license.
☐ Often receives benefits beyond payment for service (retirement and health plans).	☐ The individual receives only payment for service in agreement.
☐ Receives a net check. City withholds income tax and FICA taxes.	☐ The individual receives a gross amount check and pays his/he own taxes.
☐ Works at City's place of business.	☐ Works at his/her own office or home.
☐ Works the hours set by City.	☐ Sets his/her own hours.
☐ In general, does not advertise.	☐ Provides services to multiple entities.
☐ Is eligible for workers' compensation benefits.	☐ Has customers as a result of being known by the public as a business.
☐ Has some rights prior to termination.	☐ Is not covered by workers' compensation.
☐ Is covered by minimum wage and overtime rules.	☐ Has no termination rights other than stated in agreement.
☐ Is protected by safety and anti-discrimination rules.	☐ Is paid as contracted; no overtime.
☐ Individual may join or form a union/bargaining unit.	☐ Has no protection(s) outside the agreement.
	☐ Has no rights to union/bargaining unit representation.

NOTE: As you consider the guidance in the bulleted list, and then complete the checklist in the columns above, if you find that the relationship being considered falls more into the Employer/Employee category, you should direct the individual to complete a Parks Payroll Packet, e.g., **FORMS AND INFORMATION FOR NEW EMPLOYEES or RETURNING TEMPORARY/SEASONAL EMPLOYEES.**

Once a **City of Saint Paul Community Instructor Agreement or City of Saint Paul Recreation Center Sports Official Agreement, W-9 Request for Taxpayer Identification Number and Certification, Background Check** form, and this **Employee vs Independent Contractor Determination** form are submitted to a Service Area Coordinator, a final review will be made. If the agreement appears to be a potential Employer/Employee relationship, Parks and Recreation will hold the agreement for consultation between Human Resources and the department.

I certify that this form was prepared to reflect the anticipated work performed by the Independent Contractor listed above:

Form Prepared By: _____
Agreement Reviewed By: _____

Date: ____ / ____ / 09
Date: ____ / ____ / 09