

R144668

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Independent Contractor Agreement

This Agreement is dated July 1, 2024 and made by and between the Mt. Diablo Unified School District (the "District" or "MDUSD") and Sherry Burke (the "Evaluator" or "Contractor"). The District engages Evaluator to complete an Independent Educational Evaluation ("IEE") under the terms and conditions of this Agreement. This Agreement incorporates the Scope of Work Form (Appendix A), W-9 Form (Appendix B) and Criminal Background Check/Tuberculosis Clearance Written Form (Appendix C).

RECITALS

WHEREAS, under the Individuals with Disabilities Education Act ("IDEA") (20 U.S.C.A. §§ 1400 et seq.), parents have a right to request an IEE; and

WHEREAS, parents have voluntarily and on their own accord selected the Evaluator to conduct the IEE, and parents understand and agree that the District makes no representations or warranties about the quality or accuracy of the IEE to parents; and

NOW, THEREFORE, in consideration of the foregoing Recitals, and the mutual understandings, releases, covenants and promises herein described, the Parties agree as follows:

1. **Effective date:** The Agreement shall become effective upon written approval or ratification by the District's Board of Education. This Agreement terminates upon the Evaluator's completion of the IEE and attendance at the Individualized Education Program ("IEP") meeting, unless terminated earlier pursuant to the terms of this Agreement.
2. **Services:** The IEE shall comport with the professional standards applicable to **Licensed Psychologist**. Evaluator represents that Evaluator has the qualifications and ability to perform the IEE in a professional manner, without the advice, control, or supervision of the District. Evaluator shall be solely responsible for the professional performance of the IEE, and shall receive no assistance, direction, or control from District. Evaluator shall have sole discretion and control of Evaluator's services and the manner in which they are performed. Evaluator shall make all best efforts to complete the IEE within sixty (60) days of the effective date of this Agreement, or as soon thereafter as is reasonably possible, including the completion of all work described in the Scope of Work (Appendix A). If closure of schools or other impediments arise to preclude Evaluator from performing in-person services, Evaluator agrees to perform services remotely. In the alternative, Evaluator agrees that its obligation to perform services and right to receive Compensation for those services will be suspended for the duration of the school closures or interruption to in-person services.
 - a. The IEE shall meet the standards which the IDEA and California Education Code ("EC") establish, as applicable and as amended from time-to-time. The standards for IEEs include:
 - i. No single procedure may be used as the sole criterion for determining whether a student has a disability or determining an appropriate educational program for a student.
 - ii. Tests and assessment materials must be used for the purposes for which they are valid and reliable, and must be administered by trained personnel in conformance with the instructions provided by the producer of such tests.
 - iii. An assessment tool must provide relevant information that directly assists persons in determining the educational needs of the child.
 - iv. A test must be selected and administered to produce results that accurately reflect the pupil's aptitude, achievement level, or any other factors the test purports to measure.
 - v. Assessments must be conducted by individuals who are both knowledgeable of the student's disability and competent to perform the assessment, as determined by the school district, county office, or special education local plan area.

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- vi. An assessment must be performed by a duly licensed and credentialed Evaluator, as applicable.
 - vii. Assessments must be administered by trained and knowledgeable personnel and in accordance with any instructions provided by the author of the assessment tools.
 - viii. Tests and assessment materials must be validated for the specific purpose for which they are used; must be selected and administered so as not to be racially, culturally, or sexually discriminatory; and must be provided and administered in the student's primary language or other mode of communication unless this is clearly not feasible.
 - ix. An Evaluator must produce a written report of each assessment that includes whether the student may need special education and related services and the basis for making that determination.
 - x. The Evaluator must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information to determine whether the child is eligible for special education services.
 - xi. The assessment must use technically sound instruments that assess the relative contribution of cognitive, behavioral, physical, and developmental factors.
 - xii. Assessment materials must be used for purposes for which they are valid and reliable.
 - xiii. Evaluator understands the implication of *Larry P. v. Riles*, 793 F.2d 969 (9th Cir. 1984), and agrees to work collaboratively with the District to address concerns.
- b. This IEE shall determine present levels of abilities and identify the student's educational needs in order to enable the student to receive a free appropriate public education. The IEE shall include at least four in person meetings. These include parent interview, two assessment sessions, special education and general education teacher interviews, and a feedback session. These appointments are one to three hours. The IEE process includes: 1) clinical appointments; 2) record review; 3) contacting collateral sources; 4) test scoring; 5) data analysis; 6) report writing; 7) observation of student in special education and general education settings, prior to direct clinical appointments/testing sessions; and 8) attendance at IEP meeting. The Evaluator shall provide the District with evaluation protocols upon completion of IEE. The IEE shall be provided to the District and the student simultaneously, including any drafts. The Evaluator shall provide the IEE a minimum of one week before the IEP meeting at which the team will be reviewing the IEE.
3. **Compensation:** Compensation to Evaluator shall not exceed \$6,000.00. The Evaluator shall submit an invoice within thirty (30) days of the IEE—the invoice shall state the address to which payment shall be sent, as well as Purchase Order Number. The Evaluator shall be paid within sixty (60) days of when s/he has submitted an invoice. The invoice shall be sent to Tiffany Jones, Fiscal Analyst – Special Education at jonest@mdusd.org. The Evaluator may invoice MDUSD (1) when the IEE is provided to the District; and 2) after IEP meeting attendance. Evaluator understands that the compensation outlined herein is subject to the budget and fiscal policies, regulations and practice of the District, and appropriation of funds. The Not to Exceed amount is the maximum amount of compensation due to the Evaluator and not a guarantee of total payment to Evaluator, as Evaluator is paid in arrears for services rendered.
 4. **Criminal Background/Tuberculosis:** Evaluator affirms that s/he (1) does not have any felony or misdemeanor convictions involving a crime of moral turpitude; (2) has been screened and cleared by a medical professional for tuberculosis in the last four (4) years. Evaluator agrees that if it is determined that he/she will engage in functions that require unsupervised, frequent or prolonged contact with students, then as applicable/required by California law, s/he will complete Appendix C, Criminal Background check/Tuberculosis.
 5. **Independent Contractor:** Evaluator affirms that s/he is not an agent or employee of the District and shall at all times be an independent contractor. Evaluator shall pay, when and as due, any and all local, state and

federal income or other taxes incurred as a result of Evaluator's compensation hereunder, including estimated taxes, and shall provide District with proof of said payments upon demand.

6. **Liability of District:** Evaluator understands that the District's obligations are limited to the compensation in paragraph 3 above. The District shall not be liable for any special, consequential, indirect, or incidental damages, including but not limited to lost profits, in connection with this Agreement.
7. **Insurance:** Evaluator certifies that s/he has and will maintain during the performance of this IEE, Professional Liability Insurance in accordance with applicable industry standards. Specifically, Evaluator shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Evaluator, his/her agents, representatives, employees or subcontractors. 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. A copy of this insurance must be filed with the District.
 - a. Professional Liability/Errors & Omissions Liability, if applicable: \$1,000,000 per occurrence. If the Evaluator maintains higher limits than the minimums shown above, the District requires and shall be entitled to coverage for the higher limits maintained by the Evaluator.
 - b. Primary Coverage: For any claims related to this contract, the Evaluator's insurance coverage shall be primary insurance as respects the District, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the District, its officers, officials, employees, or volunteers shall be excess of the Evaluator's insurance and shall not contribute with it. Notice of Cancellation: Evaluator shall notify the District if the insurance policy is canceled.
8. **Student Records and Information:** The Evaluator shall comply with all applicable state and federal laws with respect to student records, information and privacy, including but not limited to Family Educational Records Privacy Act and applicable California laws.
9. **Audit:** The Evaluator agrees to fully cooperate with respect to any audit the District needs to complete in connection with this IEE. The Evaluator shall maintain such records in an accessible location and condition for a period of not less than five (5) years after compensation or until after final audit has been completed, whichever is later.
10. **Force Majeure:** The parties agree that neither shall be liable to the other under this Agreement as a result of any delay, failure or interruption in services directly caused by an act of God or public enemy; acts of civil or military authorities; catastrophes such as an earthquake, epidemic, pandemic, viral or communicable disease outbreak; quarantines; disruption of supply chains, transportation systems, or national emergency, that is beyond the reasonable control of the Party and which renders impossible the performance of contractual obligations, either totally or in part (a "Force Majeure Event"), excluding in all cases claims of financial hardship, and such nonperformance will be excused and will not be deemed a default hereunder or a ground for termination of the Agreement, provided that as soon as reasonably possible the affected Party (1) provides the other party with notice of such Force Majeure Event, (2) provides detailed documentation establishing that such Force Majeure Event was beyond the Party's reasonable control and not due to any fault or negligence on its part, and (3) works diligently to restore services as soon as reasonably possible. In no event shall any work stoppage, strike or labor dispute at a District or Evaluator site, or by District or Evaluator personnel, constitute a Force Majeure Event under this Agreement. In no event shall District be liable to Evaluator for payment for services that cannot be and are not provided as a result of a Force Majeure Event.

11. Additional Material Terms:

- a. Evaluator agrees that all plans, reports, specifications, drawings, schematics, prototypes, models, inventions and all other information and items made during the course of this Agreement and arising from the Services shall be owned by and assigned to District as its sole and exclusive property.
- b. All rules, policies, and regulations of the District Board of Education and all federal, state, and local laws, and regulations are to be observed strictly by Evaluator pursuant to this Agreement.
- c. The enforcement of the terms and conditions of this Contract and all rights of action relating to such enforcement shall be strictly reserved to the District and Evaluator. Nothing contained in this Contract shall give or allow any claim or right of action whatsoever by any other or third person. The express intent of the Parties is that any person receiving services or benefits hereunder shall be deemed an incidental beneficiary only.
- d. Evaluator agrees to not discriminate on the basis of sex, race, religious creed, national origin, age, marital status, sexual orientation, gender, AIDS/ARC/HIV status, or disability, in performance of this IEE, and comply with all applicable nondiscrimination laws and Board policies.
- e. Evaluator shall be fully informed of the applicable federal and state law affecting the performance of this IEE, and shall comply with such laws as amended from time to time.
- f. The Evaluator certifies that s/he is responsible for complying with all applicable conflict of interest standards, including but not limited to Govt. Code §§ 1090, 89503, 87406.3, 87407, 81000-91015, and applicable District Board policies.
- g. Evaluator does not have employees who are current District employees/Board members, or former District employees/Board members within the last 2 years.
- h. The Evaluator's services are personal in character and neither this Agreement, nor any duties hereunder, shall be assigned or delegated by the Evaluator.
- i. Any amendment or modification to this document shall be in writing and shall only be effective upon execution by the duly authorized representatives of the parties and written approval by the Board of Education, as necessary.
- j. This Agreement constitutes the entire understanding with respect to the subject matter hereof, and supersedes any prior or contemporaneous written or oral understanding or agreement and may be amended only by written amendment by the Parties.
- k. 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 agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in Concord, California.

12. **NOTICE TO PARTIES:** All notices to be given by the parties hereto shall be in writing and served by depositing the same in the United States Post Office and via email as follows:

NOTICE TO THE DISTRICT:

SITE/DEPARTMENT	Mt. Diablo Unified School District
CONTACT PERSON	Ivanna Huthman, Assistant Director, Special Education
STREET ADDRESS	1936 Carlotta Dr.
CITY, STATE, ZIP	Concord, CA 94519



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TELEPHONE	925-682-8000 x4194
EMAIL ADDRESS	huthmani@mdusd.org

NOTICE TO CONTRACTOR:

CONTRACTOR	Sherry Burke
CONTACT PERSON	Sherry Burke
STREET ADDRESS	4969 Bayleaf Court
CITY, STATE, ZIP	Martinez, CA 94553
TELEPHONE	(925) 500-3435
EMAIL ADDRESS	iqchick@aol.com

IN WITNESS WHEREOF the Parties hereto have executed this Agreement, to be effective upon approval or ratification by the District's Board of Education on _____.

<p>EVALUATOR</p> <p>APPROVED:</p> <p>By: <u></u></p> <p>Name: <u>Sherry Burke</u></p> <p>Title: <u>Sole Proprietor</u></p> <p>Date: <u>9-1-24</u></p>	<p>MT DIABLO UNIFIED SCHOOL DISTRICT</p> <p>APPROVED:</p> <p>By: <u></u></p> <p>Name: <u>Wendi Aghily, Ed.D.</u></p> <p>Title: <u>Chief, Pupil Services & Special Ed.</u></p> <p>Date: <u>9.10.24</u></p>
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Appendix A: Scope of Work

1. Are services being performed at a school site?

- Yes**
- No**

2. If YES, are services being performed during the school day?

To conduct an Independent Education Evaluation (IEE) per IDEA regulations. The results of the IEE will be used to assist in determining special education eligibility and educational planning. The evaluator agrees that if they develop a "draft" of the IEE report, such drafts and any edits must be shared simultaneously with Parents and District. Total cost for each Psychoeducational IEE is not to exceed \$6,000.00 (includes a comprehensive evaluation and attendance of an IEP meeting). Contract total amount allows for completion of one (1) IEE. The evaluator agrees that a failure to abide by these standards is a material breach which may result in non-payment. Assessment may include:

- Record review
- Interviews (e.g. student, parent(s), teacher(s), therapist(s), other relevant family members and professionals via phone or online video-conferencing platforms)
- Observations (e.g. test/interview observations, classroom observations via a video-conferencing platform when possible if in-person learning is occurring)
- Testing based on referral questions and student need (e.g. cognitive, processing measures, academic, social-emotional, adaptive, etc.), if required.
- Completion of a report
- Presentation of results at an IEP meeting

Appendix B

Form **W-9**
(Rev. March 2024)
Department of the Treasury
Internal Revenue Service

Request for Taxpayer Identification Number and Certification

Go to www.irs.gov/FormW9 for instructions and the latest information.

Give form to the
requester. Do not
send to the IRS.

Before you begin. For guidance related to the purpose of Form W-9, see Purpose of Form, below.

1 Name of entity/individual. An entry is required. (For a sole proprietor or disregarded entity, enter the owner's name on line 1, and enter the business/disregarded entity's name on line 2.)
Sherry Jo Burke

2 Business name/disregarded entity name, if different from above.

3a Check the appropriate box for federal tax classification of the entity/individual whose name is entered on line 1. Check only one of the following seven boxes.
 Individual/sole proprietor C corporation S corporation Partnership Trust/estate
 LLC. Enter the tax classification (C = C corporation, S = S corporation, P = Partnership)
Note: Check the "LLC" box above and, in the entry space, enter the appropriate code (C, S, or P) for the tax classification of the LLC, unless it is a disregarded entity. A disregarded entity should instead check the appropriate box for the tax classification of its owner.
 Other (see instructions)

4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):
Exempt payee code (if any) _____
Exemption from Foreign Account Tax Compliance Act (FATCA) reporting code (if any) _____
(Applies to accounts maintained outside the United States.)

3b If on line 3a you checked "Partnership" or "Trust/estate," or checked "LLC" and entered "P" as its tax classification, and you are providing this form to a partnership, trust, or estate in which you have an ownership interest, check this box if you have any foreign partners, owners, or beneficiaries. See instructions

5 Address (number, street, and apt. or suite no.). See instructions.
4969 Bayleaf Court

6 City, state, and ZIP code
Martinez, CA 94553

7 List account number(s) here (optional)

Requester's name and address (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

Note: If the account is in more than one name, see the instructions for line 1. See also *What Name and Number To Give the Requester* for guidelines on whose number to enter.

or
Employer identification number

Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
- I am not subject to backup withholding because (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
- I am a U.S. citizen or other U.S. person (defined below); and
- The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and, generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign Here Signature of U.S. person *[Signature]* Date **5-1-24**

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to www.irs.gov/FormW9.

What's New

Line 3a has been modified to clarify how a disregarded entity completes this line. An LLC that is a disregarded entity should check the appropriate box for the tax classification of its owner. Otherwise, it should check the "LLC" box and enter its appropriate tax classification.

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS is giving you this form because they

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Appendix C


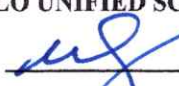
Definition: "Contractor who is an individual" and "Individual Contractor" mean that the Contractor (even if incorporated) is an individual person who will directly perform, himself or herself, the services under the Agreement with the District, and that Contractor has no employees, subcontractors or other personnel performing services under this Agreement.

Name	Sherry Burke
Services to be Performed	Psychoeducational IEE for student 5037669
Locations	+bd
Term	July 1, 2024 – June 30, 2025

Contractor shall check the applicable boxes below regarding contact with District students. If the Superintendent's Cabinet Member agrees with this assessment, he/she will sign at the bottom of the form.

Criminal Background Purposes	
<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	Will interact with District students OUTSIDE OF THE IMMEDIATE SUPERVISION AND CONTROL of a parent/guardian and/or school employee in performance of this Agreement?
Tuberculous Testing	
<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	Contractor will ONLY HAVE LIMITED OR NO CONTACT with District students the performance of this Agreement.
<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	Contractor will have FREQUENT OR PROLONGED CONTACT with District students in the performance of this Agreement as defined by District in the performance of this Agreement, and have a written TB clearance certification on file with the District.

Certification by Contractor: "With My signature below, I hereby certify that the information provided herein is true and accurate. I further acknowledge that during the term of the Agreement between myself and the District, if I learn of additional information that differs from the responses provided above, including but not limited to the possibility of hiring any personnel to perform services under this Agreement, I will immediately discuss this with the District and I understand a new or amended Agreement will be needed before any such personnel can be hired. If I am subject to a subsequent arrest of the type that bars me from contact with students as detailed in the Agreement, I will immediately notify District and cease to perform any services under this Agreement that involve any contact with students."

<p>EVALUATOR</p> <p>By: </p> <p>Name: Sherry Burke</p> <p>Title: Sole Proprietor</p> <p>Date: 9-2-24</p>	<p>MT. DIABLO UNIFIED SCHOOL DISTRICT</p> <p>By: </p> <p>Name: Wendi Aghily, Ed.D.</p> <p>Title: Chief, Pupil Services & Special Ed.</p> <p>Date: 9.10.24</p>
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