

## WITHHOLDING WAIVER REQUEST FORM

NOTE: Taxes will be withheld from compensation paid under personal services agreements *unless* it is determined that the consultant is treated as an independent contractor under federal and state law. Any consultant with five or more employees is treated as an independent contractor and no waiver is required. If the department does not want the Auditor-Controller to withhold taxes from a smaller contractor/consultant, complete this form and forward it to County Counsel for a waiver, along with a draft of the agreement and (if available) a draft of the Board Report. If no waiver is requested, or if a request is denied, the agreement must provide for withholding. (Note that all consultants are called “independent contractor,” even if taxes are withheld. Under no circumstances should the decision to treat a consultant as an employee for tax purposes be considered a conclusive determination that the consultant is an employee.)

**Name of consultant:** \_\_\_\_\_

**Number of employees:** \_\_\_\_\_

**County department:** \_\_\_\_\_

**County contact person and phone number:** \_\_\_\_\_

**General description of services:** \_\_\_\_\_

\_\_\_\_\_

### PART A

If three or more of the following five questions are answered in the affirmative, the service provider (the consultant) will generally be treated as an employee for tax purposes (that is, the agreement must be written so as to provide that taxes will be withheld).

If only one of any of the following questions is answered in the affirmative, continue to Part B.

If only two of any of the following questions are answered in the affirmative (excluding question number 1), continue to Part B.

If question number 1 is answered affirmatively and any other question is answered affirmatively, the consultant should generally be treated as an employee for tax purposes (that is, the agreement should provide for withholding).

If none of the following questions are answered affirmatively, the consultant will be treated as an independent contractor. The agreement will not require the County to withhold taxes.

## Questions

1. Does the County have discretion to provide instructions to the consultant beyond those outlined in the scope of services provided in the agreement; i.e., if the County, through an officer or employee, made recommendations or suggestions to the consultant about how to carry out some part of the work, would the consultant run a substantial risk of loss (e.g., agreement termination) if the consultant ignored the suggestion or recommendation?

Yes ( ) No ( )

2. Will the County provide the consultant with training directly related to the work to be performed under the agreement?

Yes ( ) No ( )

3. Is the work being performed a regular part of the services the County provides to the community or are there County employees who perform the same or similar duties? For example, a therapist who attends persons legally entitled to publicly provided mental health care at a County facility is performing work which is a regular County service.

Yes ( ) No ( )

4. Does the consultant work full time or primarily for the County?

Yes ( ) No ( )

5. Does the consultant supervise County employees or other persons hired to perform County services?

Yes ( ) No ( )

## PART B

### Subpart I

This subpart addresses certain professionals that the IRS has specifically recognized as independent contractors if certain criteria are met. These professionals are medical doctors, psychologists, lawyers, accountants, architects, engineers, real estate appraisers, dentists, veterinarians, building contractors, stenographers, and auctioneers. (If the consultant is not one of the listed professionals, skip to Subpart II.) Even though there may have been two affirmative answers to Part B, any of these contractors/consultants may be treated as an independent contractor provided any of the following questions are answered affirmatively.

### Questions

1. Does the consultant maintain his or her own office where most or all of the work will be performed?

Yes ( ) No ( )

2. Does the consultant offer his or her services to the general public and on average works fewer than 10 hours per week for the County?

Yes ( ) No ( )

3. Is the consultant maintaining his or her own office (not at home) and, under the agreement, working to complete a specific project (as distinguished from being hired for a specific period of time) for a lump sum?

Yes ( ) No ( )

If none of these questions is answered affirmatively, go onto Subpart II and apply those factors to determine the contractor's/consultant's tax status.

### Subpart II

This portion relates to contracts/agreements with persons other than those specifically included in Subpart I of Part B.

If there is one affirmative answer in Part A and there are two or more affirmative answers in this subpart, then the consultant should be treated as an employee for tax purposes and taxes should be withheld.

If there are two affirmative answers in Part A and there is one or more affirmative answers in this subpart, then the consultant should be treated as an employee for tax purposes.

If there is only one affirmative answer in Part A and only one affirmative answer in this subpart, or, if there are no affirmative answers in this Subpart II, the consultant may be treated as an independent contractor if he or she maintains his or her own office or facility (not at home) at which most or all of the work will be performed. All other cases should be treated as employees for tax purposes.

### Questions

1. Is the consultant doing all or nearly all of the work on County premises or at County facilities?

Yes ( ) No ( )

2. Does the consultant work exclusively for the County?

Yes ( ) No ( )

3. Is the consultant relying on the County to furnish tools or material to accomplish the work?

Yes ( ) No ( )

4. Can the County terminate the agreement without cause and without incurring liability for work not yet completed?

Yes ( ) No ( )

5. Can the consultant terminate the agreement without cause and without incurring liability to the County for the work not yet completed?

Yes ( ) No ( )

6. Does the County pay the business or traveling expenses of the consultant incurred in the performance of the work?

Yes ( ) No ( )

7. Does the County pay the consultant based on an hourly rate?

Yes ( ) No ( )

### WAIVER REQUEST APPROVAL/DENIAL

☐

This consultant *may* be treated as an independent contractor. The County does not need to withhold taxes.

☐

This consultant should be treated as an employee strictly for tax purposes. The agreement must provide that the County withhold taxes.

COUNTY COUNSEL

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

By: \_\_\_\_\_