

SOP #46 - INDEPENDENT CONTRACTORS

This policy has been developed to ensure that the City is in compliance with the Fair Labor Standards Act, Unemployment Insurance Code, Revenue and Taxation Code, and the Public Employees Retirement System regulations for Independent Contractors.

The Government Code authorizes a general law city to employ and compensate personnel for the performance of "special services". A public body may not validly do this where a regular officer or employee thereof is obligated by law to perform such services, and is willing and able to do so as part of the ordinary professional functions of his/her position. Therefore, the services sought to be performed should be of a "special" nature, in order to justify the hiring of an independent contractor.

Department Heads must consider several factors in determining whether or not an individual is an "employee" or "independent contractor". The determination is made from an integrated picture of the entire working relationship or a significant grouping of these factors:

- (a) Whether or not the one performing service is engaged in a distinct occupation or business;
- (b) The kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the City or by a specialist without supervision;
- (c) The skill required in the particular occupation;
- (d) Whether the City or the independent contractor supplies the instrumentalities, tools, and the place of work for the person doing the work;
- (e) The length of time for which the services are to be performed;
- (f) The method of payment, whether by the time or by the job;
- (g) Whether or not the work is a part of the regular business of the City;
- (h) Whether or not the parties believe they are creating a relationship of employer-employee;
- (i) The extent of control; and,

Once the determination has been made that the relationship is that of an independent contractor, the department head shall serve as the City Manager's designee to negotiate and execute an agreement with the concerned individual. The City's standard contract (Attachment A) must be executed and a purchase order prepared. Any deviation from the standard contract form must be approved in form by the City Attorney.