



## **NMERB Independent Contractor Determination Application**

### **~ Instructions ~**

An NMERB retiree (“Retiree” or “Individual”) who provides services as an independent contractor to an NMERB employer (“Local Administrative Unit” or “LAU”) does not have to suspend his or her retirement pursuant to Section 22-11-15(a) NMSA 1978 and Rule 2.82.2.11(d) if the NMERB determines that he or she qualifies as an NMERB “Independent Contractor.”

To apply for Independent Contractor status determination, the Individual and the LAU must complete all appropriate sections of the “NMERB Independent Contractor Determination Application” and submit the completed forms to the NMERB’s Santa Fe Office. The Individual must complete and sign Section I and the LAU must complete and sign Section II.

The Individual must also submit the proposed contract of the job for which they are applying no later than 15 working days prior to the effective date of the contract. Renewals, amendments, or modifications of a previously approved IC contract must also be submitted to the NMERB not less than 15 working days prior to the effective date of the renewal, amendment, or modification. A complete job description **must** be submitted. The Individual must also include an official job description of the Individual’s most recent employment with an LAU.

Please be aware in most cases an NMERB Retiree will not qualify as an Independent Contractor if the Retiree plans to provide services to an LAU that are essentially the same as those they performed as an employee for that LAU prior to their retirement.

The Individual must obtain a determination letter from the NMERB stating that he or she has qualified as an Independent Contractor before he or she can begin providing services to the LAU. Pursuant to Section 22-11-15(a), “failure to obtain a determination letter from the NMERB prior to providing services to an LAU may result in suspension of retirement benefits and reimbursement to NMERB of any benefits paid to the individual during the time the individual was out of compliance.”

If the Individual is approved as an Independent Contractor, member and employer contributions are not required to be made to the NMERB. The individual cannot earn service credit or purchase service credit for the time period the Individual provided service(s) to an LAU as an Independent Contractor.

A separate application is required for each LAU to which the Individual proposes to provide services as an Independent Contractor.

Application for determination of Independent Contractor status must be re-filed with the NMERB at the beginning of each new fiscal year.

The NMERB reserves the right to contact the Individual’s former NMERB employer and any LAUs to which he or she might be providing services relevant to the Individual’s Independent Contractor Determination Application(s).

The NMERB will review the Individual’s application to determine if he or she has qualified as an ERB Independent Contractor and will notify the Individual in the mail.

Please call the NMERB Legal Department at (505) 827-8030 if you have any questions.



NMERB Independent Contractor Determination Application

Section I: To be completed by the Individual. Please return completed application(s) to the NMERB address in Santa Fe.

Name SSN Phone

Address City State Zip

Last LAU Employer Position Held at Last LAU (pre-retirement)

Name & Phone Number of Contact for Last LAU Employer Name Phone Number

LAU for Proposed Independent Contractor Position

Address City State Zip

Supervisor Name Phone

Term of Independent Contract, if known: Start Date End Date

Name of Individual's Business:

1. Describe the nature of the individual's business:

2. Describe the services to be performed:

3. Did the Individual perform services for the LAU in any capacity before providing the services in question? Yes No

If yes, please list the dates of the prior service:

If yes, explain the differences, if any, between the current and prior service:

Was the prior service performed as an employee? Yes No

4. Is the service to be performed covered by a written agreement? (If yes, please include agreement and job description.) Yes No

5. If there is no written agreement yet available, describe the terms and conditions of the services to be performed and attach a job description to this application:

6. Has or will the Individual receive training from/by the LAU? If yes, please explain: Yes No



7. Will the Individual be given written instructions, procedures, guidelines on how to perform his or her services? Yes No  
If yes, please explain and attach document: \_\_\_\_\_  
\_\_\_\_\_
8. Will the LAU direct the Individual on how to do their work? Yes No  
If yes, please explain: \_\_\_\_\_  
\_\_\_\_\_
9. Is it a requirement that the Individual be supervised or controlled by the LAU in the performance of the services? Yes No  
If yes, please explain: \_\_\_\_\_  
\_\_\_\_\_
10. Is the LAU engaging the Individual to perform and complete a particular job only? Yes No  
If no, please explain: \_\_\_\_\_  
\_\_\_\_\_
11. Is the LAU engaging the Individual to work at a job for an indefinite period of time? Yes No  
If yes, please explain: \_\_\_\_\_  
\_\_\_\_\_
12. Is the Individual required to follow a routine or schedule? Yes No  
If yes, please explain: \_\_\_\_\_  
\_\_\_\_\_
13. Does the Individual furnish a record of time for the job? Yes No  
If yes, please explain and provide any schedule and means of reporting: \_\_\_\_\_  
\_\_\_\_\_
14. State the kind of tools, equipment, supplies furnished by the LAU, if any: \_\_\_\_\_  
\_\_\_\_\_
15. State the kind of tools, equipment, supplies furnished by the individual, if any: \_\_\_\_\_  
\_\_\_\_\_
16. What expenses are incurred by the Individual in the performance of these services? \_\_\_\_\_  
\_\_\_\_\_
17. Does the LAU reimburse the Individual for any expenses? Yes No  
If yes, please list: \_\_\_\_\_
18. Will the Individual perform services personally? Yes No
19. Does the Individual have helpers (employees)? Yes No  
If yes, who hires and pays them? \_\_\_\_\_
20. If the Individual hires the employees, does the LAU have to approve? Yes No
21. At what location are the Individual's services performed? \_\_\_\_\_
22. Describe the type of pay the Individual will receive, ie: hourly, by task, other: \_\_\_\_\_  
\_\_\_\_\_
23. Is the Individual eligible for pension, bonus, paid vacations, sick pay, etc? Yes No  
If yes, please list: \_\_\_\_\_



- 24. Does the LAU carry Workers Compensation insurance on the individual? Yes      No
- 25. Does the LAU deduct Social Security, Medicare taxes, and federal income taxes from the amounts paid to the Individual? Yes      No
- 26. How does the LAU report the Individual's income to the Internal Revenue Service? \_\_\_\_\_  
\_\_\_\_\_
- 27. How many hours a day does the Individual perform services for the LAU? \_\_\_\_\_
- 28. Does the LAU set the time, hours of the day, the Individual works? Yes      No
- 29. Does the Individual perform similar services for other employers? Yes      No
- 30. Does the Individual perform the services under a business name? Yes      No
- 31. Does the Individual advertise or maintain a business listing in a phone, trade or journal directory? Yes      No
- 32. Does the Individual provide business cards? (If yes, please provide samples.) Yes      No
- 33. Does the Individual hold himself/herself out to the public as being in business to perform the services? Yes      No
- 34. Does the LAU identify the Individual as an employee? Yes      No
- 35. How did the LAU learn of the Individual's services? \_\_\_\_\_
- 36. Is a license necessary for the services? Yes      No  
If yes, please list type: \_\_\_\_\_
- 37. Is there a license fee? If yes, who is responsible for paying the fee? Yes      No  
\_\_\_\_\_
- 38. Does the Individual have a financial investment in the business related to the services rendered? Yes      No
- 39. Can the Individual incur a loss in the performance of the service for the LAU? Yes      No  
If yes please explain: \_\_\_\_\_  
\_\_\_\_\_
- 40. Has the LAU ruled on the status (employee or independent contractor) of the Individual? Yes      No  
If yes, what was the determination: \_\_\_\_\_  
\_\_\_\_\_
- 41. Does or will the Individual assemble or process a product at home or away from the location of the services. Yes      No  
If yes, please explain: \_\_\_\_\_
- 42. Has either the LAU or the Individual filed an IRS Form SS-8 with respect to the service in question? Yes      No
- 43. Will the LAU issue an IRS Form W-9 or an IRS Form 1099 to the Individual? Yes      No

I hereby acknowledge that the information herein is true and correct to the best of my knowledge and belief.

\_\_\_\_\_  
Signature of Retiree/Individual \_\_\_\_\_  
Date



**Section II:** To be completed by the *LAU*

Name of Applicant: \_\_\_\_\_

- |  |     |    |
|--|-----|----|
| 1. Does the Individual regulate the hours of work during the day?  | Yes | No |
| 2. Does the LAU furnish the tools, equipment, manuals or written procedures for accomplishing the jobs?                                    | Yes | No |
| 3. Does the Individual make these services available to the general public?  | Yes | No |
| 4. Will the Individual be paid by the job as opposed to hourly, weekly, or monthly?  | Yes | No |
| 5. Will the LAU pay or reimburse the Individual's expenses?  | Yes | No |
| 6. Must the work (services) be performed on the LAU's premises?  | Yes | No |
| 7. Does the LAU provide or control the detail of how the work is to be accomplished?   | Yes | No |
| 8. Is the Individual required to perform the services personally?  | Yes | No |
| 9. Are the services provided by the Individual considered a cog in the mission of the LAU?   | Yes | No |
| 10. Is the Individual in a position to realize a profit or loss as a result of his/her services?   | Yes | No |
| 11. Are the services to be performed by the Individual currently being performed by employees or last performed by an employee of the LAU? | Yes | No |
| 12. Does the arrangement between the Individual and LAU contemplate continuing or recurring work?  | Yes | No |
| 13. Will the Individual be issued an IRS Form 1099?  | Yes | No |

I hereby acknowledge that the information herein is true and correct to the best of my knowledge and belief.

\_\_\_\_\_  
Name of Authorized Official

\_\_\_\_\_  
Title of Authorized Official

\_\_\_\_\_  
Signature of Authorized Official

\_\_\_\_\_  
Date

Contact Phone: \_\_\_\_\_

Email Address: \_\_\_\_\_