

**INDEPENDENT CONTRACTOR AGREEMENT WITH
JOHN M HARLAN HS BAND AND HARLAN BAND BOOSTER
ORGANIZATION**

THIS AGREEMENT, made effective as of the { } day of the month of { } (the "Effective Date"), by and between Harlan Band Booster Organization ("HBBO"), in conjunction with the John M Harlan High School Band ("The Band"), a subsidiary of the NORTHSIDE INDEPENDENT SCHOOL DISTRICT ("District"), with an address of 14350 Old Farm to Market Rd 471 W, San Antonio, TX 78253, and { } an adult individual who resides at { } ("Contractor"). The Band and Contractor may be hereinafter referred to individually as a "Party" and collectively as the "Parties."

BACKGROUND

A. The Band operates various youth programs, including, but not limited to, marching band, jazz band, color guard, indoor color guard, all under the umbrella of the John M. Harlan High School Fine Arts Department, and the Northside Independent School District Fine Arts Department.

B. Contractor has certain expertise in operating, conducting and otherwise administering youth marching band programs similar to The Band staff.

C. Contractor desires to perform certain services for the HBBO as an independent contractor with respect to certain programs operated by The Band.

NOW THEREFORE, in consideration of the promises and mutual covenants herein contained, and intending to be legally bound thereby, the Parties agree as follows:

AGREEMENT

1. Recitals.

The recitals set forth above are incorporated herein by this reference with the same force and effect as if fully set forth hereinafter.

2. Services, Best Efforts, and Policies.

2.1 Services. During the Term of this Agreement, Contractor's services shall include, but not be limited to the following (collectively, the "Services"):

See attached Addendum.

Contractor agrees that Contractor shall perform such other duties as are customarily performed by one holding such positions in other, same or similar businesses or such other and related services and duties as may be required of Contractor by The Band's Head Band Director or the appointed representative.

2.2 Best Efforts. Contractor shall at all times during the term faithfully, industriously exercise best efforts to perform the Services and take any and all actions necessary or desirable to provide the Services to the satisfaction of The Band. Contractor shall not engage in

any other projects that shall interfere with Contractor's provision of the Services required by this Agreement.

2.3 Policies. Contractor agrees that Contractor shall, in the performance of his/her obligations hereunder and completion of the services, comply with and meet any and all guidelines, standards, schedules and/or deadlines as may be established by The Band, including, but not limited to, the following:

2.3.1 Sexual Harassment. In compliance with federal and state laws, The Band and The District prohibits sexual harassment of instructors, volunteers, participants, members, employees or independent contractors of The Band and The District by any person, including Contractor, in any and all forms. Specifically, Contractor shall not threaten or insinuate, either explicitly or implicitly, that any individual's, including, but not limited to, any instructors', volunteers', participants', members', or employees' refusal to submit to sexual advances will adversely affect the instructors', volunteers', participants', members', or employees' employment, membership, participation, evaluation, wages, advancement, assignment of duties, shifts or any other conditions related to The Band. Other sexual harassing conduct is prohibited, including, but not limited to (i) unwelcome sexual flirtations, advances or propositions; (ii) verbal abuse of a sexual nature; (iii) verbal comments about an individual's body; (iv) sexually degrading words used to describe an individual; or (v) jokes or stories of a sexual nature. Instructors, volunteers, participants, members, employees and independent contractors shall not initiate, continue, pursue, or engage in any sexual relationships or relationships that would be considered "romantic" with any participants in The Band's programs, including, but not limited to the marching band, jazz band, color guard, or indoor color guard. Violation of this provision shall constitute a material breach of this Agreement and The Band, the HBBO or The District shall have the right to immediately terminate this Agreement.

3. Compensation.

For the Term and in consideration of Contractor's performance of the Services, the HBBO agrees to compensate Contractor as follows: {XXXX}. Contractor acknowledges and agrees that the services provided herein shall be provided by Contractor as an independent contractor of The Band and The Band shall not be liable for workers' compensation, unemployment insurance, employers' liability, employers' FICA, social security, withholding tax, or other taxes or withholding for, or on behalf of Contractor or any other person, forms, corporations consulted or employed by Contractor in performing services under this Agreement. The Band shall not withhold any local, state or federal taxes from Contractor's compensation hereunder and Contractor shall be responsible to pay such income, self-employment or other taxes that may be imposed on such compensation hereunder.

4. Expenses.

Contractor agrees that Contractor shall incur no expense chargeable to The Band, the HBBO or The District except as may be specifically authorized in advance in writing in each case by the HBBO or The Band.

5. Relationship of the Parties.

5.1 The HBBO shall not be responsible for any payroll or related federal or state taxes, worker's compensation or any other type of employee insurance, withholding taxes, unemployment compensation taxes or social security taxes for Contractor or any of Contractor's

employees or any other benefits, including health or accident insurance benefits. Furthermore, Contractor acknowledges and agrees that any medical bills, emergency room costs, dental bills or other expenses related to the care and well-being of the Contractor are the sole responsibility of Contractor, and that the HBBO nor The Band has any duty or obligation to pay or reimburse Contractor for any such expenses.

5.2 Contractor's appointment as an independent contractor of HBBO and The Band is personal to Contractor and made in reliance upon the availability of the personal services of Contractor. Contractor's rights and obligations under this Agreement may not be assigned or transferred by Contractor or the performance of Contractor's duties delegated to any other person or entity.

5.3 Contractor agrees that Contractor is a skilled professional in the provision of the Services described in Section 2.1 of this Agreement and, except as otherwise stated herein, the provision of the Services by Contractor is subject to the control and management of Contractor. Contractor agrees, however, that Contractor shall, in the performance of Contractor's obligations hereunder and completion of the Services, comply with and meet any and all guidelines, standards, schedules and/or deadlines as may be established by The Band and The Bands Director or the designee, within The Band and such person's sole and absolute discretion from time to time. Contractor shall report directly to the Head Band Director of The Band or such other person designated by The Band.

5.4 Contractor acknowledges and agrees that Contractor is being engaged by The Band on a non-exclusive basis and that The Band is free to engage the services of any other individual or entity to perform services similar to the Services performed by Contractor hereunder. Likewise, The Band acknowledges and agrees that Contractor, except as otherwise provided herein, is performing the Services on a non-exclusive basis and Contractor is free to perform services for an individual or entity similar to the Services provided by Contractor under this Agreement.

6. Use of John M. Harlan High School Trademark and Logo.

Contractor shall have a limited, non-exclusive right to use John M. Harlan High School's trademarks, content and logos, including those related to marching band, jazz band, color guard, indoor color guard solely for the purpose set forth above in Section 2 of this Agreement and solely for the purposes described in this Agreement. Contractor's said license to use the John M. Harlan High School trademarks, content and logos shall expire immediately upon the termination or expiration of this Agreement. Contractor shall not modify, alter or obfuscate the John M. Harlan High School trademarks and logos. Contractor hereby renounces ownership of and assigns to John M. Harlan High School any good will that accrues as the result of Contractor's use of John M. Harlan High School trademarks, logos and content.

7. Rights and Release.

7.1 **Rights.** Contractor acknowledges that The Band has commissioned Contractor to provide the Services described herein and that ownership of all or any work created by Contractor in connection with the Services provided under the Agreement is to be solely and exclusively vested in The Band. Contractor agrees that all or any work created by Contractor under the Agreement is a "Work Made for Hire" within the meaning of the copyright law, and The Band shall be the owner of the work for all purposes, including copyright. To the fullest The Band for the duration of the copyright and any extensions thereof. Contractor hereby appoints

The Band as Contractor's attorney in fact to sign any documents necessary to transfer and assign Contractor's copyright to The Band, and further agrees to sign any other documents reasonably necessary to transfer and assign said copyright to The Band at such times as may be requested by The Band. Contractor agrees that The Band is the owner of the work throughout the world in perpetuity. Contractor agrees that all rights granted by this Agreement are applicable in all media, including, but limited to, all print, online, CD-Rom, electronic, optical, digital, Internet and other media whether now known or hereafter invented.

7.2 Release. Contractor acknowledges and agrees that The Band produces materials for public relations and marketing purposes with respect to events operated by The Band, including, but not limited to, photographs, pictures, and videos. Contractor grants The Band the privilege to use, re-use, publish and re-publish and copyright any and all film, videos, photographs, pictures or other likenesses of Contractor or in which Contractor is included, in whole or in part, in composite or distorted in character or form, without restriction as to changes or alterations, and of any reproductions thereof in color or otherwise. Contractor also consent to the use of Contractor's name or any fictitious name, biographical information, story and testimonial either alone or in connection with the aforesaid film, photographs, pictures or other likenesses of Contractor. The rights granted herein shall extend in perpetuity, throughout the world and for any purpose whatsoever, including, but not by way of limitation, the sale, publication, display and exhibition thereof in editorial, promotion, advertising, trade or otherwise and in any and all media now or hereafter known, including, but not limited to: optical, electronic, digital, CD-Rom, electronic databases, archival and/or data retrieval systems, print and the Internet, without further compensation to me. Contractor further acknowledges and agrees that the photographs, film, videos, pictures and negatives thereof, testimonial and biographical information shall constitute The Band's sole property, with full right of disposition in any manner whatsoever.

8. Terms and Termination.

8.1 Term. Unless earlier terminated as provided for herein, the term of this Agreement shall begin as of Date of Signature (the "Effective Date") and end on { }(the "Term").

8.2 Termination.

8.2.1 The Band and/or the HBBO may terminate this Agreement, with or without cause, upon providing Contractor with thirty (30) days prior written notice of the HBBO and/or The Band's intention to terminate the Agreement (a "Termination Notice"), whereupon, on the date specified in such Termination Notice (the "Termination Date"), this Agreement and Contractor's engagement hereunder shall terminate.

8.2.2 In addition, if, during the Term, either Party commits a breach of its obligations under this Agreement, the non-breaching Party (the "Terminating Party") may give the other Party (the "Defaulting Party") written notice stating why the Defaulting Party is in breach of the Agreement. The Defaulting Party shall then have thirty (30) days after the Defaulting Party's receipt of such notice (or such later date as may be specified in such notice) within which to cure the breach to the reasonable satisfaction of the Terminating Party (the "Cure Period"). If the Defaulting Party fails to cure such breach within the Cure Period to the reasonable satisfaction of the Terminating Party, the Terminating Party, at its sole discretion, may choose to either: (1) terminate this Agreement and, at its option, pursue any legal remedies against the Defaulting Party; or (2) continue with this Agreement. However, if the Defaulting Party repeatedly breaches the Agreement, even if such breaches are cured, the Terminating Party

shall have the right to immediately terminate the Agreement upon providing written notice to the Defaulting Party. In addition, should the breach be deemed severe by the HBBO or The Band this agreement can be terminated immediately.

8.2.3 Upon expiration or earlier termination of this Agreement, all of the Parties' obligations here under shall cease immediately, with the exception of the Parties' obligations to make payments accrued prior to the effective date of such termination.

9. Confidentiality.

9.1 Contractor acknowledges that in the course of performing the Services for The Band as described herein, Contractor may have access to and The Band may provide Contractor with Confidential Information. For purposes of this Agreement, "Confidential Information" includes, but is not limited to, any and all information disclosed to Contractor or which Contractor learns or has in Contractor's possession regarding student information, existing and future marketing/promotion ideas, design strategies, and strategies relating to The Band's services, customer, personnel and/or business information including but not limited to student and vendor contact information, media plans, marketing concepts, new product information and other financial, proprietary business or other information of The Band in written, graphic, oral or other tangible or intangible form provided to the other including, but not limited to, specifications, records, data, computer programs, drawings, schematics, know-how, notes, models, reports, samples and financial statements/disclosures. Contractor agrees that all Confidential Information shall be used solely and exclusively by Contractor for the purpose of performing Contractor's duties under the Agreement, and Contractor agrees to hold all Confidential Information in strict confidence and not to disclose it to any third party or to use it on Contractor's own behalf for any purpose other than to provide Services under this Agreement. Contractor agrees to take all reasonable steps to protect the Confidential Information from unauthorized or inadvertent disclosure. Upon The Band's request, Contractor will either promptly destroy or return the Confidential Information The Band.

9.2 It is agreed that a violation of any of Section 9.1 of this Agreement by Contractor shall cause irreparable harm and injury to The Band, the HBBO or the District and The Band, the HBBO or the District shall be entitled, in addition to any other rights and remedies it may have at law or in equity, to an immediate injunction enjoining and restraining Contractor from doing or continuing to do any such act and any other violations or threatened violations of this Agreement and if The Band, the HBBO or the District seeks enforcement of this provision, Contractor shall waive any requirement of posting a bond or other collateral. In the event of an action to enforce the provisions of this Agreement, The Band, the HBBO or the District, if it prevails, shall be entitled, in addition to any other relief granted, to recover from Contractor reasonable costs and expenses of such enforcement actually incurred, including reasonable attorney's fees.

10. Warranty and Indemnification.

10.1 **Warranty.** Contractor represents and warrants to the HBBO that Contractor has sufficient authority to enter into this Agreement and grant the rights granted to the HBBO, including with respect to any work created under this Agreement; Contractor neither has nor shall make any contractual or other commitments that would conflict or interfere with the rights granted the HBBO or Contractor's duties and obligations under this Agreement; none of the Services that Contractor provides under this Agreement will infringe upon the rights of any third party including, but not limited to, intellectual property rights and rights relative to privacy or will be in violation of any agreement Contractor may have with any third party; Contractor's

provision of the Services and actions in furtherance of this Agreement will comply with all of applicable laws, rules and regulations, and that Contractor will meet and fulfill all commitments and obligations set forth in this Agreement.

10.2 Indemnification. Contractor shall indemnify, save, defend, and hold harmless The Band, the HBBO or the District, and its affiliates, officers, directors, consultants, agents and assigns from and against all losses, liabilities, claims, demands, damages, fees, including legal fees, and costs and expenses of whatsoever kind or nature arising out of or connected with: (i) any third party claim based on the provision of the Services or alleged infringement or alleged infringement of any patent, copyright, trademark, service mark, trade or business secret, or other intellectual property in connection with Contractor's performance and delivery of the Services performed hereunder; or (ii) arising out of any failure by Contractor to pay any applicable local, state or federal taxes including, but not limited to, taxes, penalties or interest imposed upon The Band, the HBBO or the District by any local, state or federal taxing authority.

11. Limitation on Liability; Indemnification.

IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION, LOSS OF BUSINESS OR LOST PROFITS IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT, EVEN IN THE EVENT THAT IT IS ADVISED OF THE POSSIBILITY THAT SUCH DAMAGES MAY ARISE, OCCUR OR RESULT.

12. General.

12.1 Assignment and Binding Effect. No assignment, in whole or in part, by either Party shall be valid and binding upon the other without the Party's prior written approval, which shall not be unreasonably withheld, except that The Band may assign this Agreement pursuant to a transfer of all or substantially all of its assets.

12.2 Public Announcements. Contractor shall not make any public announcements relating to the relationship set forth in this Agreement without The Band's prior written approval and consent.

12.3 Further Assurances. Each Party to the Agreement, upon the request of any other Party to the Agreement, will execute, acknowledge and deliver such further documents or instruments and/or perform such further acts as may be reasonably necessary, desirable or proper to carry out more effectively the purpose of the Agreement. Furthermore, each of the individuals executing the Agreement certifies that he or she is duly authorized to do so.

12.4 Relationship of the Parties. Nothing contained in this Agreement shall create any partnership or joint venture between the Parties. Neither party may pledge the credit of the other nor make binding commitments on the part of the other, except as otherwise specifically agreed hereunder.

12.5 Notices. Any notices required or permitted to be given under this Agreement shall be in writing and shall be delivered by being (i) served personally on the party to whom notices are to be given or if served by facsimile, receipt is confirmed; (ii) sent by Federal

Express or other commercial overnight delivery service; or (iii) sent by first-class, United States mail, postage pre-paid, to the address of the appropriate party as provide below:

If to John M. Harlan High School:

Dr. Andrew Lee Tucker
Head Band Director
John M. Harlan High School
14350 Old Farm to Market Rd 471 W,
San Antonio, TX 78253
Email: andrew.tucker@nisd.net

with a concurrent copy to:

Jonathan Boubel
President, Harlan Band Boosters
John M. Harlan High School
14350 Old Farm to Market Rd 471 W,
San Antonio, TX 78253
Email: harlanbandpresident@gmail.com

If to Contractor:

12.7 Captions/Headings/Use of Terms. The captions or headings used in this Agreement are for convenience and reference only and do not modify or interpret the intent of the Parties or the meaning of this Agreement. As used in this Agreement, unless the context requires otherwise, the singular includes the plural and vice versa and are reference to any one gender includes both.

12.8 Governing Law; Jurisdiction and Venue. Regardless of the place of its actual execution and performance, this Agreement shall be treated as though executed within the State of Texas and shall be interpreted and governed by the laws of the State of Texas. The Parties consent and agree that jurisdiction and venue of any actions arising out of this Agreement or relating to the breach or enforcement thereof, shall lie in the state or federal courts of Bexar County, Texas.

12.9 Waiver. Waiver of any breach of this Agreement shall not constitute a waiver of any other prior or subsequent breach of this Agreement. No waiver shall be effective unless made in writing and signed by any authorized representative of the non-breaching party. The failure of any party hereto to insist upon strict compliance with this Agreement, or any of the terms and conditions hereof, shall not be deemed a waiver of any rights or remedies that such party may have.

12.10 Sever-ability. In the event that any provision of this Agreement shall be held invalid or unenforceable, such provision shall be severed and the remainder of the Agreement shall continue in full force and effect.

12.11 Counterparts. The Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be deemed an original, and all of which shall constitute one and the same Agreement. Facsimile signatures and/or signatures delivered by email shall be considered to be fully binding and shall carry the same weight as original signatures when executing this Agreement.

12.12 Amendment. The Agreement may be amended by the parties hereto from time to time but only upon written approval by all of the parties thereto. Any changes to this agreement are not accepted unless initialed and dated by both parties.

12.13 Entire Agreement. This Agreement contains the entire Agreement between the parties relating to the subject matter thereof and hereof and all prior understandings or written or oral agreements between the parties relative thereto and hereto are superseded. Furthermore, this Agreement shall be construed according to its plain language and not strictly for or against any party hereto, and neither this Agreement nor any uncertainty or ambiguity herein shall be construed or resolved against the other party, whether under any rule of construction or otherwise. Neither party to this Agreement shall be considered the draftsman.

12.14 Conflicts of Interest By entering into the Agreement with The Band, the Contractor attest that there is no undisclosed conflict of interest as defined below:

A "conflict of interest" occurs when an individual's private interest interferes or appears to interfere with the interests of The Band, the HBBO or the District. A conflict of interest can arise when a board officer, band director, or independent contractor takes actions or has interests that may make it difficult to perform his or her work for The Band objectively and effectively. Conflicts of interest can also arise if a board officer, band director, or independent contractor, or his or her family, receives improper personal benefits as a result of his or her position with The Band, the HBBO or the District .

Service to The Band should never be subordinated to personal gain and advantage. Conflicts of interest should, wherever possible, be avoided. Any material transaction or relationship that could reasonably be expected to give rise to a conflict of interest should be discussed with the HBBO President and The Band Director.

A transaction or relationship that would present a conflict for a board officer, band director, or independent contractor would likely also present a conflict if it is related to a member of his or her family. For purposes of this Code, the term "family" means a person's spouse, parents, children, siblings, mothers- and fathers-in-law, sons- and daughters-in-law, brothers- and sisters-in-law and anyone who shares such person's home.

12.14 Survival. The following Sections of the Agreement shall survive the termination or expiration of the Agreement: Section 9 (Confidentiality), Section 10 (Warranties and Indemnification), Section 11 (Limitation of Liability), and Section 12 (General).

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound, have duly executed this Agreement as of the date set forth on the first page of this Agreement.

John M. Harlan High School

By: _____

Name: John M. Harlan High School

Its: HEAD BAND DIRECTOR

Date: _____

By: _____

Name: X

Date: _____

ADDENDUM TO INDEPENDENT CONTRACTOR AGREEMENT

Name:

Title: Instructor

Scheduled Dates of Service:

August 2018 - November 2018

Full Compensation: \$X.00 (XxX)

DATE \$X.00

DATE \$X.00

DATE \$X.00

Initials: _____ **Date:** _____

NOTES: Contract payout pending attendance at all listed events below.

Band Camp Events Stipend \$X.00