

**POLICY STATEMENT
CONTRACTING
CALIFORNIA ALPINE CLUB
Approved by the Board of Directors
March 20, 2010**

1. Introduction

Policy Statement

This policy applies to any CAC member, lodge trustee, board of director, or officer wishing to contract for services regardless of the source of funds. This policy supersedes all previous contracting policies and resolutions.

Background

California Alpine Club (CAC) Board of Directors and Membership passed some resolutions over the years dealing with contracting and hiring of independent contractors. Such resolutions are:

- 1. CAC, on July 15, 2007 adopted it's Resolution No. 1, granting authority to Lodge Trustees "...to obtain permits and enter into contracts...";*
- 2. CAC, on October 19, 2008 , adopted it's Resolution No. 2008-41 to indemnify any officer of the Corporation who acted in good faith and in a manner such person reasonably believed to be in, or not opposed to, the best interests of the Corporation.*

CAC has many member-volunteers who bind it into service contracts (i.e., mailing services, Trails publication, sewage-system services, etc.), which proceed without problems. The work is performed and paid for and member-volunteers are indemnified pursuant to Club Bylaws. However, the Club currently has no organized filing system to track and monitor of such contracts. Additionally, CAC has not delegated to any office or member-volunteer any authority to employ any person (i.e., others than independent contractors). Such authority requires knowledge of and compliance with complex rules, regulations and duties – and could subject CAC to penalties or loss of non-exempt tax status.

Therefore, CAC needs to adopt a policy for contracting professional services of independent contractors which is easy for member-volunteers to follow, administer, maintain records, and enforce. Not only would this policy provide some consistency for the Club, but it would also protect the Club, its members and its officers from significant penalties and risks exist for incorrect classification of independent contractors.

The designation of independent contractor status is governed by the Internal Revenue Service (IRS) tax code, CA State laws, and common law. Government agencies could determine that a worker is an employee of CAC, if CAC were to:

- (1) supervise the worker when the nature of the work does not require this,
- (2) provide the tools, equipment, supplies or

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training for the worker, (3) pay by a time period rather than by the job, (4) use a worker with no special skills or not established as a separate business entity, (5) the worker is used regularly over an extended period of time or with set hours, (6) the work is part of CAC's regular business, or (7) the worker can quit or be fired at any time. Therefore, to avoid any penalties from blurring of employment classifications and contracting practices, it is imperative that CAC applies common standards in the classification and contracting for professional services, and that each case is fully documented and auditable.

To determine the status of a worker as an independent contractor vs. an employee, the IRS and State of California have provided questionnaires and various publications to help those hiring a worker. Details can be found on the IRS website, State of California EDD website, and these publications. Please review these resources prior to engaging a worker:

- **IRS Publication 1779**, for a general overview, available at: <http://www.irs.gov/pub/irs-pdf/p1779.pdf>
- **IRS Publication SS-8**, to have IRS help determine employment status, available at: <http://www.irs.gov/pub/irs-pdf/fss8.pdf>
- **IRS Publication 15-A, 2006 Edition**, page 6 available at: <http://www.irs.gov/pub/irs-pdf/p15a.pdf>
- **CA Employment Determination Guide DE 38 and other publications**, to help determine if a worker is properly being classified as an independent contractor, vs. an employee. Available at: http://www.edd.ca.gov/pdf_pub_ctr/de38.pdf and http://www.edd.ca.gov/pdf_pub_ctr/ee-ic.pdf
- **Department of Industrial Relations website**, regarding independent contractors, available at: http://www.dir.ca.gov/dlse/FAQ_IndependentContractor.htm

2. General Responsibilities

- a. Member-volunteers who bind CAC to any professional services contract shall first be delegated limited authorities and shall perform the following duties and responsibilities:
 - *To obtain and carry evidence of authority to bind CAC into contract;*
 - *Read and understand this CAC Contracting Policy and comply with its provisions;*
 - *Communicate the information in this policy to prospective independent contractors as appropriate;*
 - *Obtain competitive bids for services or work from more than one contractor (best to have 3 bids);*
 - *Determine status of each independent contractor (i.e., licenses, insurance, professional certifications or other qualification standards to perform service, etc.);*
 - *Obtain a professional services agreement that complies with this policy and states a clear description of services to be provided, standards of performance, costs, timeframes, and any other terms;*
 - *Ensure that insurance, risk issues, laws and regulations are addressed to avoid liability or penalties to CAC;*
 - *Ensure a professional services agreement is signed and executed by all parties and is on file before service is provided;*
 - *Ensure that the independent contractor meets the contract terms;*
 - *Follow appropriate procedures for payment and insure no payment to a contractor is made prior to the signing of the agreement, or after the professional services agreement has expired;*

- *Report payments of \$600 or more on IRS Form 1099-MISC in box 7 and also file a Report of Independent Contractors (DE542) to CA EDD within 20 days;*
 - *Maintain and retain records to document the transaction including, but not limited to:*
 - *the professional services agreement and any/all amendments;*
 - *purpose of the contracted service; and*
 - *multiple solicited proposals, or a sole source justification, to ensure the price to be paid is reasonable and at a fair market price.*
 - *Make records/documentation available to the CAC President, Officers, Lodge Trustees, Board of Directors, finance committee, club treasurer, or accountant for inspection and audit for tax purposes;*
 - *To bring questions and problems to the attention of the designated President or the designated liaison officer; and*
 - *To act in good faith and in a manner reasonably believed to be in the best interest of the Corporation.*
- b. President and/or a designated officer shall serve as liaison and advisor to every delegated member-volunteer.
- c. No member-volunteer is authorized to hire or employ another on behalf of the corporation (i.e., a worker who is not classified and validated as an independent contractor).
- d. Independent contractors shall perform the following responsibilities and duties:
- *Provide detailed and accurate information for determination of status and contract formulation;*
 - *Sign professional services agreement prior to providing services;*
 - *Provide appropriate documentation for payment of services, such as an invoice, setting forth the appropriate charges, service details and taxpayer reporting number; and*
 - *Provide completed IRS Form W-9 showing the taxpayer ID, as required by IRS regulations.*

3. Professional Services Agreement

A professional services agreement (PSA) is a written contract used to engage a contractor, consultant, freelancer, or LLC (Limited Liability Corporation), to provide professional services to CAC. These service providers are called independent contractors. A PSA differs from a purchase order (PO). A PO is a commercial document issued by a buyer to a seller, indicating the type, quantities, and agreed prices for products and/or services that the seller will provide to the buyer. (Transactions such as mailing services, printing services, auditing services, and purchases can be handled via purchase orders.) Its purpose is to document/communicate a transaction's specifications, and form a contract for purchase. The PO also serves as documentation for invoice processing, and as an auditable source document supporting the incurred financial liability.

4. Determination of Service Status

A determination must be made as to whether the service or work will be provided by a CAC member volunteer or an independent contractor with the appropriate credentials, business licenses, and insurance. Appropriate credentials are

defined as official and current licenses and certifications for such things as structural engineering, architectural, construction, electrical, carpentry, mechanical, or plumbing work, if the job is of that nature.

Member volunteers may do work for the lodges with fair-market reimbursement for materials and equipment rental (or replacement), but no remuneration for labor unless they are a qualified business with licenses and insurance, in which case they may bid for the work as a contractor, but then would not be considered "volunteer".

If the services are so urgent, special, temporary, or highly technical that they cannot be performed economically or satisfactorily by member volunteers, then a PSA would be used to secure the services of an independent contractor.

5. Procurement and Payment Procedures

If it is determined that the service provider is an independent contractor, following proper procedures on behalf of the CAC for the procurement of services will ensure that all contracting requirements have been met. Fair and reasonable pricing (ensuring industry/market standards) is an important consideration in the negotiation of fees for all PSAs. A reasonable price is that which does not exceed what would be incurred by a prudent person in the conduct of a competitive business. Reasonable price can be established by a market test of securing multiple bids from different contractors. A reasonable price need not be the lowest price available, but is one which offers the highest total value to CAC.

Payment shall not be made for services rendered prior to the contract period, except as expressly approved by the Board of Directors. Payment shall not be made for services rendered after expiration of the PSA.

6. Conflict of Interest

The contractor will not hire any CAC member to perform any service covered by the PSA. The contractor shall not be a near relative of a CAC member involved in decision-making on service definition or bid evaluations. The CAC decision-makers shall not influence a decision if there is a financial conflict of interest or relationship to the contractor.