

C.2.11.1 (Procedure) Review and Approval of Agreements

Responsible Department: Legal Services

Based on Board Policy: [C.2.11](#) - Legal Services

Approved: 12-14-10

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Review and Approval of Agreements

This procedure describes the process for review of agreements, renewals to agreements and amendments to agreements (collectively “Agreements”), which shall be conducted to ensure coordination between responsible College District departments to assure that such Agreements are consistent with the College District mission and policies, are formed pursuant to applicable law, and contain business and legal provisions acceptable to the College District. All Agreements require approval as to form by the Office of Legal Services (“OLS”), but some categories specified herein do not require individual legal approval if contracted using a form of agreement approved for the particular purpose by that office.

All Agreements require approval as to form by the Office of Legal Services (“OLS”), but some categories specified herein do not require individual legal approval if contracted using an unrevised form of agreement approved for the particular purpose by that office.

All Agreements for the purchase of goods and services (“Vendor Transaction Agreements”) must be processed through the District Purchasing and Contract Administration Department (“Purchasing”) except as otherwise provided herein or in Purchasing P-Card Procedure [C.1.5.3](#).

Grant administration award, subaward and administration Agreements and subagreements, as well as academic research Agreements, also require review by the District Office of Grants Administration.

Agreements retaining the services of instructors, whether or not characterized as “consultants,” and with any and all employees, including temporary or “leased” employees, require review by the District Department of Human Resources and Organizational Development (“Human Resources”).

Agreements involving the purchase or license of information technology, whether hardware or software, require review by the District Department of Planning, Performance and Information Systems (“Information Technology”).

Agreements involving the use by third parties of College District facilities or real property, other than Facility Use Agreements, require review by the District Facilities and Construction Management Department (“Facilities”).

Agreements with insurance requirements in favor of the College District require documentation of compliance confirmed as satisfactory by the District Risk Management Department, and Agreements other than ACCD Forms with insurance requirements in favor of Agreement counter-parties require notification to that department.

Agreements which generate revenue and/or allow the use of District property by persons outside the College District community require review of fiscal implications by the District Finance and Fiscal Services Department unless pre-approved fiscal guidelines are met.

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Agreements for dual credit, whether simple (*e.g.*, Gateway to College, Alamo Academy or TECHPREP or otherwise (*e.g.*, Early College High School), and agreements with non-ACCD colleges, require review of academic issues and potential referral to Fiscal by the District Academic Success Department.

Definitions

ACCD Form Agreements. A variety of form agreements maintained by OLS at its sector of the College District Website, the use of which, as the basis for Agreement negotiation (other than for the acquisition of licensed software), is encouraged and will expedite legal review.

Agreement is any written agreement or contract regardless of designation (*e.g.*, Memoranda of Understanding or Agreement), binding the College District or any individual college to promised terms and conditions. These terms and conditions can create liability exposure far exceeding any stated financial commitment. The terms and conditions appearing at vendor websites applicable to online purchases made with College District P-Cards (see Procedure [C.1.5.3](#)) are considered Agreements within the meaning of this procedure, and any purchases of goods or services exceeding \$2,500, or any licensing of vendor intellectual property regardless of purchase price, shall require the P-Card holder to download said terms and conditions and submit them and the proposed order for prior legal approval. Typical agreements covered by this procedure include, without limitation:

1. Leases, space or facility use Agreements, or property easements and rights of entry, with College District as owner;
2. Simple dual credit Agreements with secondary educational institutions, including, without limitation, dual credit Agreements between the College District and school districts or home-schooling parents, Gateway to College Agreements, Alamo Academies Agreements or TECHPREP secondary educational institutions referenced herein below;
3. Affiliation Agreements with care facilities for student practical vocational experience;
4. Agreements with K-12 educational institutions, excluding dual credit Agreements;
5. Grant award, subaward and administration Agreements and subagreements;
6. Agreements licensing the intellectual property of others to the College District, being a subset of Vendor Transaction Agreements;
7. Agreements licensing or clarifying rival claims of ownership in College District intellectual property;

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8. Vendor Transaction Agreements for the purchase of goods, services, etc., including licenses to use the intellectual property of others and professional services agreements referenced hereinabove;
9. Intergovernmental Agreements, excluding Agreements with Colleges and secondary educational institutions referenced herein below;
10. Course hosting and transcribing Agreements;
11. Agreements with colleges, excluding course hosting and transcribing, and grant or research related Agreements, including, without limitation, articulation, matriculation, course credit transfer and similar Agreements;

he intellectual property of others to the College District;
12. Construction Agreements for the development or construction of improvements to realty, including those incident to public-private partnerships or the cooperative improvement of College District realty by other governmental units (“Construction Agreements”);
13. International Agreements of cooperation, student or faculty exchange, etc. with educational institutions in foreign countries;
14. Educational Service Agreements in which the College District is the service provider;
15. Academic Research Agreements;
16. Agreements for the acquisition of real property, including purchase or lease as tenant of improved or unimproved real property;
17. Agreements in support of treasury, investment or financing transactions;
18. Agreements for sale of surplus personal or real property by the College District;
19. Confidentiality/non-disclosure Agreements;
20. Hotel and/or conference facility Agreements;
21. Employment-related agreements; and
22. Amendments to agreements (which must always be made in writing).

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Upper-Level Contract Administrator is the college district employee with budgetary authority to commit funds to an Agreement.

Signing Contract Administrator is the College District employee authorized by Procedure [C.2.11.2](#) to commit the College District to the particular category of Agreement, or a duly authorized delegate.

EXCEPTIONS TO REQUIREMENT OF INDIVIDUALIZED LEGAL REVIEW

This procedure does not require individualized review by the Office of Legal Services of Agreements **contracted using the current form of agreement obtained at the time of contracting from the OLS website approved for the particular purpose by OLS** in the following instances, provided that the forms are not amended other than to fill in blanks for business terms applicable to a particular transaction:

- a. Agreements for the purchase of services from any single vendor, excluding agreements licensing the intellectual property of others to the College District, which within any fiscal year will have a collective value of less than \$10,000 (but these agreements require review and signature by Purchasing);
- b. Acquisitions by Purchasing pursuant to its standard forms of terms and conditions, standard forms of services purchase Agreements or group purchasing Agreements then in effect, provided that such have been previously reviewed as to form by the Office of Legal Services, unless (a) those standard terms and conditions are modified or (b) additional circumstances warrant individualized legal approval;
- c. Facility Use Agreements, including monthly scheduling exhibits to annually executed Recurring Intermittent Facility Use Agreements, but excluding Facility Use Agreements involving political office holders, political events, fee exceptions or the serving of alcohol;
- d. International Agreements not requiring any substantial District expenditures or its provision of educational services outside the United States;
- e. Simple Dual Credit Agreements;
- f. Education Services Agreements
- g. Affiliation Agreements; or
- h. Renewals of Agreements not initially competitively procured which merely extend their term, but renewals of vendor transaction agreements require the review & signature of Purchasing.

Agreements not requiring individualized legal review remain subject to the inter-departmental consultation / approval requirements set forth in the initial section of this Procedure.

PROCEDURE

Initial Authorization and Terms

1. Initial authorization to contract must be received from the Upper-Level Contract Administrator. Contracting actions may be time consuming and should be initiated a minimum of 120 days prior to the desired effective date of a Vendor Transaction Agreement. Upon authorization, the Monitoring Contract Administrator shall be responsible for:

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- a. Determining the Agreement's fundamental initial deliverable requirements, terms and conditions, including: (1) Payment terms; (2) Period of performance or effectiveness (“Term”); (3) Expected deliverables (whether tangible, *e.g.*, “50 widgets” or service oriented/intangible, *e.g.*, “develop new curriculum for [course name]”); and (4) Identification and encumbrance of funds to support Agreement performance during the applicable fiscal year in the form of an approved purchase requisition in the Banner system.
 - b. Determining that the Agreement supports the mission and strategic objectives of the College District;
 - c. Providing details of expected qualifications of individuals performing services if applicable (*e.g.*, “must possess a PhD in the particular discipline”); and
 - d. Determining performance measures and describing a means for quantifying and evaluating performance during the term of the Agreement in relation to each performance measures and staged payments conditioned on same when feasible.
2. To facilitate review and approval, proposed contract terms shall be in the format described in Exhibit [C.2.11.1.Ex](#).

Lead Role of Purchasing in Vendor Transactions

All Vendor Transactions for the acquisition of goods or services shall be submitted to Purchasing by the Monitoring Contract Administrator, with the sole exceptions of P-Card transactions authorized by Procedure [C.1.5.3](#) (but that exception does not apply to licensing agreements). Purchasing shall promptly confer with the Monitoring Contract Administrator to determine the procurement requirements.

Purchasing Determination of Lawful Means of Procurement

Purchasing shall initially determine whether a proposed Vendor Transaction may be made without specific Board approval under existing delegation of contracting authority and without competitive procurement under applicable law and regulations. If competitive procurement is required, it shall be undertaken by Purchasing. If the procurement maybe lawfully accomplished by other means, then Purchasing, shall determine and perform the method best calculated to serve the interests of the College District. Purchasing shall also appropriately schedule any required Board approval.

Purchasing Selection of Form of Vendor Transaction Agreements

If Purchasing determines that existing frame, master or group purchasing Agreements (“Existing Agreements”) are available to execute the Vendor Transaction, then it shall execute the Vendor Transaction with reference to the applicable Existing Agreement. If no Existing Agreement is available, then Purchasing shall propose to the vendor a transaction based on Purchasing’s standard form of terms and conditions or an ACCD Form Agreement. If these are

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rejected by the vendor, Purchasing shall obtain the vendor's form of agreement, including any vendor terms and conditions incorporated therein by reference, and shall forward same to OLS for legal review. If the vendor accepts Purchasing terms or an ACCD form of agreement only subject to proposed modifications, Purchasing shall forward such proposed modifications to OLS for legal review. Purchasing shall confer with OLS in the development and revisions of Purchasing's standard terms and conditions, its portfolio of group purchasing agreements and its forms of solicitation and agreement for competitive procurement awards.

Management Review

1. Proposed Agreements not required to be routed through Purchasing shall be routed through the Upper-Level Contract Administrator. In such instances, the Upper-Level Contract Administrator must first determine whether the expenditure of College District funds under the Agreement does not exceed \$50,000 during any 12-month period, and that the Agreement falls within a delegation of signature authority by the Board to the Chancellor under Policy [B.5.4](#), without which Board approval of the Agreement must first be obtained. If the College District expenditure during any 12-month period exceeds \$50,000, then the Agreement shall be reviewed with Purchasing for confirmation that it is not a Vendor Transaction Agreement requiring competitive procurement absent an applicable Authorized Purchasing method.
2. Management review of a proposed Agreement's initial terms and conditions is the responsibility of the Upper-Level Contract Administrator, regardless of whether it has been routed through Purchasing. The Upper-Level Contract Administrator, prior to approval of the proposed initial terms and conditions, shall determine, and correct as may be required, the following:
 - a. Whether the terms and conditions of the proposed Agreement have been processed through or meet the requirements of Purchasing, Grant Administration, Human Resources, Information Technology, Facilities, Risk Management and/or Fiscal Administration, as applicable;
 - b. Whether the Agreement requires specific Board approval;
 - c. Whether a draft Agreement has been prepared using any ACCD Form that is available, and whether any such form used is the current version from the OLS website;
 - d. Whether any Agreement not prepared using an ACCD Form has been prepared gathering all applicable vendor terms and conditions from all relevant sources (including for P-Card transactions); and
 - e. Whether funds to implement the Agreement have been properly identified and committed through the Banner system.
 - f. Whether the term of the Agreement is appropriate. Automatic renewal coupled with a right of either party to terminate with reasonable notice is favored for long-term relationship Agreements (other than certain Vendor Transaction Agreements) to limit the administrative burden of repeated renewals.

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3. Thereafter, upon review and approval of the initial terms of an Agreement, the Upper-Level Contract Administrator or Purchasing, as applicable, shall send a request for legal review to OLS using the legal review routing form at [C.2.11.1.Ex](#). The form shall be accompanied by an ACCD Form Agreement selected from the OLS website and completed by the Monitoring Contract Administrator unless no appropriate ACCD Form Agreement for the transaction is available there (*e.g.*, P-Card transactions or the licensing to the College District of the intellectual property of others). The legal review routing form shall be used in all requests for contract preparation or review.
4. Purchasing shall ensure that each vendor has a fully-executed Vendor Application Form, IRS Form W-9 and Conflicts of Interest Disclosure (if applicable) on file for all Vendor Transaction Agreements[LGR1].

Legal Review and Contract Preparation

Thereafter, absent an applicable exception, legal review shall be required after determination of the business terms and conditions of a proposed Agreement, and the selection and completion of an ACCD Form Agreement if available, by the Purchasing or the Monitoring Contract Administrator, as applicable. Legal review shall consist of contract review/preparation, legal analysis and supplying such additional terms and conditions as may be necessary to clearly define the rights and responsibilities of the parties. This process may entail the preparation of one or more draft agreements or addenda and requires coordination with the Monitoring Contract Administrator or Upper-Level Contract Administrator. Depending on the volume, nature and priority of other OLS commitments, this process takes approximately ten business days. "Rush" requests should be made in the legal review routing form and only when crucial, and inquiries regarding status during this period are discouraged. It is important to note that legal advice concerning the Agreements does NOT address business, technical, administrative, academic, or other non-legal issues. Monitoring Contract Administrators MUST READ the Agreements AND UNDERSTAND their terms and conditions. If there are any terms or conditions that are not understood, the Monitoring Contract Administrator must present the questions/concerns to OLS for clarification. Upon completion of the review and preparation process and the contract document, OLS shall forward the final original contract document and any applicable addendum that may have been drafted supplying additional or revised terms and conditions, each marked to indicate legal approval, to the Upper-Level Contract Administrator for contract execution by the contracting parties. Contract documents approved "subject to execution of addendum" may not be signed and delivered to contract counterparties unless the approved addendum is also executed and delivered by both parties at the same time. In no case shall the delivery of goods or services under an Agreement commence prior to Agreement execution by all parties.

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Processing and Approval

1. The Upper-Level Contract Administrator shall assure that agreements between the College District and contracting parties (other than those meeting the exceptions herein provided) have received the approval of OLS before signature by the contracting parties, and that the other party has signed an approved Agreement prior to submitting the Agreement for signature to the appropriate Alamo Colleges signer designated by

Procedure [C.2.11.2](#), This shall not prohibit Board approval of an unexecuted agreement “substantially in the form presented,” provided that OLS explicitly agrees to this means of approval and accepts the responsibility that for ensuring that any subsequent modifications to the draft are immaterial in context.

2. The Board has delegated certain contracting authority to the Chancellor under Policy [B.5.4](#), authorizing the Chancellor to delegate, in writing, the authority to execute an agreement as may be appropriate for the type of agreement under consideration, which the Chancellor has done through his adoption of Procedure [C.2.11.2](#).
3. In all cases, a copy of the fully-executed version of the agreement shall be supplied to the District Office of Legal Services as a portable document file (.pdf), for storage. A fully executed copy of any Agreement involving expenditures by the College District or enterprise-wide performance by the College District shall be provided to Purchasing.

Electronic Transactions and Digital Signatures

If all parties to the agreement agree to the use of electronic means, the agreement may be executed with digital signatures where there is reasonable certainty of the identity and agreement of the signers. "Electronic" or "digital signature" means an electronic sound, symbol or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record. Many commonly-used software applications are capable of affixing digital signatures.

Amendments to Agreements Must Be in Writing

If during the course of performance during the term of an Agreement the parties agree to a change in their responsibilities, whether explicitly or tacitly, then the Monitoring Contract Administrator shall development an Amendment from an ACCD Form Agreement and process such amendment on the same basis as any other Agreement.