**Legal Review of Contracts**

The purpose of these procedures is to help you understand the process for reviewing and signing of contracts. Prior to submitting a contract for signature, you should use the following procedures for submitting contracts for review, preliminary questions, general contractual information and potential problem terms and conditions. This should enable you to identify and address general legal issues and problems that routinely arise in regard to contracts. If you are in doubt about how to answer a question for a particular document or you have a concern about a contract that this does not address, please contact the Contract Administrator directly for further assistance.

**Definitions**

*Contract* – The term contract refers to any document that has or references terms and conditions requiring a signature. It may be called a contract, agreement, MOU, order form, proposal, etc. The reference could be in the form of a hyperlink to a website with additional terms.

*Provider* - For the purposes of this document, provider means second party to the contract to be reviewed and signed. This could be a vendor, speaker, another college, school, etc.

*Standard Addendum to Agreement* - The District uses a Standard Addendum to Agreement (SAA) that can be attached to any contractual document containing terms and conditions submitted by second party, requiring a District signature. The SAA is a tool that can be used to ensure compliance with state laws by indicating specific terms that the District requires and attaching it to the submitted document. The SAA indicates that the terms and conditions on the SAA will be incorporated into the document submitted by the third party, and the SAA will govern where any conflicting terms or conditions exist. The SAA will be signed by the District and the vendor, accepting its terms.

*Standard Contracts* - Standard Contracts are exempt from individualized legal review. Standard Contracts are contracts created by the Contract Administrator, which have been reviewed and approved in writing by the Contract Administrator for use without individualized legal review. Approval for the use of a Standard Contract will expire every two years, at which time the Standard Contract will be reviewed, revised if needed, and re-approved if appropriate. It is your responsibility to ensure that the Contract Administrator receives a signed copy of the contract for District records. Standard Contracts List includes:

* Collin Corporate College Training Agreement
* Contract for Services
* Public Safety Training Center Training Agreement
* Partnership Agreement with ISD’s
* Articulation Agreement
* Clinical Affiliation Agreements or related Program Agreements (Vet Tech)

**Signatory Authority**

See Review and Signatory Authority Chart in Attachment B

**Procedures for Submitting Contracts for Review**

**1. *Does your contract involve grant funding?***

* If no, please move to question 2.

If yes, submit your document to the Grants Management Office for processing. The Grants Management Office will review and process your agreement, forward it to the Contract Administrator for review and approval, and obtain all signatures on the document.

* If your contract also involves the expenditure of funds by the college (through grant funding or not), please also submit a requisition or purchase order as provided in question 2.

**2. *Does your contract involve the expenditure of funds for the purchase, lease, or license of goods or services?***

If no, move to question 3.

If yes, submit a requisition and attach a copy of the document to the requisition. The Purchasing Department will review your requisition and submit the document through the appropriate process for having it reviewed, approved, and signed by an individual with delegated signatory authority.

**3. *Is your contract a Standard Contract that was approved by the Contract Administrator for use without individualized review?***

If no, move to question 4.

If yes, submit the document for signature. If any changes were made to the standard contract then it must be sent to the Contract Administrator for review. After review, the Contract Administrator will submit the contract for signature.

**4. *If your contract does not require review by either the Grants Management Office or is not related to the expenditure of funds for the purchase, lease or licensure of goods or services, then you may submit it directly to the Contract Administrator by sending an email with documentation including: the originating department, the department contact person, the contact person’s telephone extension, the date the contract is needed (ALLOW AT LEAST 5 DAYS FOR REVIEW AND SIGNATURE), the contract itself, and contact information for the provider.***

The Contract Administrator will review the contract, modify it if necessary, negotiate any changes with the provider and approve it. The Contract Administrator will then forward it to the appropriate person for signature. Once the contract has been signed, you will be notified by the Contract Administrator. You will be responsible for obtaining the signature of the other party(ies) to the contract and returning a fully executed copy of the contract to the Contract Administrator.

***See flow chart in Attachment A***

**Preliminary Questions**

Please respond to the questions below and apply the information provided to your contract. If the answer to a question is YES continue to the next question unless instructed to do otherwise. For additional guidance on any item, please contact the Contract Administrator.

***1. Have you read the contract in its entirety and do you understand and agree with all of its terms and conditions? Will the District be able to comply with all of the terms of the contract?***

If a contract term is confusing, irrelevant, inaccurate, or impossible, then it should be removed or replaced. You can remove a term by striking through it. You can also include new terms in an addendum to the contract, which should be signed by all the parties to the contract, or you could add the language to their contract. Individuals involved in using the goods and/or services being provided should read, understand and agree to follow the terms and conditions that pertain to the use of the goods and services being provided.

***2. Is the contract complete? Does it include all relevant terms and conditions, including exhibits and schedules?***

Is the contract missing any pages? Are the contract dates current? Are all exhibits or attachments properly labeled and included with the contract, and have you reviewed all documents referenced in the contract? Referenced documents or links to terms and conditions included in the contract become part of the contract, so they need to be reviewed in the same manner as the original contract. If a term or condition is not explicitly stated in the written contract, then it is not binding on the other party. This is true even if the other party has discussed the term or condition with you and has agreed to it verbally. So, if something is important, make sure that it is clearly stated in the contract.

***3. If the contract document is an addendum or amendment to another contract or if it is intended to replace a contract currently in effect, does the new document reference the previous contract and explain how it is to be impacted?***

If a new contract is intended to replace a previous contract in its entirety, then it should be clearly stated that the old contract is no longer binding. If only some terms and conditions of the old contract are being replaced, but others will continue to be in effect, then this needs to be clearly explained in an addendum or amendment. There should not be any confusion as to how the terms and conditions of the old contract and those of the new addendum or amendment work together.

***4. Has appropriate notification been provided to, and approval obtained from, your department and all other relevant offices or departments?***

Approval must also be obtained from any other department or office impacted by the contract or with authority over the subject matter of the contract. Examples include:

* the use of the District logos or marks;
* making a commitment that the vendor will be an “exclusive provider” of their product or service to the campus;
* insurance provisions;
* changes to facilities, to include electrical and plumbing requirements;
* IT related purchases, such as hardware or software.

**General Contractual information**

* ***Is the contract in the name of Collin County Community College District?***

Departments or other campus divisions cannot be listed as contracting parties; individuals who sign contracts on behalf of the District must have signature authority to bind the District. The District’s legal name is required on all contracts.

* ***Are all references to the parties accurate, complete and consistent, including references in:***

(a) the first paragraph of the contract,

(b) the abbreviations or defined terms referring to the parties, and

(c) the signature blocks?

* ***Are the duties and obligations of all the parties to the contract clearly stated so they all understand:***

(a) what each party’s duties and obligations are,

(b) how each party’s duties and obligations will be performed, and

(c) when each party’s duties and obligations will be performed?

* ***Does the contract clearly establish the place, time, and method of payment? Please note that the District does not prepay or pay deposits.***
* ***If the contract is not for a specific amount, does the contract clearly and accurately state the maximum amount that could be owed under the contract?***
* ***Does the contract clearly state:***

(a) the beginning or effective date, and

(b) the ending or expiration date?

* ***Can the contract be renewed or extended, if so, does it renew or extend automatically, and are you comfortable with how it can be renewed or extended? Departments are responsible for ensuring proper notice is received for any contracts that will not be renewed or extended. The District allows contracts to renew for no more than 5 years.***
* ***Is the contract based on a per student and/or staff headcount?***
* ***Are parameters set for the maximum increase for renewal, i.e. not to exceed 5% or referencing a specific CPI or PPI?***
* ***Have you and the provider completed a Conflict of Interest Form (if applicable)? Please see Board Policies BBFA, DBD, and CFE for more information on Conflict of Interest at*** <https://pol.tasb.org/Home/Index/304>***.***
* ***Does the contract contain a penalty for early termination and if so have you deleted the penalty clause or determined that your department is willing to accept the cost of early termination?***
* ***Are the warranties made by the District limited to the following:***

(a) the signatory has the authority to enter and sign the contract, and/or

(b) factual representations that are well-supported?

**Unacceptable Terms and Conditions**

(Clauses and requirements that could conflict with Texas law unless modified or deleted.)

* ***Does the contract contain a clause requiring the District to indemnify another party, and if so, have you either modified it or attached the Standard Addendum to the agreement?***

An indemnity clause can be modified by adding the phrase “to the fullest extent allowed by Texas law”. \*Please note that if another party is indemnifying the District, this is desirable and should be left in. In certain cases, you might want to request indemnification from the other party.

* ***Does the contract contain a clause that gives another party the right to control any investigation, defense, or settlement of any claim or lawsuit filed against the District, and if so,*** ***have you either deleted the clause or modified it?***
* ***Does the contract contain a binding arbitration clause and if so, have you either deleted the clause, modified it, or attached the Standard Addendum to the agreement?***

Generally, the District cannot agree to binding arbitration or waive its right to trial by jury but approval can be obtained to do so.

* ***Does the contract require the District to provide insurance, and if so have you attached the Standard Addendum or requested assistance from the AVP for Financial Services and Reporting?***
* ***Is the contract governed by the laws of the State of Texas, or have you attached the Standard Addendum?***
* ***If the contract has a venue clause, does it list Collin County, TX as the venue, or have you attached the Standard Addendum?***
* ***Does the contract contain a clause that limits the time within which the District could bring legal action or file a claim against the other party, or does it limit the liability of the other party, and if so, have you removed the clause or attached the Standard Addendum?***
* ***Is the contract related to students, and if so have you made sure FERPA language is included? It is very important that FERPA language is added. Please see sample wording below.***

SAMPLE: The District and Provider will comply with the requirements of the Family Educational Rights and Privacy Act (FERPA) when dealing with the confidentiality of student education records and personally identifiable information. Provider agrees to hold student education records and personally identifiable information in strict confidence and will not use or disclose this information unless required by law.

* ***Does the contract contain a confidentiality, nondisclosure, or privacy provision with which the District will be expected to comply and if so, have you either deleted the clause, modified it, or attached the Standard Addendum to the agreement?***

The District is subject to the Texas Public Information Act. The District cannot keep information confidential if it is subject to public disclosure under the Texas Public Information Act. Therefore, any clauses in contracts which require the District to maintain information as confidential must either be deleted or qualified with “to the extent permitted by the Texas Public Information Act.”

* ***Does the contract contain a clause that allows the other party to make representations in the name of the District, to act as an agent of the District, or to collect money on behalf of the District and if so, have you removed the clause or contacted the Contract Administrator for guidance?***
* ***Does the contract include a clause that rejects the terms and conditions of any purchase order, and if so, have you ascertained that the vendor’s contract does not violate state law requirements, or has the Vendor signed the Standard Addendum?***
* ***Does the contract include Israel Non-Boycott Verification (if applicable) and if not, have you added it or attached the Standard Addendum to the agreement?***

A contract is exempt from this provision if the contract value is less than $100,000, the provider is a sole proprietorship, or the provider employees less than 10 full-time employees.

* ***Do the payment terms comply with state requirements?***

Payment will be made in accordance with Texas Government Code, Subchapter B. Payments and Interest, Chapter 2251.021 (b). Payment will be made, per statutory requirements, after the later of:

 · the date the District receives the goods under the contract;

· the date the performance of the service under the contract is completed; or

· the date the District receives an invoice for the goods or service.

As a general rule, the District does not pay deposits for goods or services being provided.

* ***Does the contract obligate the District to make payments beyond the current appropriations term and if so, have you included appropriations language manually or by attaching the Standard Addendum?***

The terms of this contract are contingent upon sufficient appropriations being made by the Board of Trustees, a granting agency, or other appropriate governmental entity. Notwithstanding any language to the contrary in the contract document, the District may terminate its obligations under the contract if sufficient appropriations are not made by the Board of Trustees, a granting agency, or other appropriate governmental entity to pay amounts due for multiple year agreements. The District will use its best efforts to obtain approval of funding from all necessary authorities for additional years. The District's decisions as to whether sufficient appropriations are available shall be accepted by the supplier and shall be final and binding.

**Attachment A – Flow Chart**

Submit your contract to the Grants Management Office.

YES

Attach a copy of your contract to the purchase requisition.

YES

Submit your contract to the proper signatory authority.

YES

NO

NO

NO

Submit your contract to the Contract Administrator

Is your contract a Standard Contract as listed on Signatory Authority Chart

Does your contract involve the expenditure of funds for the purchase, lease, or license of goods or services?

Does your contract involve a grant funding?

**For general questions contact the Contract Administrator at** **contractadministrator@collin.edu**

**Attachment B – Review and Signatory Authority Chart**