

Contracts and Insurance Guidelines

Part One

Presented by:

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Thank you for joining us as we proceed on our Purchasing Virtual Road Trip Training Series!



Before we hit the road......



We wanted to you to know that we are recording the training series and we have created a **Purchasing Road Show Training Tool Box** that can be found on the Purchasing Department's Downloads Page: https://downloads.smccd.edu/browse/purchgs



We value your input, with that said, we have decided to split our Contracts and Insurance Training into two sessions. Today's session will be Part One where we will spotlight on some basic areas that will help guide you through the contractual process. We will design another training, Part Two, where we will journey into the specifics of Contract development and Insurance compliance.



Please note your questions in the Zoom Q & A feature and at the end of our presentation we will do our best to answer your questions.



If we are talking too fast, please send us a quick note using the Zoom Chat Feature and we will take our foot off the throttle.



At the end of the training, please take a moment to fill out a very short survey.

Disclaimer

The discussion and materials provided in this presentation are for educational purposes only. Participants are advised to consult with your College and District Business Offices for guidance on any specific contractual or insurance related inquiries, as the final outcome is based on the facts and circumstances of each particular transaction. Certain matters may require the District to consult with legal counsel.

Have you ever felt like this when trying to put together an Agreement?



Compliance with Purchasing Procedures & Guidelines

- Identify funding (and encumber funds at appropriate time)
- Comply with appropriate Purchasing Procedures & Guidelines based on applicable dollar threshold
- Obtain appropriate college administrative approvals before sending to District for the obligatory signatures
- The intent is to create code compliant contracts
- A contract obtained by incorrect means is void and unenforceable (Education Code 72530(b))



Contract Formation – Basic Principles

- Agreement: A contract is made when one party makes a proposal or offer that is accepted by another party;
- Consideration: Something of value received or promised is exchanged;
- Contractual Capacity/Competent Parties: Both parties must be competent and authorized to enter into the agreement;
- Legality: The contract's purpose must be to accomplish some goal that is legal and not against public policy;
- Assent/Mutual Agreement: The apparent consent of both parties must be genuine and mutual; and
- Form: The agreement must be in whatever form (e.g., written, under seal, etc.) the law requires.

Contractual W's and How



WHAT is the intent? Scope of services?

Scope of Services Guidelines

- Duties and Responsibilities (Tasks to be completed)
- Timeline (Term start/end dates, Performance Milestones)
- Deliverables & Proof of Completion
- Define District's responsibilities, if any (Provide access and/or data to vendor, etc.)

Vendor Accountability:

- Understands their roles and responsibilities (scope)
- Provides services or perform tasks in the time frame requested
- Provides the work product/deliverables that are required
- Insurance –does the Contractor have it?
- Agrees to the hold harmless and indemnification requirements

WHO enters into a contract?

- The District (including all of the Colleges and their units) are known in agreements as San Mateo County Community College District (Legal Name)
- Pursuant to Education Code, the Board of Trustees has delegated authority to the Chancellor, or his designees, the power to enter into contracts on behalf of the Board, subject to statutory authority
- Any contract entered into shall be in writing and in a District authorized form
- No contract made pursuant to this Board delegation/authorization shall be valid or enforceable against the District unless it has been approved/ratified by the Board

WHY does the District need contracts?

For the District's and Vendor's Protection

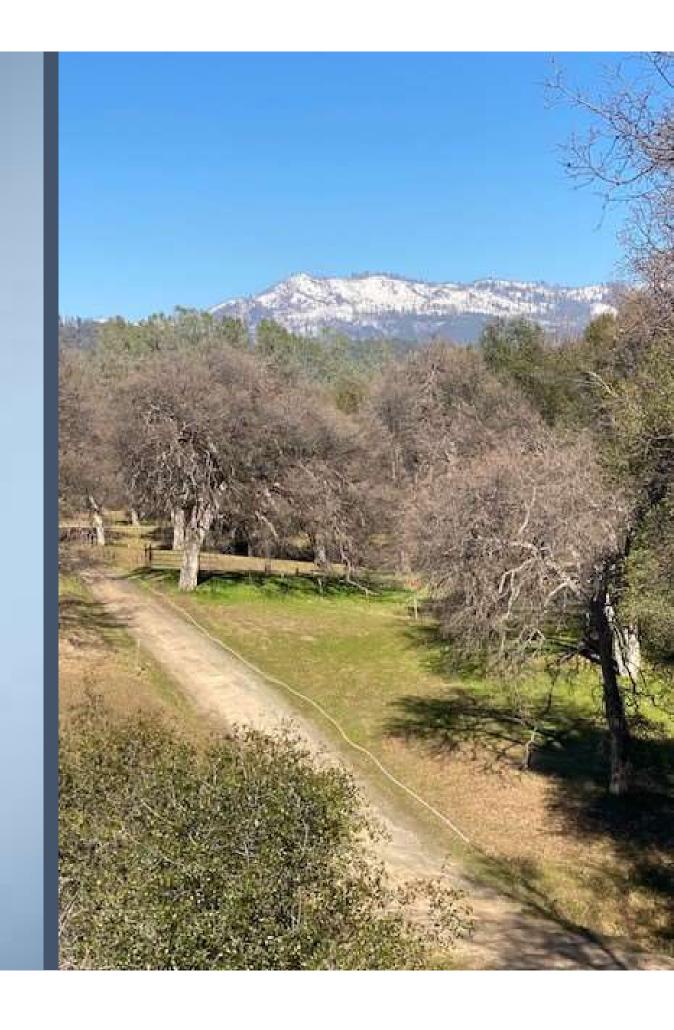
- District can be held liable for damages caused by our vendors
- Risk is placed upon those best able to control the work
- Maintain expenditures within department or project budget
- A contract spells out:
 - The work to be done, services to be performed
 - Identifies specific term start and end dates
 - How much the service will cost
 - Clarifies the responsibilities and obligations of the parties
 - The District's Standard Terms and Conditions



WHY do vendors need to provide insurance documents?

- Insurance coverage is a part of the District's risk management strategy
- It is contractually required. Vendors must have and provide proof of insurance to conduct business with District
- The District does not want to be liable for an accident if it's the vendor's fault or if the vendor hires a subcontractor to do some of the work and it's the subcontractors fault
- If the vendor has an accident or makes a mistake and a third party is hurt – like a student or visitor to the campus - insurance and indemnity are important

What Types of Contracts are Used at the District?



District's Contract Template Library

- Standard Services Agreement (SSA)
- Independent Contractor Agreement (ICA)
- Instructional or Educational Services Agreements (ISA)
- Performance Agreements
- Facilities Use Permits
- Purchase Order
- Other agreements (Clinical Site Agreements, Lease Agreements, Communications Site Use Permits, Construction Agreements, Professional Services, Waiver/Releases of Liability Form)
- Contract Amendment

Is a Purchase Order a Contract?

- A Purchase Order (PO) is a contract to purchase goods or services from a vendor.
- There are purchasing situations that warrant the use of <u>both</u> a PO and a Contract.
- The use of a PO only to procure goods and services would be appropriate if the following conditions exist:
 - Vendor does not require the signing of any document including Contracts,
 Order Forms, Statements of Work and Terms & Conditions, etc.
 - Simple services or purchase of materials/supplies
 - Simple contractual expectations
 - Period of performance is less than one year
 - Purchase is low risk as determined by the College/District Business Office
 - Vendor will not be providing labor/installation services on-site

Amendments

- A contract amendment, also known as contract addendums or change orders, is a mutually agreed change making modifications to, correcting, deleting from, or adding to an existing contract
- Any modifications to an existing contract are required to be in writing
- Use the District's contract amendment template to amend your contract
- Of course, to have a valid amendment, you must first have a proper contract in place (contract cannot be expired)
- All proposed amendments must be drafted by the District Business Office

Use of Vendor Provided Agreements

- Depending on the services, the choice of contract and content is not always within the District's control
- Vendors will demand/require the use of their own contract template
- Review and analysis of Vendor's terms & conditions by the District Business Office is required
- Negotiation is vital
- Examples of Vendor Provided Agreements:
 - Hotel Contracts
 - Academic collaboration or Memorandums of Understanding
 - Equipment Purchase or Lease Agreements
 - Maintenance Agreements
 - Software and other licensing agreements
 - Technology and web-based services user agreements



Prohibited or Red Flag Contract Clauses

- Term of Agreement (exceeds allowable term limits)
- Automatic Renewals
- Termination (does not allow to terminate for convenience)
- Limitation of Liability
- Indemnification/Hold Harmless
- Insurance
- Intellectual Property Rights in Work of Product
- Assignment of Rights
- Confidentiality
- Governing Law and Venue
- Exclusivity or Non-Compete
- Disputes (Binding Arbitration)



The **key** is to determine early on in the negotiations whether a certain term might be a **deal-breaker** before you put in too much time and effort in negotiating other terms

Technology Agreement

Decisions to purchase
Technology must involve
ITS and need to be vetted
by College and District
Administration.

You can find the
Employee Technology
Purchase Request Form
at: https://smccd-czqfp.formstack.com/workflows/its_purchasing_reguest

We typically use the
Software
Company's
Agreement – not
the District's
Standard Services
Agreement

Technology
Purchases are
subject to all
purchasing and
public contract rules
(Remember, to
review the quote
guidelines, you
might need an RFP!)

Technology
Purchases <u>cannot</u>
be purchased with
a procurement
card.

You must work with ITS when Purchasing Technology.

WHY do I need to work with ITS when purchasing Technology?

Accessibility (VPAT and/or Manual Testing)

Voluntary Product Accessibility Template (VPAT) - Voluntary Product Accessibility Template is a template containing information regarding how an information and communications technology product or service conforms with Section 508 of the U.S. Rehabilitation Act of 1973, as amended.

- * Family Educational Rights and Privacy Act (Private Policy and/or FERPA Statement)
 The Family Educational Rights and Privacy Act of 1974 is a United States federal law that governs the access to educational information and records by public entities such as potential employers, publicly funded educational institutions, and foreign governments.
- * Security (How does the user sign-in to the product?) Security considerations that go into the evaluation depend on the type of product. ITS reviews data security and protocol when the product sends/receives/stores sensitive data.
- Compatibility (Will software work on District devices?)
- Implementation requirements (Is there ITS support required to implement/maintain?)

Technology Agreement

WHAT documentation will I need?

As the requestor of Technology (Software), your next steps in the approval process are the following:

- Obtain the vendor's legal name, contact person, address, phone number, and e-mail address.
- Request vendor's Terms & Conditions (T & Cs), including privacy, accessibility and billing T & Cs which may be provided separately.
- Obtain the vendor's current W-9. Vendor must use the current IRS
 Form (dated October 2018) and it must be signed within the current calendar year https://www.irs.gov/pub/irs-pdf/fw9.pdf
- Selected vendor's quote and other solicited quotes in compliance with purchasing guidelines.
- Your Division/Department FOAP (Accounting Number). Please make sure that if a budget transfer is needed for funding, that should be done before sending the documentation over to the VPA Office.

WHO SHOULD I PROVIDE THIS DOCUMENTION TO?



Specific College Technology Request

Please send all documentation you have to your **College VPA Office**, they will create an iContracts container and forward to the District Office for review and further processing.

Districtwide Technology Request

Please send all documentation you have to **ITS**, they will create an iContracts container and forward to the District Office for review and further processing.

<u>Please do not key in a requisition, ITS will key all Technology requisitions</u>. Requisitions will not be keyed until all of the information noted above is loaded into iContracts and your VP/Dean/Manager(s) have approved the purchase.

A little advanced planning can turn this



Into this



Guidelines for Choosing the Right Contract



WHAT Agreement/Template to use?

Agreements/Templates are chosen based on the following factors:

- Type and level of services being provided
- Duration and Complexity
- Risk/Exposures
- Value

In many cases the default is the Standard Services Agreement

WHAT Standard Services Agreement should you use?

Services agreements are chosen based on the risk of the services

 There are three levels of risk which require different types and limits of insurance coverages – Low, Medium, and Default (high)*

* Note: Generally Default Contracts are used by the Purchasing Department to secure Charter Buses.

Insurance Limits (SMCCCD)

Insurance limits for the various contracts were developed by District Administration in consultation with the District's insurance brokers.



WHAT are the District's current insurance requirements for Low and Medium Risk Contracts?

• Low Risk:

- \$1M General Liability (Per occurrence)
- \$2M Aggregate
- \$2M Umbrella or Excess Coverage per occurrence plus \$2M aggregate
- \$1M Automobile Coverage

Medium Risk:

- \$1M General Liability (Per occurrence)
- \$2M Aggregate
- \$3M Umbrella or Excess Coverage per occurrence plus \$3M aggregate
- \$1M Automobile Coverage

Contract Lifecycle Management



WHERE do I start? (Contract Tips)

- Obtain the latest contract template from the Purchasing Downloads Page.
- The vendor name in the contract should match the name on the W-9
 ... for instance:

Robert's Hardware dba American Hardware Supply

- Ask your VPA/Business Office if you are not sure what contract to use.
 The District Business Office can help as well but be sure that your VPA/Business Office is in the loop.
- Be aware of dollar limit guidelines Reference Purchasing Guidelines from the SharePoint Downloads Page.
 - https://downloads.smccd.edu/browse/purchgs

Contract Tips (cont'd)

- The originator of the contract should 'fill in the blanks' on the contract, not the vendor.
- If the vendor wants to make changes to contract terms and conditions or insurance amounts, check in with the VPA/Business Office before the vendor signs the contract. We don't typically make changes to the terms; although, if they are necessary, your College VPA Office will work with the District Office to make any agreed upon modifications.
- Do not have a vendor start work until the contract is fully executed. (Fully executed means that both the District and vendor has signed the agreement).
- Do not key in the requisition until the contract has been fully executed.
- IMPORTANT! Give yourself ample time to prepare a contract and collect the required documentation. Do not wait until the last minute! Sometimes there is a need for last minute agreements; however, these should be the exception instead of the rule!

WHAT is iContracts?

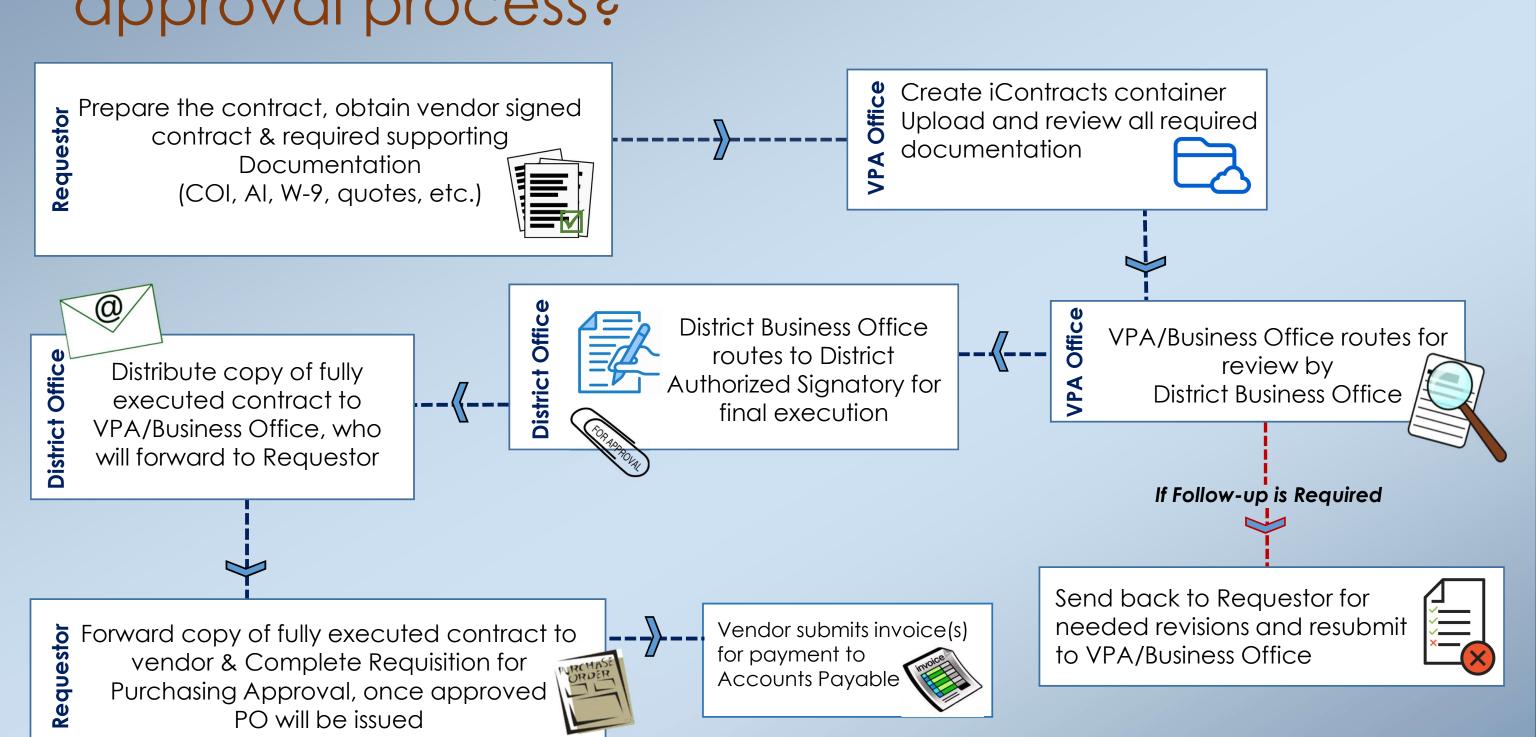
Contract management is complex and cumbersome.

In 2014, the District chose iContracts as our Contract Management Software - District wide.

- Manages all aspects of every contract's lifecycle, including housing all contract information in a central repository.
- * We can set milestones when contracts and insurance documents need to be renewed.
- We can set workflows which allows us to know exactly where a contract is within the process.
- We can pull a variety of reports for future contract planning purposes.
- All contracts that the District enters into are loaded into the iContracts database along with the supporting documents.

If you ever need a copy of a contract that you have misplaced or need to renew, please contact your College VPA Office or District Business Office.... they can easily provide you a copy.

WHAT is the contract and insurance routing and approval process?



HOW do I request insurance forms from the vendor?

- Don't be hesitant. Your vendor might not understand what documentation you are requesting. Your vendor's insurance provider should understand. Insurance providers produce Certificate of Insurance (COI) and Additional Insured (AI) Endorsement requests every day.
- Call your vendor's attention to the Insurance Requirements in the agreement. That's where the exact insurance language is.
- The VPA/Business Office and/or the District Business Office can assist with issues regarding insurance.

WHAT if the vendor does not have the required insurance that is stated in the contract?

- The vendor should first reach out to their insurance provider in an effort to
 obtain the required insurance limits. The vendor should not sign the contract if
 they cannot provide the appropriate insurance.
- If the vendor cannot provide the required insurance, they should notify the contract originator.
- The contract originator should contact your College VPA Office for guidance.
 The VPA Office oftentimes confers with the District Business Office to analyze
 the risk level based on the services that will be provided. In limited situations,
 an insurance waiver may be needed. Such requests will need approved by the
 College VPA Office and the District Business Office. The insurance contractual
 language will then be modified by the District Business Office reflecting any
 agreed upon changes.

Sample Insurance Documents



Useful insurance terms:

- Certificate of Insurance (COI) is a document that shows the amount of insurance the vendor can provide the District.
- CGL Commercial and General Liability
- Additional Insured (AI) Endorsement names the District on the vendor's policy.
- The COI certificate holder should state:

San Mateo County Community College District 3401 CSM Drive San Mateo, CA 94402

• The COI description box should name SMCCCD as the Additional Insured (AI):

The San Mateo County Community College District, it's Officers, Agents and Employees are named as additional insured per attached endorsement.

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I have the COI, why do I need an AI?

contractual liability insurance is liability insurance that provides coverage for all contracts in which the insured is assuming liability.

SAMPLE ADDITIONAL INSURED (AI) ENDORSEMENT

POLICY NUMBER: B4031206382



Vendor's Name (Contractor's Name)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

BLANKET ADDITIONAL INSURED- PRIMARY AND NON-CONTRIBUTORY-OWNERS, LESSEES OR CONTRACTORS

COMMERCIAL GENERAL LIABILITY COVERAGE PART SCHEDULE

Name of Person or Organization:

THE SAN MATEO COUNTY COMMUNITY COLLEGE DISTRICT, ITS OFFICERS, AGENTS AND EMPLOYEES

3401 CSM DRIVE SAN MATEO, CA 94402

In consideration of the additional premium of \$0.0, it is hereby understood and agreed that

Section II — In accordance with the terms, conditions, limitations, and provisions of the policy to which this endorsement is attached, Section II- Who is an Insured is amended to include as an Additional Insured the person, organization or entity designated in this endorsement but only with respect to liability for bodily injury or property damage caused, in whole or in part, by your work at the designated construction project performed for the designated person, organization or entity and included in the ongoing operations hazard. This endorsement does not create on our part a duty to defend the designated person, organization or entity for any fees or expenses incurred by an insured in the defense of the designated person, organization or entity. This endorsement is only applicable if the designated person, organization or entity and the designated project sections are completed.

With respect to the Insurance afforded to these Additional Insureds, the following additional exclusions apply:

This Insurance does not apply to "bodily injury" or "property damage" occurring after:

- 1. All work, including materials, parts or equipment furnished In connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the Additional Insured(s) at the location of the covered operations has been completed; or
- 2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

PRIMARY/ NON-CONTRIBUTORY WORDING:

It is agreed that this insurance is primary and non-contributory and that no insurance held or owned by the designated Additional Insured shall be called upon to cover a loss under said policy up to the limits of this policy if loss under this policy arises directly from work performed by Named Insured or if others performed on behalf of the Named Insured.

All other terms, conditions and exclusions remain unchanged

Form Edition 05/10/11

Page I of I

Specific Additional Insured Endorsement names the District

POLICY NUMBER: B4031206382 90MMERCIAL ENERAL LIABILITY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS - SCHEDULED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name of Person or Organization:

THE SAN MATEO COUNTY COMMUNITY COLLEGE DISTRICT, ITS OFFICERS, AGENTS AND EMPLOYEES

3401 CSM DRIVE, SAN MATEO, CA 94402

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

- A. Section II Who Is An Insured is amended to include as an insured the person or organization shown in the Schedule, but only with respect to li ability arising out of your ongoing operations per formed for that insured.
- B. With respect to the insurance afforded to these additional insureds, the following exclusion is added:
- C. Exclusions

This insurance does not apply to "bodily injury" or "property damage" occurring after:

- (1) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the addi tional insured(s) at the site of the cov ered operations has been completed; or
- (2) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

CG 20 10 10 01 © ISO Properties, Inc., 2000 Page 1 of 1

WHAT if I receive a contract via DocuSign?

If you receive a contract through DocuSign, please <u>download the</u> <u>contract</u> and send via e-mail, along with any back-up documents, to your college VPA/Business Office.

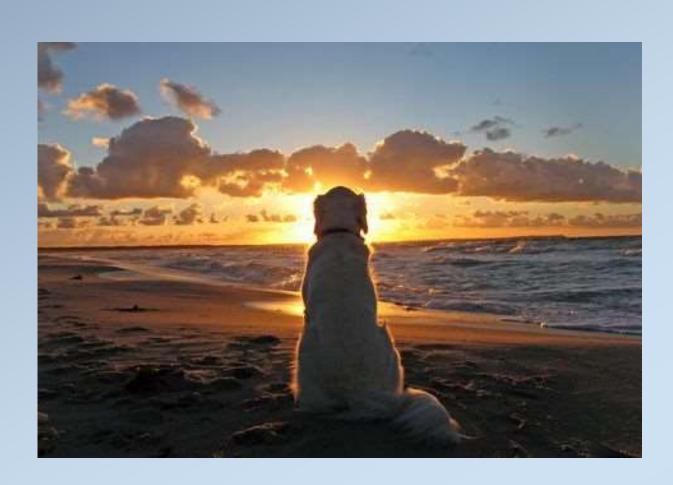
Your college VPA/Business Office will review, approve, and upload into iContracts. The VPA Offices will forward your documents, via iContracts, to the District Office for final District Business Office review and will be signed off by a District signatory.

Once the contract is fully executed, it will be sent back to the college VPA Office who will then forward on to the contract originator. It will be the contract originator's responsibility to send the fully executed contract via DocuSign back to the vendor. If the contract originator e-mails the contract directly to the vendor, please make sure to contact the vendor so they can turn off the automatic reminder function within DocuSign.

EXCITING UPDATES COMING SOON!

- District Contract Templates and Forms
 - Contract for Guest Speakers (2 pgs) New!
 - Contract Signature Request form Revised!
 - Independent Contractor Checklist New!
 - Independent Contractor Agreement Revised!
 - Standard Services Agreement Revised!
- Upcoming Trainings/Webinars
 - Independent Contracts Guidelines March 11, 2021
 - Contract and Insurance Guidelines: Part Two New! TBD

Thank You!





We hope you enjoyed the journey!

QUESTIONS?

We appreciate your interest in learning about contracts and insurance requirements.

If you would like additional information on today's topics, please contact Yanely Pulido at <u>pulidoy@smccd.edu</u> or Roxanne Brewer at <u>brewerr@smccd.edu</u>

