

# Office Of Legal Services

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# TODAY'S DISCUSSION

- I. Essential Elements Of A Contract
- II. Proper Utilization Of Legal Services' Form Contracts
- III. Process For Review And Legal Approval Of Contracts
- IV. Questions?

# ESSENTIAL ELEMENTS OF A CONTRACT



# 1. Full Legal Name & Address of the Parties

- “Alamo Community College District On Behalf Of \_\_\_\_\_ College”
- Ask The Other Party For Its Exact Official Legal Entity Name – If Not a Company, Obtain The Person’s First/Last Name; As Well As Its d/b/a
- TIN Or SSN
- Address



## 2. Dates of Performance

- ▶ Commencement/Effective Date
- ▶ Termination Date
- ▶ Automatic Renewal?



# 3. Deliverables

- ▶ What Will The Other Party Provide To The College?
- ▶ What Will The College Provide To The Other Party?
- ▶ “Consideration”

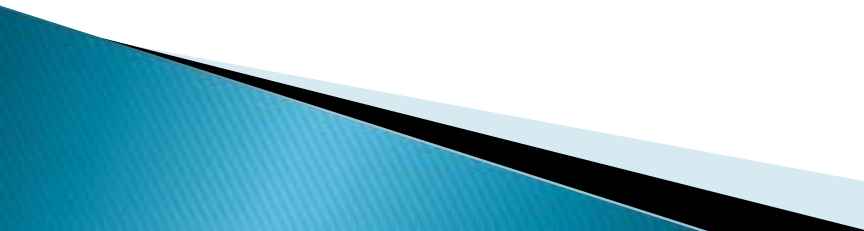


# 4. Intent

- ▶ Intent Cannot Be Inferred
- ▶ ALL Terms Must Be Written In The Agreement Or Will Be Waived
- ▶ Oral Promises Will Not Be Enforced



# 5. Form Of Contract

- ▶ First Attempt To Use An Alamo Colleges Office Of Legal Services Form of Agreement, Even If Adaptation Will Be Required;
  - ▶ Most Vendors Licensing Their Products Will Insist On Adapting Their Own Form To Protect Their Intellectual Property;
  - ▶ Vendor's Insisting On The Use Of Their Own Forms Should Be Advised That An Alamo Colleges Addendum Will Very Likely Be Required; and
  - ▶ Certain Provisions Must Be Included And Others Excluded In Contracts With Texas Public Entities Such As Alamo Colleges
- 



# 5. Additional Terms/Conditions

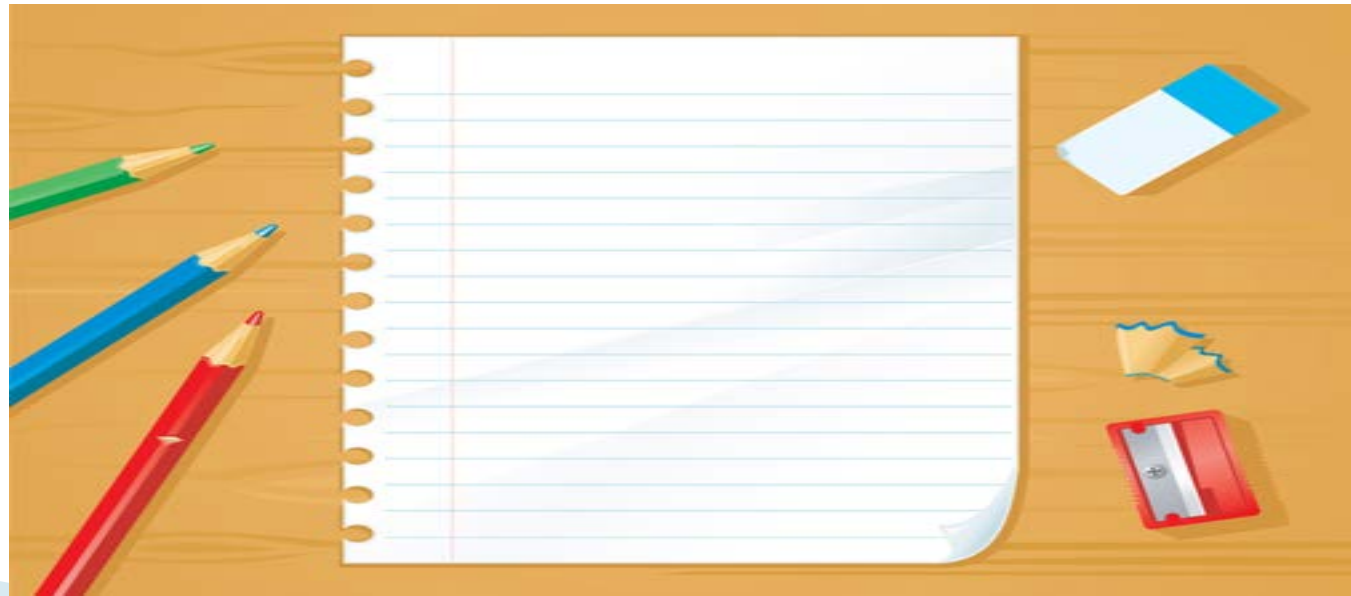
- ▶ Legal Services will add additional terms and conditions as it deems appropriate depending on the type of agreement.
- ▶ Insurance, release, indemnification, governing laws, etc.





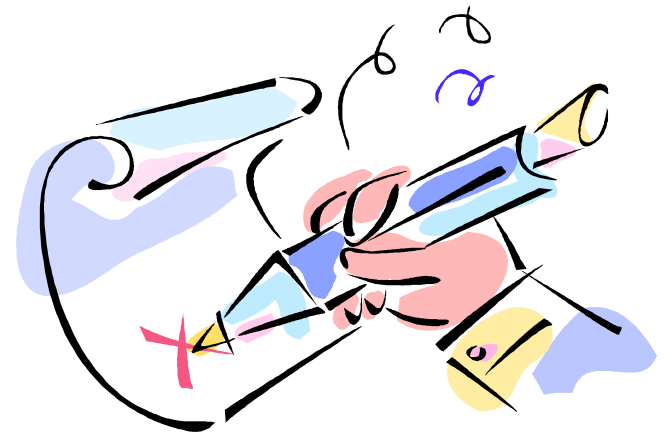
# 6. Fill in ALL Blanks

- ▶ Contract Initiator Or Monitoring Officer Is Most Knowledgeable Of The Agreement – MUST Fill In All Blanks Before Submitting For Review/Approval



# 7. Authorized Signatures

- ▶ Chancellor, Vice Chancellors, District/Assoc. Directors of Purchasing, College Presidents, and VPCS Only
- ▶ Employees Should NOT Sign Contracts Unless They Have Written Delegation of Authority To Sign
  - Personal Liability May Result



# PROPER UTILIZATION OF LEGAL SERVICES' FORM CONTRACTS



# 1. Legal Services' Webpage

- ▶ <http://www.alamo.edu/district/legal/contracts.htm>
- ▶ Forms Are A Starting Point
- ▶ No Form Will Address All Situations Or All Terms And Conditions
- ▶ Go To Webpage Each Time You Use A Form To Ensure You Have The Current Version



## 2. Read

- ▶ Read The Entire Form CAREFULLY
  - If You Are Required To Use The Vendor's/Consultant's Form, Read The Entire Document AND Fill In All Blanks
- ▶ Call VPCS With Questions
- ▶ VPCS Will Call Legal Services If Necessary



# 3. Fill In The Blank Lines

- ▶ Do NOT Submit Any Agreement For Review If You Have Not Filled In ALL Of The Blank Lines
  - Legal And VPCS Cannot Fully Assess The Agreement If It Is Incomplete
- ▶ Name(s), Dates, Payment/Pricing, TIN/SSN, Notice, Deliverables





# “NOTICE”

- ▶ Notice = Who On The Campus Will Be Notified About ANY Issue That Arises Relating To The Agreement:
  - Does NOT Have To Be The Signing Party;
  - Can Be More Than One Person – “With Copy To:”

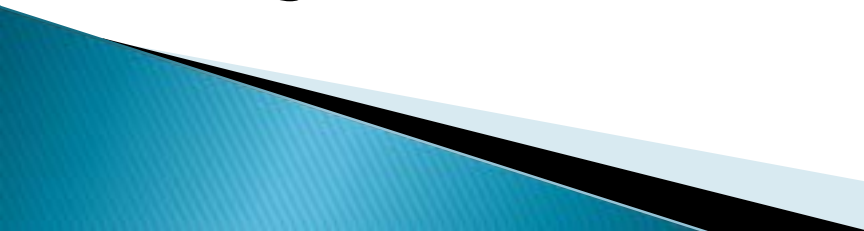


# 4. Revisions


- ▶ Contract Initiators Or Monitoring Officer Must Insert Revisions That Clearly & Correctly Reflect The Intended Deliverables/Promises Of The Parties Using The Changes Shown Feature Of The Word Processing; And
- ▶ Legal Services Must Review All Revisions To Form Agreements



## 5. Form Doesn't Work with Your Facts

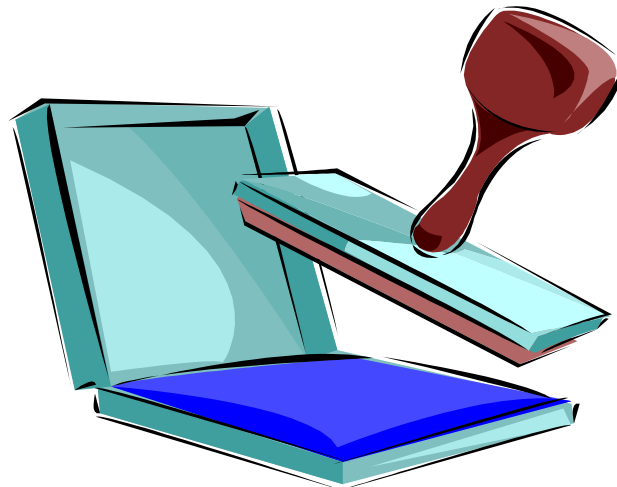
- ▶ Contact VPCS For Assistance If You Don't See A Form That Fits Your Facts.
  - ▶ VPCS Will Contact Legal Services If A Non-Website Form Is Available, If A Form Can Be Adapted, Or If An Entirely New Agreement Should Be Drafted.
  - ▶ Contract Initiator Or Monitoring Officer Must Provide Project/Program Information So That Legal Services Can Draft A Proper Agreement.
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# 6. Submit to VPCS

- ▶ All Contracts, Including Form Agreements, MUST Be Submitted To The VPCS
  - ▶ VPCS Will Either:
    - Approve + Sign Only For Services Agreements Written On An Unamended Alamo Colleges Form With Less Than \$10,000 To Be Paid; Or
    - Approve + Forward To Legal Services For Review/Approval; Or
    - Return To Initiator Or Monitoring Officer To Correct And/Or Revise
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# PROCESS FOR REVIEW AND LEGAL APPROVAL OF CONTRACTS

*APPROVED AS TO FORM ONLY*



# EXCEPTIONS

- ▶ Service Agreement; And
- ▶ Educational Service Agreement To Be Revised Per Signature Authority Revisions
- ▶ IF:
  - You Use The Current Form On The Webpage Without Deletions;
  - You Make No Revisions; And
  - The Value <\$10,000
- ▶ Then, VPCS May Sign Without OLS Approval

# EXCEPTIONS

- ▶ All Renewal Agreements
- ▶ IF:
  - NO Change in the Content;
  - Monitoring Officer/Contract Initiator Reviews, Validates and Confirms, in Writing, to Signing Authority that No Changes in the Content Have Occurred; and
  - The Original Agreement was Approved by Legal
- ▶ Signed by Chancellor, Vice Chancellors, Presidents, District/Assoc. Directors of Purchasing, or VPCS (services, <\$10k)
- ▶ Board Approval if >\$50k

# Policy and Procedures

- ▶ C.2.11 (Policy) Legal Services
- ▶ C.2.11.1 (Procedure) Review and Approval of Certain Agreements





# DEFINITIONS



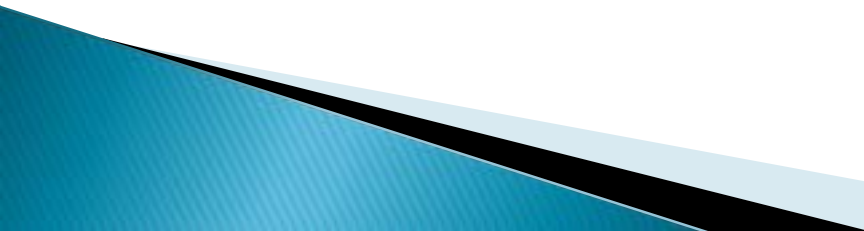
# “Agreement” / “Contract”

- ▶ Written
- ▶ Designation Or Title Is Irrelevant
- ▶ Binds the College District Or Individual Colleges
- ▶ Terms And Conditions (“Essential Elements”)


## Typical Titles:

- Affiliation Agreement
- Lease, Space, Or Facility Use Agreement
- Dual Credit Agreement
- Services Agreement
- Grant Administration Agreement & Sub-agreement
- Memoranda of Understanding or Agreement

# “Monitoring Officer”

- ▶ College District Employee
  - ▶ Duty to Implement and/or Monitor the Agreement
  - ▶ Direct, Personal Oversight over the:
    - Method;
    - Manner; and
    - Quality of Contract Services
  - ▶ Ultimately Responsible for Administering the Agreement
- 

# “Upper-level Administrator”

- ▶ College Presidents, Vice Chancellors, Chancellor, or
  - ▶ VPCS, or
  - ▶ Administrator at the Director or Higher Level of Authority in the Monitoring Officer’s Supervisory Chain of Command
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# PROCEDURE



# 1. Initial Authorization & Contract Terms

- ▶ Monitoring Officer Must Obtain Authorization to Enter into Agreement (Requisition, if appropriate)
- ▶ Monitoring Officer Shall Provide the Essential Elements of the Contract
  - Dates, Names, Payment Terms, Deliverables
  - Written assessment describing how the agreement supports the mission and strategic objectives of the College District



## 2. Management Review

- ▶ VPCS will ensure the agreement is consistent with College District's:
  - Mission, Policies, Strategic Objectives, Quality of Education Objectives, and Fiscal Authorization
- ▶ VPCS, upon approval, will forward the agreement to Purchasing or Legal Services for review or drafting
- ▶ VPCS must ensure that the Vendor Questionnaire, W-9, and Conflict of Interest form have been secured and forwarded to Purchasing



# 3. Purchasing

- ▶ If You Are Purchasing Goods or Services, the VPCS Will Forward the Requisition and Proposed Agreement to Purchasing;
- ▶ Purchasing Will Review and Ensure Compliance With Purchasing Guidelines;
- ▶ Purchasing Will Forward to Legal for Review.





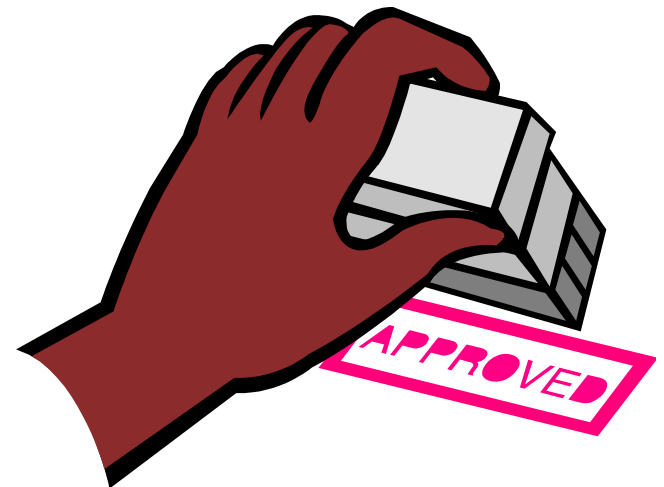
# 4. Legal Review

- ▶ Contract Review and/or Drafting
- ▶ Legal Analysis
- ▶ Providing Additional Terms and Conditions to Clearly Define the Rights and Responsibilities of the Parties
- ▶ May Require Collaboration with Monitoring Officer and VPCS
- ▶ Legal Will Stamp Either “Approved As To Form Only” or “Approved Subject To Execution Of Addendum”




# “Legally Approved as to Form Only”

- ▶ Legal Services is approving the *legal form* of the Agreement – NOT the business or operational aspects.
- ▶ Monitoring Officer is deemed to have READ and UNDERSTOOD the agreement if no questions are presented with the agreement.



# “Legally Approved Subject to Execution of Addendum”

- ▶ Legal Approval Of The Document is Conditioned On The Concurrent Execution And Delivery Of An Addendum Serving To Modify A Non-ACCD Form Agreement That Has Been Customized By Legal Services To The Counter-Party Form Of Agreement
  - ▶ Never Separate The Addendum From The Underlying Agreement Which It Modifies
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# Legal Review Does NOT Address:

- ▶ Business/Operational Concerns;
- ▶ Financial/Budgetary;
- ▶ Technical Issues;
- ▶ Administrative Concerns;
- ▶ Academic Concerns; or
- ▶ Other Non-Legal Issues
- ▶ Legal Services Will Forward Copies Of Contracts Received To Finance and Risk Management, As Well As To Grant Accounting for Grants

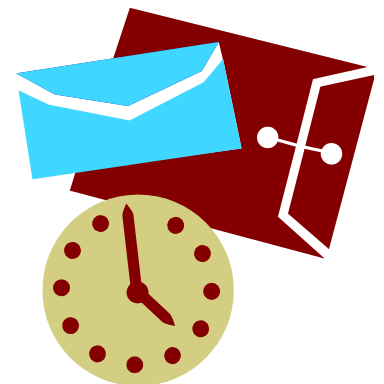


# 5. Approval by Other Party

- ▶ Legal Services Shall Return the Revised Agreement to VPCS or Purchasing
- ▶ VPCS or Purchasing Shall Coordinate Review, Approval by the Other Party
  - If Other Party has revisions, VPCS or Purchasing must forward those revisions back to Legal for review/approval



- ▶ Once, Signed By The Other Party, Copying The Monitoring Officer Approved By Legal, Legal Will Forward The Agreement To VPCS Or Purchasing, Which In Turn Will Forward The Agreement To Be Legal Signed By The Other Party,
- ▶ The Monitoring Officer Will Monitor The Signature And Return Of The Agreement To Alamo Colleges And Its Delivery To The Appropriate Alamo Colleges Signer



# 6. Fully Executed Agreements

- ▶ Copies of All Fully Executed Agreements MUST be Provided (email is preferred) to Legal Services for Our Records



# QUESTIONS?

