



Rancho Santiago Community College
District
Contract Guide

Introduction

The Rancho Santiago Community College District Guide to Contracting (hereinafter “Guide”) is designed to assist campus personnel understand the overall process of managing, maintaining, and terminating legally binding contracts.

Rancho Santiago Community College District (hereinafter “RSCCD”) and the colleges that it serves utilize a wide variety of agreements to conduct business in RSCCD’s mission of education and public service. For the purposes of this Guide, “contracts” refers to all such agreements. This Guide provides important infrastructure about who is authorized to develop and execute such agreements on behalf of RSCCD and is available on the intranet and will be edited as needed to incorporate important updates.

Section 1. Before Starting a Contract defines “contract”, assists the reader in whether a contract is needed, and who is authorized to create, amend, or terminate a legally binding RSCCD contract.

Section 2. Benefits and Risks outline the benefits of a properly executed contract and the risks associated with not having one.

Section 3. Contract Types and Key Considerations provides an overview of the types of contracts generally executed at RSCCD and a list of key considerations to evaluate prior to entering into a contract.

Section 4. Creating and Executing a Contract provides guidance through the process of creating and “executing” a written contract. Without the mandatory execution step, RSCCD is vulnerable to challenges caused by contracts that are not legally binding.

Section 5. Managing, Amending, and Terminating a contract provides an overview of how to manage a contract day-to-day to meet RSCCD’s obligations and ensures RSCCD receives what is due by the contract. This also helps guide the reader to whether a contract needs to be amended or terminated and how.

Please note that contracts for construction services and public works are outside the scope of this Guide. If you have questions about those contracts, please refer to the Facility Planning, District Construction, and Support Services Department at the District. If you have questions about this Guide, please email contracts@rsccd.edu

We hope you find Guide helpful!

ARTICLE 1. BEFORE STARTING A CONTRACT

What is a contract?

A contract, for the purpose of this Guide, is a written agreement between RSCCD and one or more parties enforceable by law.

When to create a contract?

Any RSCCD personnel, whether the District, Santa Ana College, or Santiago Canyon College (hereinafter “unit”) who engages in a transaction with a non-RSCCD party needs to have that transaction in a written contract. Such units that enter into a contract do so generally with the following in mind:

- Purchase, exchange, or receiving funding for a good or service;
- Train students, faculty or staff;
- Generate revenue;
- Exchange ideas;
- Provide a public service to the community;
- Lay the groundwork for future projects;
- Fulling a bid process requirement.

Who is authorized to create, amend, or terminate a contract at RSCCD?

Only the Board of Trustees has the authority to execute contracts on behalf of the District. This authority has been specifically delegated to specific individuals in accordance with Board Policy and Administrative Responsibilities for specific circumstances. More information about this authority is available in Section 5 of this Guide.

It is the responsibility of RSCCD personnel to follow the proper standard of procedure in providing the scope of work and other important information related to the terms of the desired contract.

NOTE: It is important to note that only specifically delegated individuals are authorized to sign contracts on behalf of RSCCD or bind RSCCD in any manner. If an unauthorized individual enters into an agreement, such individual may face personal adverse consequences as a result. Therefore, the first step in the contracting process is to always identify the signatory.

What about “piggybacking” off a current contract?

“Piggybacking” is when a contract between a third party and a party is utilized so that RSCCD can use the same contract for the same services. Important considerations include, but are not limited:

- Is the scope of the agreement the exact same as the scope of work considered for RSCCD?

- Was the agreement competitively bid?
- Are there elements in the contract that are not acceptable to RSCCD? For example, was the agreement for longer than five years? Is the insurance the same limits as the ones required by RSCCD Board of Trustees?

As seen above, there are a lot of factors to consider before piggybacking on another contract. It is the responsibility of RSCCD personnel to follow the proper standard operating procedure to ensure that RSCCD remains compliant with the laws and regulations of federal, state, and local law along with Board policies and administrative regulations. Piggybacking should never be done without consulting Purchasing Services or Contracts Management Services.

ARTICLE 2. BENEFITS AND RISKS

Benefits of having a written contract

RSCCD operates from written contracts only. Having a fully executed (signed by both parties) written contract prior to performance is considered a best practice. Several important reasons include:

- Clarifies and provides evidence for the roles, intent, and relationship of the parties.
- Spells out each parties' obligations and expectations about key elements of the transaction.
- Assigns consequences for departing from expectations or failure to abide by the terms.
- Details important information regarding the contracts' enforcement requirements.
- Helps prevent dispute between the parties.
- Provides a framework for resolving potential future conflicts.
- Helps inform how the project is to be managed once the work has begun.
- Lays out incoming and/or outgoing payment terms so everyone is clear about the costs of performing the work, the payment schedule and reimbursement method, and whether payment is contingent upon a particular milestone or deliverable.

In addition to these benefits, the negotiation, drafting, and review process that leads to a contract being satisfactory to all parties can help identify areas of potential difficulty in the relationship. Moreover, it can give all parties an opportunity to clarify the terms of their agreement and provide confidence that everyone understands the terms when the contract is signed on each party's behalf.

IMPORTANT: Once a written contract is fully executed, the unit must remember to notify Contract Management Services immediately if a contract term is not met, or if a contract provision or condition has changed. If needed, the unit's concern will be escalated to RSCCD's attorneys for assistance.

Risks of not having a written contract

There are many risks associated with performing, paying for, or accepting work (sometimes in the form of receipt of goods and/or services) without a written, fully executed contract. These risks include, but are not limited to:

- Litigation due to incomplete or inadequate performance
- Lack of payment, goods, or services (either to or by RSCCD)
- Potential loss of (a) intellectual property rights, (b) right to data, (c) professional certification
- Harm to the reputation of RSCCD or its personnel
- Delays in processing contract-related financial transactions, such as supplier payments
- Personally liable for the procurement of goods or services
- Possibility of placing future funding in jeopardy

ARTICLE 3. TYPES OF CONTRACTS AND KEY CONSIDERATIONS

Types of Contracts

Binding contracts

Important: If the essential elements of a contract are present, the type or title of the contract is not important. Regardless of the contract type, a properly executed (i.e., signed by a delegated authority) document will create legally binding (i.e., enforceable) obligations. Said differently, binding contracts create obligations that are enforceable by law.

Some common types of binding contracts include:

- Click-through Agreements
- Gifts
- Grants and Contracts
- Letter Agreements
- Letter of Intent (LOI) or Deal Memo (DM)
- Memorandum of Agreement (MOA) or Memorandum of Understanding (MOU)
- Purchase Orders

Purchase Agreements

Purchase Agreements are utilized for the purchase of goods and or services. These are the main agreements utilized by the District for the procurement of goods and/or services and generally follow the standard process for creation and execution. These can be for professional services, consultants, or other applicable services. In the case of an independent contractor, ensure that the status of the independent contractor is not in question; please utilize the resources from Purchasing Services in determining the status of an independent contractor.

Important: California Public Contract Code Section 10515 prohibits the District from entering into a subsequent contract with a consultant for the performance of services that the consultant previously recommended (aka follow-on contract). Make sure any possibility of services that may be provided later are included int such agreements.

Facility Use Agreements

When an outside party wants to use District facilities or vice versa, permits are required. The District is subject to the Civic Center Act as well as board policy and administrative regulations. Facility users that are unable to provide their own insurance may purchase coverage through TULIP; any events excluded from TULIP should be excluded from campus and should not be held on campus.

Instructional Service Agreements

When the District wishes to receive or provide specific training and services to public or private entities, Instructional Service Agreements may be used to hire individuals with specific expertise and training to teach courses that are approved through the college's curriculum approval process to provide students

college credit. These agreements must follow all requirements contained in the State Chancellor's Office Contract Guide for Instructional Service Agreements.

Non-Disclosure Agreements

Non-Disclosure Agreements are designed to ensure confidentiality between two parties for certain information. However, the District, by law, is required to open certain information to the public. Be sure that the information that is being shared can be covered under confidentiality requirements.

Click-Through Agreements

"Click-through" agreements (aka shrink wrap) are generally used in online transactions, such as licensing downloadable software. Most click-through agreements require acceptance of the agreement's terms by clicking a button that indicates acceptance of terms before the user can access a service or product.

Important: Click-through agreements are contracts. Individuals who accept click-through agreements without delegated signature authority may face personal consequences. The authority to sign a "click-through" agreement is the same as for a standard RSCCD contract.

Grants and Contracts

A "grant" benefits RSCCD by supporting activities that relate to RSCCD's mission of teaching and public service and is offered through federal, state, or local agencies. There are often regulations by federal and state rules along with additional District policies and procedures related to the District's Board of Trustees approval for accepting outside funding. These are reviewed by the grants analyst at the District office and signed by an authorized signatory.

Letter Agreements

Despite its innocuous sounding name, a letter from one party to another that contains the essential elements of a contract and is countersigned by the recipient to indicate acceptance of its terms is sometimes called a "letter agreement." Such letter agreements are contracts and must be signed by the Board of Trustees.

Letter of Intent or Deal Memo

A letter of intent or deal memo is an interim agreement that summarizes the main points of a proposed deal, spells out a course of action to be taken, or both.

Instructional Service Agreements

Instructional service agreements are agreements that exist between public agencies or private entities and a college to provide specific training and services. This can be for college-level training, practical courses, or for a certification. Individuals within said public agencies or private entities can be hired and assigned to teach courses that are approved through a college's curriculum approval process and students that successfully complete these courses can receive college credit. These are binding contracts where the terms need to be spelled out to ensure liability is properly allocated.

Educational Affiliation Agreements

A college and the departments within the college may oftentimes require or encourage students to have clinical or field training experience as a part of its curriculum in order to graduate. Such training experience is usually attained with the cooperation of an outside agency that agrees to participate in a cooperative effort with the college and/or department. Having a formal agreement is important to clearly delineate the level of liability for the parties involved. This is especially important in the event where health information pursuant to the Health Insurance Portability and Accountability Act of 1996 (hereinafter "HIPPA").

Purchase Orders

A contractual relationship can be established even if all parties do not sign the contract. For example, a purchase order delivered to another party and accepted by performance (i.e., the work is performed) creates a legal contract.

Important: If the unit receives a quotation, statement of work, invoice or other document committing RSCCD to receiving services or goods, the personnel should contact Purchasing Services immediately, before accepting any goods or beginning any services. If the unit receives a purchase order from an outside party because RSCCD is providing a good or service, the personnel should contact Accounts Payable before performing any work.

RSCCD's purchase order forms contain standard terms and conditions that ordinarily apply to all purchase orders issued by Purchasing Services. Many businesses, however, attempt to substitute their own standard terms and conditions. These terms and conditions are not approved, and they can and should be rejected or negotiated by either Purchasing Services or Contract Management Services as they may create significant obligations including, but not limited to, financial, time, and risk.

Non-Binding Agreements

Most agreements, unless carefully and successfully drafted by the responsible contracting office to be non-binding, are legally enforceable. On rare occasions, a non-binding document is an option worth considering; for example, to set out the main components of a complex transaction under negotiation, or if needed and adequate to obtain preliminary approvals, financing, etc. However, in the long run, it is generally more efficient and less risky to develop a complete and final contract.

Memoranda of Agreement, Understanding, or Intent

A memorandum of agreement, understanding, or intent expresses mutual agreement on a matter between two or more parties but is non-binding. A memorandum must identify the subject matter, parties involved, objectives that summarize the terms of the agreement, and be signed by the parties.

Important: Never attempt to draft a non-binding agreement without guidance. Do not sign an agreement provided to you by outside of Contracts Management Services. If you need or wish to create or accept a non-binding (or binding) document, always seek assistance from Contracts Management Services.

Key Considerations

Prior to entering a contract with an outside party, several key questions must be considered:

Can standard RSCCD-approved forms be used to facilitate the contract?

Generally, Contracts Management Services reviews and approves language in the District's standard forms. Using third-party forms will usually increase the contract negotiation time and may delay contract execution (i.e., signature). Standard forms must be approved by Contracts Management Services.

Will the RSCCD be providing or receiving funding?

Outgoing funding contracts are handled by Educational Services in coordination with Purchasing Services. Please reach out to Educational Services for outgoing funding contracts.

When goods and/or services are commercially available from a supplier, the contract must be competitively bid through Purchasing Services, in accordance with Board Policies and Administrative Regulations.

Will the university be entering into an agreement for the purchase of sale of goods and/or services?

If yes, the District and/or College requesting party must ensure that (a) the good or service does not compete with an existing agreement; (b) activities are consistent with the District's mission and goals; and (c) no commitments are made for items outside of RSCDD's control. If this service or good is available commercially from several different parties, depending on the value of the procurement, the best practice is to complete a competitive solicitation process for purchases and revenue-generating agreements. In some cases, competitive solicitation is required by California statute. For additional information, please refer to Purchasing Services resources.

Does an outside party intend or desire to list the university as a reference or a customer, or use its trademarks to imply an association or affiliation?

This is typically not allowed. (See California State Education Code 92000-92001 for more information). However, if yes, it is important to understand (a) how the outside party intends to use the trademarks; (b) whether such use supports RSCCD's mission, goals, socially responsible activities, and equity and inclusion guidelines; and (c) what are the risks, benefits, and protections that accompany the potential partnership. These types of requests must be reviewed by Business Services.

Is there a potential conflict of interest?

Conflict exists by virtue of a relationship that could result in an undue influence on the employee's professional judgment. In accordance with RSCCD Board Policies and Administrative Regulations, a conflict of interest exists whenever an employee's personal, professional, commercial, or financial interests or activities outside of the District have the possibility (whether potential, real, or perceived) of

- compromising the employee's judgment;
- biasing the nature or direction of scholarship;

- influencing the employee’s decision or behavior with respect to teaching, student affairs, promotions and appointments, use of District and/or college resources, interaction with human subjects, or other matters of interest to the District; or
- resulting in personal or a family member’s gain or advancement at the expense of the District.

Has Return on Investment (ROI) been calculated and is it sufficient to warrant the agreement?

ROI includes personnel time needed to handle the contract’s management, such as financial transactions (e.g., invoicing), reporting, and ensuring all obligations are met by RSCCD and by other contracting parties, etc.

Will the performance of the agreement take place in the U.S. or internationally?

International contracts tend to be more complex. There could be significant issues if performance occurs abroad.

Will any sensitive data (e.g., student, personal, financial, medical, etc.) be shared?

Any data sharing must comply with Federal law, California law, and RSCCD Board regulations and administrative regulations and policy. Considerations such as access to non-directory student information, whether Supplier is hosting a system or has incidental access, whether the data includes highly sensitive personal information, and where the data is stored will determine whether a data protection exhibit’s inclusion in the contract is warranted or not.

Is RSCCD adequately protected from risk? If risk is unavoidable, are approved mitigation plans in place?

Departments may review general guidance from Risk Management on the RSCCD intranet.

Are key contract dates and related terms clearly outlined?

A beginning and an end date must be included. A reasonable way out of the agreement should also be included in case the contract needs to be terminated prior to the contract’s end date. An option for renewal should be considered if the RSCCD contracting party believes contract renewal may be needed or desired.

Is there a clearly defined Scope of Work (SOW)?

The SOW should adequately describe each party’s responsibilities and include key dates and milestones, payment schedule, progress report requirement and frequency, etc.

Does the contract include clearly outlined (and realistic) obligations and responsibilities, as well as a mechanism to address potential conflict?

These may include notice, defined meetings of the parties, mediation, arbitration, litigation, and/or termination.

SECTION 4. CREATING AND EXECUTING A CONTRACT

Contracts Management Services

After establishing that a contract is needed, the next and most important step is to contact Contracts Management Services at contracts@rscdd.edu to draft and execute the contract. The personnel may email or call the office directly or submit a request to get the contracting process started.

Drafting a contract

In preparation for the contract drafting stage, units should download the latest applicable template from the Contracts intranet webpage located at <https://intranet.rscdd.edu/Contracts/> and complete the draft agreement. Then the personnel should email Contracts Management Services the draft agreement for review and drafting. The quality and completeness of this draft is very important, as it will enable Contracts Management Services to best represent RSCCD's interests. During the process, Contracts Management Services may require from the personnel additional information or documentation needed to draft the contract.

Reviewing and approving a contract

In some cases, before the contracting office finishes drafting the contract, Subject Matter Experts (SMEs) may need to review and approve the draft, based on the specifications of the contract. Although SMEs do not have delegated signature authority to enter into a contract on behalf of District, they do play an important role in reviewing contracts and mitigating risk. Two key offices are:

- Risk Management
- Information Technology Services

Executing a Contract

After a contract has been reviewed and approved, it must be executed (i.e., signed). Personnel should follow the standard operating procedure of their respective College and/or District to obtain the appropriate signatures.

Important: The contract must be executed by an authorized signer (i.e., a person with delegated authority or signature authority) in order for it to be "executed," and therefore legally binding. All contracts must either receive Board of Trustees approval or be ratified by the Board of Trustees to be legally binding.

While the order of operations for signatures can vary as to who signs first, a blank version of the contract must be submitted to the Board of Trustees for signature approval. It can then be signed by the authorized signatory.

Once the contract is fully executed (signed by all parties), the unit should route the agreement for signatures in accordance with their respective District or College standard operating procedures and provide a fully executed copy to Contracts Management Services.

Click-Through Agreements: Like any other legally binding contract, click-through agreements are also subject to the same execution requirements as other contracts. If the signer (or “clicker”) is not authorized to act on behalf of RSCCD, the contract is void and unenforceable, and the unauthorized individual is making a false representation of authority to use, access, or enjoy the benefits of a service.

Signature Authority

Signature Authority is fully delineated in AR 6150 found here:
<https://rscdd.edu/Trustees/Pages/policies-and-regulations.aspx>

5. Managing, Amending, and Terminating a Contract

Day-to-day contract management

Once a contract has been fully executed, it is the unit's responsibility to read and understand the terms and conditions of the contract and to manage contract obligations according to these requirements. Doing so includes, but is not limited to project administration, implementation, fund management, payment issuance, revenue collection, invoicing, timely reporting to required parties (e.g., outside parties, sponsors), seeking amendment or termination of a contract when needed, etc. In addition, the unit must maintain contract records in accordance with Board Policy 3310, AR 3310, and their respective District or College's retention record policies.

Important: Failure to perform according to the specifications of a contract could result in a material contract breach, void the contract, legal action, or other serious consequences.

Amending or updating a contract

Important: After the contract is implemented, units must notify Contracts Management Services immediately if any of the factors affecting the contract change.

Contracts should be reviewed regularly to determine if an amendment is needed. Existing contracts may need to be amended (i.e., updated or changed) if there has been a change that affects the contract, or the contract no longer meets business or policy compliance requirements. In some cases, units have a master agreement with a party that is renewed annually. In other cases, the original agreement may be old, and new laws, policies, and university practices may be in place, which require the contract to be reviewed and amended. If this is the case, the unit must contact the appropriate contracting office immediately, so they can review and update the contract as needed to ensure compliance with current norms.

Important: no contract for services may exceed five (5) years and no contract for goods may exceed three (3) years.

Terminating a contract

There are several reasons to terminate an existing contract. The main reason is failure to perform based on the requirements of the contract (i.e., breach). Breach may include payment issues, lack of insurance, failure to perform services as set forth in the contract, or any other factor. As units manage their contracts, they must contact Contracts Management Services immediately for guidance on next steps if they notice that milestones are not being completed according to the contract's Statement of Work requirements.

Other reasons to terminate a contract include:

- All parties mutually agree to end the contract.

- The university wishes to exercise a contract's "termination for convenience." (Termination for convenience is not a condition that is typically exercised, but it is good to include in contracts as it allows the university to end the contract at will.)
- An outdated agreement must be updated and it is easier to terminate the original contract and enter into a new one.
- Another party acquires the external contracting party's business or organization. In this case, RSCCD usually has the right to either terminate or allow the contract to be "assigned" to the new party.