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Chapter:      **Fiscal & Business Services**

Modification No. 001

Subject:      **Contracts**

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The Board of Trustees is authorized by state law to enter into agreements which are advisable for the establishment and operation of the College. Except for those contracts individually authorized by a Board resolution which specifies otherwise, the President is authorized to execute all contracts on behalf of the College and to delegate all or part of her/his contracting authority. For purposes of this policy, the authorization to execute contracts includes the authority to execute all documents on behalf of the College, including but not limited to those related to the acceptance of funds, leases, issuance of permits, software licenses, proposals for financing of projects, requests for operational licenses and forms necessary in connection with the grant process.

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Board Approval: July 28, 1986.

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**I.      Definition of Contract**

There are numerous definitions of the word contract and different ways that a contract can be formed. For purposes of these procedures, a contract should be considered as a promise enforceable at law directly or indirectly. It is any agreement that affects the legal relationship between the College and another person or entity. To be considered a contract, there must be at least one promise and something of value (e.g. money) promised or actually given. It is possible for contracts to be oral as well as written, formal as well as informal. In order for a contract to be a binding obligation of the College it must be entered into by an individual who is authorized to enter into that contract. For example, a written contract must be signed by someone who is authorized to sign the contract.

While purchase orders are contracts and may not be awarded, amended or modified by unauthorized individuals, these procedures do not apply to the standard format College purchase order.

**II.      General**

- A.**      In order to enter into discussions about, draft or negotiate a contract on behalf of the College a person must be authorized to do so. These procedures apply in those circumstances where a purchase, award, contract etc. has been duly authorized or the person so negotiating has the authority to do so. No contracts, drafts of contracts etc. may be initiated and processed for signature unless there is authorization for the contract. This does not preclude review of contract documents.
- B.**      As a general rule the College does not enter into oral contracts. Only in extraordinary circumstances will such a contract be permitted. Under such circumstances (1) the terms and conditions of the oral contract must be approved in advance by either the President or the General Counsel and (2) the originating office must confirm all the terms and conditions in writing within five (5) days of the oral agreement. That confirmation must be accepted and acknowledged by the party contracting with the College.
- C.**      Because of the complexity, implications, frequency, and variety of contracts, each contract must be reviewed to determine if the College can and should comply with the terms and conditions, if it is in the best interest of the College and on the most favorable terms which can be obtained by the College, if sufficient funding is available, if it is consistent with the College's policies and procedures, if it is consistent with other College documents and if it is consistent with externally mandated rules and regulations. No contract is to be submitted to the General Counsel for review as to legality unless all of the above items have been reviewed by the appropriate faculty member, support, associate and administrative staff. While it is the General Counsel's responsibility to determine if a proposed contract is legal, it is expected that proposed contracts will reflect previously issued legal opinions or advice.

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**III. Contracting Process****A. Initiation**

Preliminary discussions regarding drafting or negotiation of a contract may be initiated by any College employee who is acting within the scope of his/her authority. If an employee is not specifically authorized to negotiate a contract, that employee must receive prior approval for any negotiation. No employee should act in a manner which would lead another party to believe that that employee is authorized to negotiate or execute a contract on behalf of the College unless that employee has been granted such authority in writing.

**1. Standard Format**

For those contracts which are of a kind for which a standard format or standard clauses have been developed or approved by the General Counsel, the approved format must be used unless the General Counsel approves otherwise. In such circumstances, the basis of any initial draft contract shall be in the College's format and/or contain appropriate standard clauses. The General Counsel is authorized to distribute a list of approved formats and/or clauses.

**2. Other Format**

a. For those contracts for which there is no standard college format, the initiating office should prepare a draft contract using other form contracts for guidance. If additional assistance is required, the drafter should first consult with his/her supervisor, then the appropriate administrator(s) and then, if necessary, with the General Counsel. While use of standard contractor prepared contracts is to be avoided, individual clauses may be utilized. In those circumstances where it is determined that there is no alternative to using a standard contractor prepared contract, an addenda which at a minimum includes standard College language should be prepared or language inserted which incorporates the terms and conditions on the reverse side of a Montgomery College Purchase Order.

b. The only exceptions to "a." above are as follows:

- (1) contracts with existing contractors with the College where both parties have previously agreed to form amendments to the standard contract. In such instances the form amendment shall be prepared prior to submittal for execution; or
- (2) upon recommendation of the appropriate administrator and approval of the General Counsel.

**B. Review****1. Responsibility**

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It is the responsibility of the originating office, the appropriate supervisor and the appropriate administrator(s) to review and approve all contracts before they are transmitted for execution on behalf of the College. Supervisor(s) and administrator(s) will be held accountable for contracts.

2. Nature of Review

- a. Once authorization to negotiate a contract has been obtained and a contract has been drafted, the originating office and the appropriate administrator shall review and approve a contract giving consideration to the following:
  - (1) Whether the proposed contract can and should be administered by the originating office.
  - (2) Whether the College and the contractor can comply with all the terms and conditions of the contract and whether the contract is in the best interest of the College and on terms that are the most favorable that the College can obtain. If the contract will involve work by College offices other than the originating office, it is the responsibility of the originating office to obtain the concurrence of each and every affected office.
  - (3) Whether sufficient funds are available.
  - (4) Whether the contract has been developed in accordance with and is consistent with the College's policies and procedures and all other relevant College documents, such as purchase orders and other contracts to which the College is a party.
  - (5) Whether all the necessary required external and internal coordination has been completed.
  - (6) Whether the contract is consistent with externally mandated rules and regulations.
- b. Contracts shall not be transmitted for execution unless the above conditions have been met. The act of transmitting a contract for execution will constitute the transmitter's certification that the above conditions have been met.
- c. Contracts submitted for signature must be accompanied by background information regarding the nature of, need for and authorization for the activity which is the subject matter of the contract and a copy of any applicable Board Resolution. Contracts for purchases based on or incorporating procurement contracts of other state and local governments must be accompanied by a copy of that contract and a statement as to the consistency of its terms and conditions with College needs.
- d. Contracts submitted for signature must be accompanied by a

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certification from the Vice President of Finance/Chief Financial Officer that sufficient budgeted funds are available for such purposes if an expenditure is involved, and that the budget is acceptable if the College is the service provider or grant recipient.

- e. Generally all signatures from all parties should be obtained before a contract is signed by the authorized individual on behalf of the College.
- f. The General Counsel shall review and approve proposed contracts for form and legality. In those instances where the General Counsel has approved a standard contract, this approval is not required as long as there are no substitutions for, additions to or deletions from the standard approved language.
- g. Contracts which are submitted for signature must be submitted in final format. Two original copies of every contract should be submitted so that the College and the contractor may each have an original.

C. Distribution

- 1. Upon execution of the agreement by all parties, copies of the contract will be distributed by the originating/initiating office as follows:
  - a. General Counsel
  - b. Vice President of Finance/Chief Financial Officer (if appropriate)
  - c. Originating Office
  - d. Contractor (if appropriate)
  - e. Implementing Office (if not one of the above)

IV. Administration of Contracts

- A. Unless otherwise specified, after an agreement is executed, the initiator is responsible to the appropriate major administrator for the administration of the agreement. For purposes of these procedures, administration of the agreement includes but is not limited to the authority to perform the functions specified below in accordance with applicable policies and procedures and contract documents commencing on the date that the contract is signed and terminating on the date that the contract performance is completed (including final payment and acceptance) or terminated.
  - 1. Monitoring the implementation of the agreement to assure compliance by the contractor(s) with all the contractor(s) obligations including but not limited to those concerning timeliness and quality;
  - 2. Providing direction to the contractor to ensure satisfactory and complete performance;
  - 3. Maintaining necessary documentation and records regarding contractor performance and other pertinent matters;
  - 4. Furnishing timely written notice of contractor performance failures to the

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General Counsel as appropriate;

5. Determining or recommending of acceptance or rejection of contractor performance, as appropriate;
6. Assuring compliance by the College with all the terms and conditions of the agreement and any update of those terms and conditions as required;
7. Preparing, receiving, furnishing and/or transmitting, as appropriate, any notices or reports required either under the terms of the contract or as a result of implementation;
8. Approving or rejecting invoices for payment and transmittal for appropriate action;
9. Taking appropriate action to inform all appropriate individuals of the terms and conditions of a contract. For example, individuals who use licensed software must be aware of the terms and conditions of the applicable license agreement including the restrictions on usage and copying of that software;
10. Recommending contract modifications or terminations for default or for the convenience of the college.

B. Unless specifically authorized elsewhere in Policies and Procedures or in the contract document(s) itself, administration of the agreement does not include the authority to perform the following functions:

1. Alter or modify contracts;
2. Terminate or cancel contracts;
3. Effect procurements;
4. Interpret ambiguities in contract language;
5. Waive the College's contractual rights;
6. Settle disputes or claims.

V. Custody of Contracts

The General Counsel is designated as the official custodian of all contracts of the College. One (1) copy of every active contract to which the College is a party shall be sent to the General Counsel. In addition, the initiator (originator) shall maintain on file one copy of every active contract for which the initiating office is responsible and notify the General Counsel if a contract should no longer be considered active or the status of a contract has or should be changed. This section does not apply to software licenses not actually signed by the College and maintained by the Office of Educational Support Services.

VI. Delegation of Authority

The President has delegated the general authority to execute contracts on behalf of the

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College to the Senior Vice President for Administrative and Fiscal Services, the Senior Vice President for Academic Affairs, the Senior Vice President for Student Services, and the Senior Vice President for Advancement and Community Engagement. For purposes of these procedures, contracts for the acquisition of goods and /or services are processed through a centralized procurement process. The Procurement Office is the central purchasing office. For purposes of this procedure, the authorization to execute contracts includes the authority to execute all documents on behalf of the College, including but not limited to those related to the acceptance of funds, leases, releases, issuance of permits, software licenses, proposals for financing of projects, requests for operational licenses and forms necessary in connection with the grant process.

VII. Sub-Delegation of Authority

- A. In certain specific circumstances, the Senior Vice President for Administrative and Fiscal Services, the Senior Vice President for Academic Affairs, the Senior Vice President for Student Services, and the Senior Vice President for Advancement and Community Engagement, with the approval of the President, have further sub-delegated the following signatory authority for contracts in standard format:
  1. Contracts issued by the Procurement Office to the Senior Vice President for Administrative and Fiscal Services, who has sub-delegated the authority to the Director of Procurement to execute contracts which do not exceed twenty-five thousand dollars (\$25,000).
  2. Contracts for Student Activities - contracts for speakers, entertainers, exhibitors or similar activities for the educational or recreational benefit of students - (in standard College format) - to the Senior Vice President for Student Services who has sub-delegated the authority to the vice president/provosts of the Germantown, Rockville and Takoma Park/Silver Spring campuses who have sub-delegated the authority to the respective deans of student development and instructional deans.
  3. Extended Learning Services agreements (in standard College format) - to the Senior Vice President for Academic Affairs who has sub-delegated the authority to the Vice President/Provost for Workforce Development and Continuing Education.
  4. Contracts for advertising to the Senior Vice President for Administrative and Fiscal Services who has sub-delegated the authority to the Senior Vice President for Advancement and Community Engagement.
  5. Agreements (in standard College format) with facilities or service providers which permit students designated by the College to obtain clinical practical learning experiences as part of the College's educational program to the Senior Vice President for Academic Affairs, who has sub-delegated the authority to the vice president/provosts of the Germantown, Rockville and Takoma Park/Silver Spring campuses, and to the Vice President/Provost for Workforce Development and Continuing Education.
  6. Application for permits for the operation of the Child Care Services at the Germantown, Rockville and Takoma Park campuses - (where application

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has been previously signed by the General Counsel) to the Senior Vice President for Student Services, who has sub-delegated the authority to the Director of Child Care Services.

7. Requests for license to sell alcoholic beverages - (where application has been previously signed by the General Counsel) to the Senior Vice President for Administrative and Fiscal Services, who has sub-delegated the authority to the Director of Auxiliary Services.
8. Salary reduction agreements with College employees for purposes of establishing tax sheltered annuities - to the Senior Vice President for Administrative and Fiscal Services, who has sub-delegated the authority to the Vice President of Human Resources, Development, and Engagement, who has sub-delegated the authority to the Director of College Benefits Programs.
9. Agreements with TIAA-CREF, Aetna and the Maryland State Retirement System - to the Vice President for Administrative and Fiscal Services, who has sub-delegated the authority to the Vice President of Human Resources, Development, and Engagement, who has sub-delegated the authority to the Director of College Benefits Programs.
10. Applications for service for the following utilities: telephone (except for data lines), gas, water, sewer and electric - to the Senior Vice President for Administrative and Fiscal Services, who has sub-delegated the authority to the Vice President of Facilities and Security.
11. Applications for service for data lines - to the Vice President for Administrative and Fiscal Services who has sub-delegated the authority to the Vice President of Instructional and Information Technology/Chief Information Officer.
12. Applications for grants and/or proposals - to the Senior Vice President for Academic Affairs, the Senior Vice President for Student Services, or the Senior Vice President for Advancement and Community Engagement – after review and approval for submission by the Grants Review Committee.
13. Industrial alcohol documents for the procurement of industrial alcohol for use in science instructional programs - to the Senior Vice President for Academic Affairs, who has sub-delegated the authority to the vice president/provosts of the Germantown, Rockville, and Takoma Park/Silver Spring campuses.
14. Applications for obtaining or transferring title of vehicles - to the Senior Vice President for Administrative and Fiscal Services, who has sub-delegated the authority to the Director of Procurement.
15. On the job training (OJT) contracts under the Workforce Investment Act, etc., (in standard College format) to the Senior Vice President for Academic Affairs.
16. Training contracts for one course or one day (in standard College format)

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to the Senior Vice President for Academic Affairs, who has sub-delegated the authority to the Vice President/Provost for Workforce Development and Continuing Education.

17. Contracts for course development which costs less than \$1500 (in standard College format) to the Senior Vice President for Academic Affairs, who has sub-delegated the authority to the Vice President/Provost for Workforce Development and Continuing Education.
18. Renewal of contracts for goods or services for an additional term if such renewal has been previously authorized, when there is no change in the terms of the conditions of the contract except for pricing - to the Senior Vice President for Administrative and Fiscal Services, who has sub-delegated the authority to the Director of Procurement.
19. Agreement for Contract Services for Office of Institutional Advancement College Relations (in standard College format) which does not exceed fifteen hundred dollars (\$1,500.00), to the Senior Vice President for Administrative and Fiscal Services, who has sub-delegated the authority to the Senior Vice President for and Community Engagement.
20. Agreement for Small Business Trainers (in standard College format) to the Senior Vice President for Academic Affairs, who has sub-delegated the authority to the Vice President/Provost for Workforce Development and Continuing Education.
21. Agreement for Professional Services for College Theatre (in standard College format) which does not exceed three thousand dollars (\$3,000.00) to the Senior Vice President for Academic Affairs, who has sub-delegated the authority to the vice president/provosts of the Germantown, Rockville and Takoma Park/Silver Spring campuses who have sub-delegated the authority to the respective instructional deans.
22. Honorarium Confirmation (in standard College format) to the Senior Vice President for Academic Affairs who has sub-delegated the authority to the vice president/provosts of the Germantown, Rockville and Takoma Park/Silver Spring campuses who have sub-delegated the authority to the respective instructional deans.
23. Agreement for Special Programs for Gifted and Talented Students (in standard College format) to the Senior Vice President for Academic Affairs, who has sub-delegated the authority to the Vice President/Provost for Workforce Development and Continuing Education.
24. Agreement with Artist for Participation in Outdoor Sculpture Program (in standard College format) to the Senior Vice President for Academic Affairs, who has sub-delegated the authority to the vice president/provosts of the Germantown, Rockville and Takoma Park/Silver Spring campuses who have sub-delegated the authority to the appropriate area instructional deans.
25. Agreement with Artist for Participation in Outdoor Sculpture Traveling Exhibition Program (in standard College format) to the Senior Vice

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President for Academic Affairs, who has sub-delegated the authority to the vice president/provosts of the Germantown, Rockville and Takoma Park/Silver Spring campuses who have sub-delegated the authority to the appropriate area instructional deans.

26. Master Agreement with Receiving Institution Participating in the Outdoor Sculpture Traveling Exhibition Program (in standard College format) to the Senior Vice President for Academic Affairs, who has sub-delegated the authority to the vice president/provosts of the Germantown, Rockville and Takoma Park/Silver Spring campuses who have sub-delegated the authority to the appropriate area instructional deans.
27. Tax Exemption Certificates or other forms verifying tax exempt status, to the Senior Vice President for Administrative and Fiscal Services, who has sub-delegated the authority to the Vice President of Finance/Chief Financial Officer.
28. Contracts between Continuing Education and Workforce Investment Act to the Senior Vice President for Academic Affairs on behalf of Workforce Investment Act and to the Vice President/Provost for Workforce Development and Continuing Education.
29. Agreements for Continuing Education instructor contracts to the Senior Vice President for Academic Affairs, who has sub-delegated the authority to the Vice President/Provost for Workforce Development and Continuing Education, who has sub-delegated the authority to the respective Continuing Education directors.
30. Agreements for professional performance (in standard College format) to be performed in the Performing Arts Center and the Cultural Arts Center to the Senior Vice President for Academic Affairs, who has sub-delegated the authority to the Vice President/Provost of the Rockville and/or Takoma Park/Silver Spring Campus, who has sub-delegated the authority to the appropriate area instructional dean for contracts with dollar values up to \$25,000.
31. Agreements with media or video distributors/vendors related to the licensing, sale, purchase or loan of audiovisual materials to the Vice President for Senior Administrative and Fiscal Services, who has sub-delegated the authority to the Director of Instructional Technology Learning Centers.
32. Non-bargaining unit faculty employment contracts, to the Senior Vice President for Administrative and Fiscal Services, who has sub-delegated the authority to sign contracts of one academic year or less to the Vice President of Human Resources, Development, and Engagement.
33. "Notice of Initial Appointment" form used to employ bargaining unit faculty members, to the Senior Vice President for Academic Affairs, who has sub-delegated the authority to the deans.
34. Training consultant contracts (in standard College format) which does not exceed ten thousand dollars (\$10,000), to the Senior Vice President for

Administrative and Fiscal Services, who has sub-delegated the authority to the Director of Employee and Labor Relations and Recruitment.

B. The sub-delegation of authority specified above is limited to the extent that the General Counsel has approved a standard format and/or language for the enumerated contracts or previously signed an application and as long as there are no substitutions for, additions to, or deletions from the standard approved language.

VIII. Reporting

Each Senior Vice President shall submit to the General Counsel by September 1 of each year an annual report of all contracts signed pursuant to the delegated authority during the previous fiscal year.

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Administrative Approval: July 29, 1986; April 20, 1988; June 7, 1988; January 3, 1989; July 27, 1989; October 17, 1990; April 23, 1991; December 10, 1991; July 30, 1992; March 21, 1994; February 22, 1994; January 3, 2000, June 24, 2013.