

CHAPTER 3: COMMITMENT VOUCHERS

RULE 3-1: COMMITMENT VOUCHERS

RULE 3-2: PURCHASE ORDERS

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RULE 3-1: COMMITMENT VOUCHERS

1. AUTHORITY:

§24-30-202 (1-4), and (5)(a), C.R.S. (State Controller Authority)

§24-30-1401, et seq., C.R.S. (Professional Services)

§24-102-206, C.R.S. (Contract Performance Outside United States or Colorado)

§24-106-103, C.R.S. (Centralized Contract Management System)

§24-106-106, C.R.S. (Right to Audit Records)

§24-106-107, C.R.S. (Monitoring of Vendor Performance)

2. DEFINITIONS:

All references to “contract” or “agreement” refer to legally binding documents between the State and another party or documents describing the agreement between State Agencies and Institutions of Higher Education. The terms “contract”, and “agreement” are used interchangeably in the following definitions to reflect their common usage in the State and include any amendments and modifications thereto.

- 2.1.** Advance Payment – A payment made for goods or services prior to the receipt and acceptance of the goods or the completion and acceptance of the services.
- 2.2.** Advice of Employment – A document that includes an offer of employment.
- 2.3.** Contract – Any Commitment Voucher that constitutes a State Contract or Purchase Order under this Fiscal Rule, where the principal purpose is to acquire supplies, services, or construction or to dispose of supplies for the direct benefit of the State.
- 2.4.** Commercial Cards – See Fiscal Rule 2-7 (State Commercial Cards).
- 2.5.** Emergency – A situation which creates a threat to public health, welfare, or safety such as may arise by reason of floods, epidemics, riots, equipment failures, or such other reasons as may be designated by the State Controller or a delegate of the State Controller as an emergency, and that creates an immediate and serious need for goods, services, or construction without time to issue a Purchase Order or State Contract and the lack of which would seriously threaten:
 - 2.5.1.** The functioning of State government or its programs;
 - 2.5.2.** The preservation or protection of property; or
 - 2.5.3.** The health or safety of any person or persons.
- 2.6.** Encumbrance – An amount reserved on the State Financial System or an approved State Agency or Institution of Higher Education financial system to reflect a formal obligation of the State.
- 2.7.** Financing – The receipt of a loan or issuance of bonds or certificates of participation.
- 2.8.** GAAP – See Fiscal Rule 1-1 (Accounting Principles and Standards).
- 2.9.** Grant – See Fiscal Rule 3-4 (Grants).
- 2.10.** Interagency Agreement – See Fiscal Rule 3-5 (Interagency Agreements).
- 2.11.** Major Information Technology Project – See §24-37.5-102(2.6), C.R.S.

- 2.12.** Party – An individual or entity who is not a State Agency or Institution of Higher Education. If appropriate in the context, the term “Party” may also refer to multiple individuals or entities who are not State Agencies or Institutions of Higher Education.
- 2.13.** Personal Services Commitment Voucher – A Commitment Voucher between a State Agency or Institution of Higher Education and a Party, where the Party provides labor, time, or effort for the direct benefit of the State. An individual or entity performing services under a Personal Services Commitment Voucher is an independent contractor and not an employee of the State.
- 2.14.** Procurement Official – The head of the procurement function for an Institution of Higher Education or for a State Agency who has received delegation from the State’s Chief Procurement Officer.
- 2.15.** Procurement Code Violation – A purchase made in violation of the Procurement Code and the Procurement Rules. A Procurement Code Violation is subject to ratification in accordance with the Procurement Code and the Procurement Rules.
- 2.16.** Purchase – The act of incurring an obligation on behalf of the State in order to acquire goods or services from another entity
- 2.17.** Purchase Order or PO – See Fiscal Rule 3-2 (Purchase Orders).
- 2.18.** Small Dollar Grant Award – See Fiscal Rule 3-4 (Grants).
- 2.19.** Small Purchase Documentation – Documentation of a purchase, which does not require a Purchase Order, Grant Agreement, Interagency Agreement or State Contract under §4 of this Fiscal Rule, but does require, without limitation, an invoice, billing statement, itemized receipt, court order, travel authorization, approved Vendor Agreement, or any other document appropriate to the transaction and approved by the State Controller.
- 2.20.** State Contract – See Fiscal Rule 3-3 (State Contracts).
- 2.21.** Statutory Violation – Liabilities incurred or payments made on the State’s behalf without prior approval of a Purchase Order, Grant Agreement, Small Dollar Grant Award, or State Contract by the State Controller or a proper delegate, when required under this Fiscal Rule, or without the prior approval of a State Contract by the State’s Chief Information Officer or a proper delegate for a Major Information Technology Project. A Procurement Code Violation does not necessarily constitute a Statutory Violation under these Fiscal Rules.
- 2.22.** Vendor Agreement – Any form of agreement provided by a contractor or vendor, including an online or “click-through” agreement, containing contractual provisions relating to the goods and/or services to be provided by such contractor or vendor.

3. RULE:

- 3.1.** A State Agency or Institution of Higher Education shall not disburse funds unless the disbursement is supported by a Commitment Voucher and complies with Fiscal Rule 2-1. Prior to entering into a Commitment Vouchers for proposed expenditures, State Agencies and Institutions of Higher Education shall ensure the following:
 - 3.1.1.** The purchase satisfies all appropriate procurement requirements;
 - 3.1.2.** The Commitment Voucher used meets the requirements for that type of Commitment Voucher, as defined by Fiscal Rules; and
 - 3.1.3.** The purchase complies with applicable statutes, executive orders, rules, and policies.
- 3.2.** In addition to the requirements in §3.1 of this Fiscal Rule, State Agencies and Institutions of Higher Education shall ensure the following for all Commitment Vouchers, other than Small

Purchase Documentation:

- 3.2.1.** The Commitment Voucher adequately defines all parties involved in the transaction, the respective performance obligations of the parties, the maximum amount payable and pricing, the required performance date, the timing of payments, and the entity responsible for payments;
- 3.2.2.** The Commitment Voucher terms and conditions represent a commercially reasonable allocation of risks between the parties and any risks to the State are outweighed by the benefits to the State; and
- 3.2.3.** The expenditure is encumbered prior to or concurrently with the execution of the Commitment Voucher.
 - 3.2.3.1.** The Encumbrance of funds is not required for the following:
 - 3.2.3.1.1.** Agreements related to the issuance of Financing where the payment for that work will be paid out of the proceeds of the Financing and the State is not obligated to pay if the Financing is never received by the State.
 - 3.2.3.1.2.** Agreements where the total amount of payments are calculated as a portion of revenues received, and the State is not obligated to pay until after the revenues are actually collected.
 - 3.2.3.1.3.** Any of the items specified in §5.3 of this Fiscal Rule.
 - 3.2.3.2.** Regardless of the total term of a Commitment Voucher, a State Agency or Institution of Higher Education shall only encumber funds for the current State fiscal year of the Commitment Voucher, unless the Agency or Institution of Higher Education has continuous spending authority for that Commitment Voucher.

4. COMMITMENT VOUCHERS

- 4.1.** Purchase Orders – When State Agencies and Institutions of Higher Education are required to use a PO as the Commitment Voucher under this Fiscal Rule, the State Agency or Institution of Higher Education shall use the PO in accordance with Fiscal Rule 3-2 (Purchase Orders) and shall comply with all requirements of that Rule.
- 4.2.** State Contracts – When State Agencies and Institutions of Higher Education are required to use a State Contract as the Commitment Voucher under this Fiscal Rule, the State Agency or Institution of Higher Education shall use the State Contract in accordance with Fiscal Rule 3-3 (State Contracts) and shall comply with all requirements of that Rule.
- 4.3.** Grants – When State Agencies and Institutions of Higher Education are required to use a Grant Agreement or Small Dollar Grant Award as the Commitment Voucher under this Fiscal Rule, the State Agency or Institution of Higher Education shall use the Grant Agreement or Small Dollar Grant Award in accordance with Fiscal Rule 3-4 (Grants) and shall comply with all requirements of that Rule.
- 4.4.** Interagency Agreements – When State Agencies and Institutions of Higher Education are required to use an Interagency Agreement under this Fiscal Rule, the State Agency or Institution of Higher Education shall use the Interagency Agreement in accordance with Fiscal Rule 3-5 (Interagency Agreements) and shall comply with all requirements of that Rule.
- 4.5.** Small Purchase Documentation – When State Agencies and Institutions of Higher Education

use Small Purchase Documentation as the Commitment Voucher under this Fiscal Rule, the State Agency or Institution of Higher Education shall ensure that the Small Purchase Documentation describes the following:

- 4.5.1. The goods or services being purchased and the reason for the disbursement of funds if the description of the goods or services doesn't otherwise clearly specify the reason;
- 4.5.2. The total amount due for the goods delivered or services provided and sufficient detail or itemization to ensure that the proper amount will be paid and the prices are fair and reasonable; and
- 4.5.3. Sufficient detail to determine if the delivery of goods or provision of services was successfully completed and accepted.

Separate Small Purchase Documentation is not required for purchases made by travelers that do not require a receipt under Fiscal Rule 5-1(Travel), as the travel authorization constitutes the Small Purchase Documentation for those purchases. As the Commercial Card is only a method of payment, purchases made with a Commercial Card require Small Purchase Documentation and may also require another form of Commitment Voucher.

5. DOLLAR LIMITS AND REQUIREMENTS:

- 5.1. The following table describes the required Commitment Voucher for the different types of agreements.

TYPE OF AGREEMENT	DOLLAR LIMIT	REQUIRED DOCUMENT FOR COMMITMENT VOUCHER
Goods	\$5,000 and less	Small Purchase Documentation, PO, or State Contract
	More than \$5,000	PO or State Contract
Services	\$5,000 and less	Small Purchase Documentation, PO, or State Contract
	More than \$5,000 and not more than \$150,000	PO or State Contract
	More than \$150,000	State Contract

Grants	\$5,000 and less	Small Purchase Documentation, Small Dollar Grant Award, or Grant Agreement
	More than \$5,000 and not more than \$150,000	Small Dollar Grant Award or Grant Agreement
	More than \$150,000	Grant Agreement
Capital Construction / Controlled Maintenance	\$150,000 and less	Construction PO (See Fiscal Rule 4-1)
	More than \$150,000	Construction Contract (See Fiscal Rule 4-1)
Professional Services under §24-30-1401, et seq., C.R.S., including architectural, engineering, land surveying, industrial hygienist, and landscape architect services	Any dollar amount	State Contract
Real Property lease or license of land, buildings, or a portion thereof for term of more than 30 days	Any dollar amount	State Contract
Agreements Between Agencies and/or Institutions of Higher Education	Any dollar amount	No Commitment Voucher Needed; Use Interagency Agreement in accordance with Fiscal Rule 3-5

- 5.2.** Dollar Limits – the dollar limits shown in the table in §5.1 of this Fiscal Rule apply to the total term of the Commitment Voucher. If a single Commitment Voucher will be used for a purchase that will span multiple fiscal years, then the total of all fiscal years included in that Commitment Voucher is the amount to which the dollar limit will apply. State Agencies and Institutions of Higher Education shall use a single Commitment Voucher for purchases in accordance with the State Controller Contract, Grant, and Purchase Order Policies regarding single purchases.
- 5.3.** Protecting the State’s Interests – State Contracts shall be used in situations in addition to those described in this Section if other Commitment Vouchers do not adequately protect the State’s interests. Refer questions regarding the proper form of Commitment Voucher to the Office of

the State Controller.

5.4. Disbursements Exempt from Purchase Order or State Contract – A Purchase Order or State Contract is not required for the following types of disbursements regardless of the amount of funds disbursed:

- 5.4.1.** Access to internet-based, on-demand training classes and webinars;
- 5.4.2.** Advices of Employments;
- 5.4.3.** Calculated payments required under a program within a State Agency or Institution of Higher Education (e.g., formula distributions, other distributions required by regulatory or statutory formulas);
- 5.4.4.** Copier rental agreements when the payment is based on a defined rate per copy;
- 5.4.5.** Conference registrations;
- 5.4.6.** Conference facilities at hotels or other venues that include, but need not be limited to, meeting rooms, audio visual equipment, catering, and guest accommodation rooms.
- 5.4.7.** Financial aid or tuition assistance programs that is paid directly to a beneficiary;
- 5.4.8.** Membership dues and fees, and participation assessments, that do not include services or examinations;
- 5.4.9.** Insurance premiums;
- 5.4.10.** Services needed by the Department of Law, or by another State Agency or Institution of Higher Education with the approval of the Department of Law to seek outside counsel, to support civil or criminal proceedings, civil or criminal enforcement, or legal services (e.g. attorneys, expert consultants, expert witnesses, mediators, and arbitrators).
- 5.4.11.** Court orders related to criminal proceedings, civil enforcement, or legal services.
- 5.4.12.** Intra-agency or intra-institution purchases;
- 5.4.13.** Moving expenses reimbursed to State employees or paid on behalf of State employees;
- 5.4.14.** Payroll and related disbursements to employees (withholding, authorized benefits, etc.), including reimbursements or payment for Travel as described in Fiscal Rule 5-1;
- 5.4.15.** Postal and other delivery charges, including messenger fees, post office boxes and postage meters;
- 5.4.16.** State program payments to or on behalf of individuals qualified for the program's benefits;
- 5.4.17.** Subscriptions for journals, informational publications, informational and research databases or similar materials (print or electronic), that do not include additional services (such as training or configuration);
- 5.4.18.** Utility hook ups, relocations, and line extensions performed by a utility company;
- 5.4.19.** Water; energy (regulated electric and natural gas, and steam); local, long-distance, wireless, satellite, and telephone communication or data services, including pagers, cell phones and other wireless/communication devices; septic pumping services;

regular, non-hazardous trash collection services; and bulk fuel (coal, heating oil, gasoline, propane), which are routinely purchased by a State Agency or Institution of Higher Education; and

5.4.20. Other disbursements approved in writing by the State Controller.

5.5. Exemption from Purchase Order and State Contract Only. The exemptions listed in §5.3 are exemptions from the need to have a Purchase Order or State Contract only and does not create any exemption from any other statutory requirement, such as the requirements of the Colorado Procurement Code and the Procurement Rules.

6. PROHIBITED TERMS AND LIMITATIONS:

- 6.1.** Indemnification by the State Prohibited – Unless specifically authorized by statute, a State Agency or Institution of Higher Education shall not indemnify and/or hold harmless another Party (no matter how it is phrased) against any liability incurred as a result of the acts or omissions of such State Agency or Institution of Higher Education. The Colorado Constitution prohibits disbursement by the State Treasurer except upon appropriations made by law or as otherwise authorized by law (Article V, §33). Except as authorized by law, any term or provision of any Commitment Voucher or any other agreement that requires the State to indemnify or hold harmless another Party is void as described in §24-106-109, C.R.S.
- 6.2.** Binding Arbitration Prohibited – A State Agency or Institution of Higher Education shall not be bound by the results of arbitration or any other extrajudicial dispute resolution process in which the final resolution is not determined by the State. Any term or provision of any Commitment Voucher or any other agreement that requires the State to agree to binding arbitration or any other binding extrajudicial resolution process in which the final resolution is not determined by the State is void as described in §24-106-109, C.R.S.
- 6.3.** Limitations of Liability – A State Agency or Institution of Higher Education may not limit another Party’s liability for claims or damages arising out of bodily injury, death, or damage to tangible property of the State. Any term or provision of any Commitment Voucher or any other agreement that limits the liability of a Party for bodily injury, death or damage to tangible property of the State is void as described in §24-106-109, C.R.S. Other liability may be limited if the State Agency or Institution of Higher Education determines in writing that the benefits outweigh the risks, the limitation of liability does not apply to any insurance required under the Commitment Voucher, if any, and the Office of the State Controller has approved the limitation.
- 6.4.** Choice of Law Outside of Colorado – A State Agency or Institution of Higher Education may not agree to be bound by the laws of another state. As described in §24-106-109, C.R.S., all agreements except those with another government shall be governed by Colorado law. State Agencies and Institutions of Higher Education may agree to be silent on choice of law in agreements with another governmental entity, but cannot agree to their law as controlling.
- 6.5.** Inclusion of Void Terms – A State Agency or Institution of Higher Education should not include a term or provision that would be void under this §6 or under §24-106-109, C.R.S., in any Commitment Voucher or a Vendor Agreement entered into by a State Agency or Institution of Higher Education with another Party. If another Party requires the inclusion of a void provision, the State Agency or Institution of Higher Education shall inform the Party that those terms or provisions will be void if they are included. If the Party is unwilling or unable to remove those terms or provisions after being notified but is unwilling to accept the Commitment Voucher, Small Purchase Documentation, or Vendor Agreement without the inclusion, the State Agency or Institution of Higher Education may enter into the Commitment

Voucher or Vendor Agreement that includes the void provision if the State Controller, Chief Procurement Officer, authorized Procurement Official or delegate, or authorized State Controller delegate approves the inclusion of the void term or provision.

7. COMMITMENT VOUCHER APPROVALS:

The State Controller, or an authorized delegate of the State Controller, shall approve all Purchase Orders, State Contracts, Grant Agreements, and Small Dollar Grant Awards. A State Agency or Institution of Higher Education, at its discretion, may require such additional internal approvals as it deems proper. The State Agency or Institution of Higher Education shall obtain all required approvals and signatures and retain documentation thereof in its files for the period specified in the State Controller Contract, Grant, and Purchase Order Policies. Unless a State Agency or Institution of Higher Education is exempt by statute or has delegated approval authority, prior approval of the Commitment Voucher by one or more of the Central Approvers, defined in Fiscal Rule 3-3, is required as follows:

- 7.1.** Capital Construction and Controlled Maintenance Commitment Vouchers require the approval of the State Architect or a delegate of the State Architect, unless otherwise exempt by statute or waived by the State Architect. See §24-30-1303(1)(d), C.R.S.
- 7.2.** Commitment Vouchers for services normally provided by the Division of Central Services require the approval of the Director of the Division of Central Services, Department of Personnel and Administration, or a delegate of the Director of the Division of Central Services, for all State Agencies located within Adams, Arapahoe, Boulder, Douglas, Pueblo, El Paso, and Jefferson counties, the City and County of Broomfield, and the City and County of Denver. Institutions of Higher Education are exempt from this requirement. See §24-30-1104(1), C.R.S.
- 7.3.** Contingency-Based Commitment Vouchers require the approval of the Office of State Planning and Budgeting. See §24-17-204, C.R.S.
- 7.4.** Debt Collection Services Commitment Vouchers require the approval of the State Controller or a delegate of the State Controller with specific authority to approve Debt Collection Services Commitment Vouchers. See §24-30-202.4, C.R.S.
- 7.5.** Financial Information Commitment Vouchers used by a State Agency or Institution of Higher Education to record financial transactions and information, develop financial reports, or prepare financial statements require the approval of the State Controller. See §24-30-202(12), C.R.S.
- 7.6.** Information Technology Commitment Vouchers require approval by the Governor's Office of Information Technology as described in the State Controller Contract, Grant, and Purchase Order Policies.
- 7.7.** Legal Services Commitment Vouchers require the approval of the State Attorney General or a delegate of the State Attorney General. See §24-31-101, C.R.S.
- 7.8.** Personal Services Commitment Vouchers require the approval of the State Personnel Director or a delegate of the State Personnel Director. See §24-50-501, et seq., C.R.S. This approval is not required for Personal Services Commitment Vouchers for services that are:
 - 7.8.1.** Exempt from the State classified personnel system under Article XII, §13 of the State Constitution, including without limitation, attorneys at law serving as assistant attorneys general; faculty members and certain administrators at Institutions of Higher Education, exempt under §24-50-135, C.R.S., and members, officers, and employees of the judicial and legislative branches of the State, unless specifically provided by the Constitution, and the offices of the Governor and Lieutenant Governor whose functions and duties are confined to such offices.; or

- 7.8.2. Non-recurring services lasting nine months or less, where the need for such services is not expected to recur on a regular basis. Temporary services that do not meet these criteria require approval from the State Personnel Director or a delegate of the State Personnel Director.
- 7.9. Real property State Contracts, including leases where the State Agency or Institution of Higher Education is the tenant, easements, and rights-of-way agreements, require the approval of the State Architect or the Director of Real Estate Programs within the Office of the State Architect, Department of Personnel & Administration, or a delegate of either position, unless otherwise exempted by statute. See §24-30-1303, C.R.S. Real properties administered by the State Board of Land Commissioners, Division of Parks and Wildlife in the Department of Natural Resources, and the Department of Transportation, are exempt from this requirement. See §24-30-1301(15)(b), C.R.S.
- 7.10. Utility cost-savings Commitment Vouchers require the approval of the State Personnel Director or a delegate of the State Personnel Director. See §24-30-2003(1)(b), C.R.S.
- 7.11. Commitment Vouchers related to the Business Enterprise Program require the approval of the Business Enterprise Program within the Department of Labor and Employment. See §8-84-201, et seq., C.R.S.

8. STATUTORY VIOLATIONS:

A Statutory Violation occurs when liabilities are incurred or payments are made on the State’s behalf without prior approval of a State Purchase Order, Small Dollar Grant Award, Grant Agreement, or State Contract, when required under this Fiscal Rule. A Statutory Violation also occurs when liabilities are incurred or payments are made that exceed the unencumbered balance of the appropriation to which the resulting disbursement would be charged.

- 8.1. Personal Liability – Under §24-30-202(3), C.R.S., any person(s) who incurs, orders or votes for an obligation or makes a payment which creates a Statutory Violation shall be personally liable for such obligation, unless the contractor payment subject to the Statutory Violation is approved by the State Controller and the State Controller permits the State Agency or Institution of Higher Education to make payment to the contractor without recovering the amount of that payment from the person(s) who incurred, ordered or voted for an obligation or made a payment which created the Statutory Violation.
- 8.2. Payment Prohibition – A State Agency or Institution of Higher Education shall not make payments to a contractor that are subject to a Statutory Violation, unless and until the contractor payment subject to the violation has been approved by the State Controller.
- 8.3. Commitment Voucher Modification Provision – A State Agency or Institution of Higher Education shall not modify any requirements related to the work contained in a Commitment Voucher if that Commitment Voucher is subject to an unapproved Statutory Violation.
- 8.4. Approval Allowing Contractor Payment – The State Controller or an authorized delegate of the State Controller, in that individual’s sole discretion, may approve a retroactive Commitment Voucher supporting the expenditure or obligation creating a Statutory Violation, and allow payment to the contractor if that individual finds all of the following:
 - 8.4.1. The prices or rates are fair and reasonable;
 - 8.4.2. The amount of the expenditure is authorized by the appropriation and allotment to which it will be charged and is within the unencumbered balance available within that allotment;
 - 8.4.3. The State Agency or Institution of Higher Education provides a written explanation

in accordance with the State Controller Contract, Grant, and Purchase Order Policies;
and

- 8.4.4.** The contractor did not act in bad faith or in a fraudulent manner.
- 8.5.** Removal of Personal Liability – As part of any approval allowing contractor payment, the State Controller or an authorized delegate of the State Controller, in that individual’s sole discretion, may permit the State Agency or Institution of Higher Education to make payment to the contractor without recovering the amount of that payment from the person(s) who incurred, ordered, or voted for an obligation or made a payment which created the Statutory Violation if that individual finds of the following:
 - 8.5.1.** The violation does not show a willful disregard of law, rules, policies or regulations on the part of the person(s) who incurred, ordered, or voted for an obligation, or who made a payment which created the Statutory Violation;
 - 8.5.2.** The violation happened accidentally or was unavoidable through no fault of the person(s) who incurred, ordered, or voted for an obligation, or who made a payment which created the Statutory Violation; and
 - 8.5.3.** The State Agency or Institution of Higher Education has requested permission to make the payment without recovering the amount of the payment from the person(s) who incurred, ordered, or voted for an obligation or who made a payment which created the Statutory Violation.
- 8.6.** Fiscal Rule Violation Ratification – If the State Controller or an authorized delegate of the State Controller approves a retroactive Commitment Voucher supporting the expenditure or obligation creating a Statutory Violation, then that approval shall also constitute a ratification of the violation of this Fiscal Rule.

9. ADVANCE PAYMENTS

- 9.1.** General Prohibition – Commitment Vouchers shall not provide for Advance Payment for goods supplied and/or services performed or for any other contractual obligation, except as permitted in §§9.4 through 9.6 of this Fiscal Rule.
- 9.2.** Accounting for Advance Payments – Regardless of when a payment is made, State Agencies and Institutions of Higher Education shall account for those payments in accordance with GAAP and any grant requirements applicable to those payments.
- 9.3.** Waiver Process – The State Controller or an authorized delegate of the State Controller, in that individual’s sole discretion, may grant the request of a State Agency or Institution of Higher Education for a waiver, allowing an Advance Payment not listed in the exceptions in §§9.4 through 9.6. The waiver request shall include evidence that advance payment is an established industry standard and/or provides a benefit to the State at least equal to the cost and risk of the Advance Payment.
- 9.4.** Exceptions – Prior Approval of State Controller Not Required – Advance Payments where the payment is made no more than one year in advance of the substantial receipt and acceptance of the goods or completion and acceptance of the services to which the payment applies are permitted without prior approval of the State Controller or a delegate of the State Controller for the following, unless the State Controller or delegate determines that the circumstances around the payment require prior approval to minimize risk to the State:
 - 9.4.1.** Advertising services and related goods;
 - 9.4.2.** Charter Transportation;

- 9.4.3. Construction permits;
- 9.4.4. Catering for events at both State and non-State facilities;
- 9.4.5. Deposits for conference facilities at hotels or other venues that include, but need not be limited to, meeting rooms, audio visual equipment, catering, and guest accommodation rooms.
- 9.4.6. ExpressToll passes issued by the E-470 Public Highway Authority.
- 9.4.7. Federal grants awarded by the State to subgrantees (in compliance with Federal requirements) or agreements where the State is acting as a fiscal agent for the disbursement of Federal funds (in compliance with Federal requirements);
- 9.4.8. Information technology (IT) service agreements (including internet access, systems and database access),
- 9.4.9. Insurance premiums;
- 9.4.10. Interagency Agreements;
- 9.4.11. Janitorial services;
- 9.4.12. Licenses, including licenses for software;
- 9.4.13. Maintenance of office equipment or information technology (IT) (software and hardware), and other maintenance agreements;
- 9.4.14. Membership dues and fees, and participation assessments, that do not include services or examinations;
- 9.4.15. Personal property leases or rentals;
- 9.4.16. Postal and other delivery charges, including messenger fees, post office boxes and postage meters;
- 9.4.17. Purchases made with a Commercial Card through an online retailer (See Fiscal Rule 2-7);
- 9.4.18. Professional services provided by entertainers and speakers;
- 9.4.19. Participation in conferences and trade shows as an exhibitor or presenter, including booth rental at those conferences or events;
- 9.4.20. Real property leases, where the State is a tenant, and perpetual easements, if the entire interest is purchased and all attendant rights are transferred upon payment;
- 9.4.21. Security alarm and safety systems and monitoring;
- 9.4.22. Services needed by the Department of Law, or by another State Agency or Institution of Higher Education with the approval of the Department of Law to seek outside counsel, to support criminal or civil proceedings, civil or criminal enforcement, or legal services (e.g. attorneys, expert consultants, expert witnesses, mediators, and arbitrators).
- 9.4.23. Sponsored projects – See Fiscal Rule 3-3 (State Contracts);
- 9.4.24. Subscriptions for journals, informational publications, informational and research databases or similar materials (print or electronic), which do not include additional services (such as training and configuration);
- 9.4.25. Telecommunications services, such as prepaid local, long-distance, wireless,

satellite, and telephone communication or data services, including pagers, cell phones and other wireless/communication devices;

- 9.4.26.** Travel expenses such as hotels, motels, airfare etc. paid in accordance with Fiscal Rule 5-1;
 - 9.4.27.** Tuition, registration, and fees charged for trainings, classes, conferences, and seminars;
 - 9.4.28.** Utility hook-ups, relocations, and line extensions performed by a utility company;
 - 9.4.29.** Utility services including trash and recycling collection, heat, water, and sewer; and
 - 9.4.30.** Water rights purchases, temporary water leases, or water storage payments.
- 9.5.** Exceptions – Prior Approval Not Required – Multiple Years. Advance Payments, where the payment may be made any time in advance of the receipt of the goods or completion of the service to which the payment applies, are permitted without prior approval of the State Controller for the following:
- 9.5.1.** Federal contracts where the State Agency or Institution of Higher Education is paying the Federal government and the Federal agency requires Advance Payments under the Anti-Deficiency Act or other Federal rule or regulation;
 - 9.5.2.** In-kind payments, where the State Agency or Institution of Higher Education has access to variable quantities of the good or commodity to be used for payment and the State Controller delegate for the State Agency or Institution of Higher Education determines, and documents in the contract file, that it is in the best interest of the State Agency or Institution of Higher Education to be able to prepay in years where the State Agency or Institution of Higher Education has access to high quantities to offset years where lower quantities are available (e.g. when a State Agency or Institution of Higher Education is required to pay in water, it may need to prepay in “wet” years in order to offset drought years).
- 9.6.** Exceptions – Prior Delegate Approval Required – One or More Years. Advance Payments of up to \$10,000, may be made any time in advance of the receipt and acceptance of goods or the completion and acceptance of services, if the State Controller delegate for the State Agency or Institution of Higher Education determines, and documents in the Contract file, that the Advance Payment provides a benefit to the State at least equal to the cost and risk of the Advance Payment. Advance Payments shall not be split in order to stay below the \$10,000 maximum. In no instance shall more than \$10,000 be advanced under a single Commitment Voucher without State Controller approval.

10. REQUIREMENTS FOR PERSONAL SERVICES COMMITMENT VOUCHERS

- 10.1.** Designation of Contract Manager – In accordance with §24-106-107, C.R.S., for each Personal Services Commitment Voucher, State Agencies and Institutions of Higher Education shall designate at least one person with subject matter expertise as a contract manager to be responsible for day-to-day management of the Personal Services Commitment Voucher, including performance monitoring as required by §24-106-107(3), C.R.S.
- 10.2.** Monitoring – Each State Agency and Institution of Higher Education shall monitor its Personal Services Commitment Vouchers to ensure that the work is performed in accordance with the performance measures and standards of the Personal Services Commitment Voucher and that the contractor was paid in accordance with the payment schedule in the Personal Services Commitment Voucher. State Agencies and Institutions of Higher Education shall follow the State Controller Contract, Grant, and Purchase Order Policies and the accountability standards

in §24-106-107(2)(b), C.R.S.

- 10.3.** Contract Management System – In accordance with §24-106-103(3)(d), C.R.S., State Agencies and Institutions of Higher Education subject to §24-106-103, C.R.S., shall include all Personal Services Commitment Vouchers over \$100,000.00 in the State’s centralized contract management system, maintained by the Department of Personnel and Administration, within 30 days following their execution, regardless of the type of Commitment Voucher used.
- 10.4.** Personal Services Provided By Retirees – State Agencies and Institutions of Higher Education that purchase services from an independent contractor who is also a retired State employee shall make employer contributions to Public Employees' Retirement Association (PERA) in accordance with per §24-51-1101(2), C.R.S. For State Agencies that utilize the State Financial System, full disclosure of the relationship with the retired State employee working as independent contractor shall be provided to the Office of the State Controller to allow coordination of employer contribution payments to PERA on behalf of State Agencies. Agencies and Institutions of Higher Education that do not use the State Financial System shall be responsible for ensuring that the proper contribution payments are made to PERA.
- 10.5.** Personal Services Commitment Voucher Terms – In addition to the elements otherwise required for each type of Commitment Voucher, each Personal Services Commitment Voucher over \$100,000 shall include all of the following terms, as required by §24-106-107, C.R.S.:
 - 10.5.1.** Performance measures and standards developed specifically for the Commitment Voucher by the administering State Agency or Institution of Higher Education;
 - 10.5.2.** Accountability standards requiring regular contractor reports on achievement of the specified performance measures and standards;
 - 10.5.3.** Payment provisions allowing the State Agency or Institution of Higher Education to withhold payment until successful completion of all or specified parts of the Commitment Voucher and requiring prompt payment upon successful completion;
 - 10.5.4.** Monitoring requirements specifying how the State Agency or Institution of Higher Education will evaluate the contractor’s performance, including progress reports, site visits, inspections, and reviews of performance data; and
 - 10.5.5.** Processes for resolving disputes between the State Agency or Institution of Higher Education and the contractor.

11. EMERGENCIES:

Emergency disbursements for procurements that would require a State Contract or Purchase Order may be made upon presentation of invoices, receipts, or other statements describing goods or services purchased and the amount to be paid. Goods and services necessary to respond to an Emergency may be procured immediately, without issuing a Commitment Voucher or obtaining a written waiver from the Office of the State Controller, where all of the following conditions are met:

- 11.1.** The nature of the situation requires an immediate response and there is insufficient time to issue a Commitment Voucher;
- 11.2.** The procurement is authorized in accordance with the Procurement Code and the Procurement Rules;
- 11.3.** The expenditure is approved by a State Controller delegate;
- 11.4.** If there are any future performance obligations necessary to resolve the Emergency, a Commitment Voucher is executed as soon as possible to define those future performance obligations, as required by Fiscal Rules; and

11.5. The State Agency or Institution of Higher Education notifies the State Controller's Office in writing, as soon as possible, of the circumstances, the goods and services purchased, and the dollar amount of the commitment. Failure to provide notice in a timely manner, as determined by the State Controller's Office, will constitute a Statutory Violation.

12. VENDOR AGREEMENTS:

12.1. Prohibited Use – A Vendor Agreement shall not be used in lieu of a State Purchase Order or State Contract, where one is required, absent the prior written approval of the State Controller or an approved delegate. A Vendor Agreement shall not be used where a State Purchase Order or State Contract is not required, except as provided in §12.2 or in the State Controller Contract, Grant, and Purchase Order Policies.

12.2. Permitted Use – The Chief Fiscal Officer or Procurement Official of a State Agency or Institution of Higher Education, or a delegate of either individual, may authorize the use of Vendor Agreements up to \$5,000, if a State Contract or Purchase Order is not required.

12.3. Conditions of Use – All of the conditions set forth in the State Controller Contract, Grant, and Purchase Order Policies related to Vendor Agreements shall be met whenever a Vendor Agreement is used.

13. INDEPENDENT CONTRACTOR RELATIONSHIP:

State Agencies and Institutions of Higher Education shall ensure that all Commitment Vouchers create only an independent contractor relationship and do not create an employer-employee relationship. State Agencies and Institutions of Higher Education shall not engage in any practices that would result in the creation of an employer-employee relationship.

RULE 3-2: PURCHASE ORDERS

1. AUTHORITY:

§24-30-202(1-4) and (5)(a), C.R.S. (State Controller Authority)

§24-106-103, C.R.S. (Centralized Contract Management System)

§24-102-206, C.R.S. (Contract Performance Outside United States or Colorado)

§24-106-106, C.R.S. (Right to Audit Records)

§24-106-107, C.R.S. (Monitoring of Vendor Performance)

2. DEFINITIONS:

2.1. Purchase Order – A unilaterally approved Commitment Voucher, the form of which has been approved by the State Controller, issued by a State Agency or Institution of Higher Education to purchase goods, services, or construction for the direct benefit of the State, as described in this Fiscal Rule.

3. RULE:

Each State Agency or Institution of Higher Education shall use a Purchase Order as described in this Rule when Fiscal Rule 3-1 requires the use of a Purchase Order as the Commitment Voucher.

4. CONTENT OF PURCHASE ORDERS:

4.1. Standard Provisions – All Purchase Orders issued by State Agencies and Institutions of Higher Education shall include all of the following:

4.1.1. Identification of the parties;

4.1.2. A description of all goods to be delivered and/or services to be performed;

4.1.3. Payment Terms, as defined in Fiscal Rule 2-3, including the maximum dollar amount;

4.1.4. Dates that define the term of the Purchase Order; and

4.1.5. Any other content required under the State Controller Contract, Grant, and Purchase Order Policies.

5. APPROVED PURCHASE ORDER FORMS

5.1. All Purchase Orders shall be in a form approved by the State Controller. The State Controller has approved the following Purchase Order forms and may approve additional forms in the State Controller's sole discretion.

5.1.1. Model Purchase Orders – State Agencies and Institutions of Higher Education shall use the model Purchase Order forms as described in the State Controller Contract, Grant, and Purchase Order Policies.

5.1.2. Purchase Order Modifications – All modifications to a Purchase Order shall be made by a formal written change order approved by the State Controller or a delegate, unless an alternative modification tool has been approved by the State Controller. A Purchase Order for services or one that has already been accepted by performance cannot be modified or extended (revived) after its term has expired.

5.1.2.1. If unaccepted goods are delivered after the expiration of a Purchase

Order for goods only, the State Agency of Institution of Higher Education may accept those goods by modifying the Purchase Order to extend the term to the date the goods were delivered so long as the goods had not been used by the State prior to the extension. In this circumstance, the use of goods prior to the execution of the extension of the Purchase Order constitutes a Statutory Violation as described in Fiscal Rule 3-1, §8.

- 5.1.3.** Other Purchase Order Forms – State Agencies and Institutions of Higher Education may use any other Purchase Order form that is approved by the State Controller from time-to-time.

6. STATE CONTROLLER REVIEW AND APPROVAL:

6.1. Performance of State Controller Functions

- 6.1.1.** Delegation to State Agencies and Institutions of Higher Education – The State Controller has delegated the authority to approve Purchase Orders to the State’s Chief Procurement Officer, as defined in §24-101-301(6), C.R.S., with special approval to sub delegate that authority. The State Controller may also delegate the authority to approve Purchase Orders to any other individual through a delegation agreement in accordance with Fiscal Rule 1-4.

6.2. Process for Review, Approval, and Signature

- 6.2.1.** Review of Purchase Orders – All Purchase Orders shall be reviewed by the State’s Chief Procurement Officer, a Procurement Official or another individual with either a delegation from the State Controller or a sub-delegation from the Chief Procurement Officer or a Procurement Official to review Purchase Orders to determine if the Purchase Order complies with Fiscal Rule 3-1, §3 and all procurement laws and regulations.
- 6.2.2.** Approval of Purchase Orders – All Purchase Orders shall be approved by the State’s Chief Procurement Officer, a Procurement Official, or another individual with either a delegation from the State Controller or a sub-delegation from the Chief Procurement Officer or a Procurement Official to approve Purchase Orders, prior to any Purchase Order becoming effective. If approved, the person approving the Purchase Order shall evidence such approval in the State Financial System, or other such system used by the State Agency or Institution of Higher Education in accordance with Fiscal Rule 1-3, or by signing the Purchase Order.

RULE 3-3: STATE CONTRACTS

1. AUTHORITIES:

Article V, Section 33, Constitution of Colorado – Disbursement of public money

Article XI, Section 1, Constitution of Colorado – Pledging credit of state, county, city, town or school district forbidden

Article XII, Section 13 (2), Constitution of Colorado – State personnel system – merit system

Governor's Executive Order signed April 7, 1978 (Authority to Sign Contracts, Deeds, and Leases)

Governor's Executive Order D 016 07 – Improving State Information Technology Management

State of Colorado Procurement Rules – 1 CCR 101-9

§4-1-101, et seq., C.R.S. (Uniform Commercial Code)

§24-2-102(4), C.R.S. (Appointment of Officers and Employees)

§2-2-320(2), C.R.S. (Legislative Contracts Approval)

§24-17-201, et seq., C.R.S. (State Contingency-based Contracts)

§24-30-202, C.R.S. (State Controller Authority)

§24-30-1104(1)(h), C.R.S. (Central Services Approval Authority)

§24-30-1107, C.R.S. (Central Services Approval authority)

§24-30-1303(1)(a) and (d), C.R.S. (Office of State Architect Approval Authority)

§24-30-1404(4), C.R.S. (Prohibition against Contingency Fees)

§24-30-2001, et seq., C.R.S. (Utility Cost-savings Measures)

§24-31-101(1)(c), C.R.S. (State Attorney General Powers and Duties)

§24-31-104, C.R.S. (Appointment of Subordinate Officers and Employees)

§24-34-101, et seq., C.R.S. (Department of Regulatory Agencies)

§24-37.5-101, et seq., C.R.S. (Office of Information Technology)

§24-37.5-601, et seq., C.R.S. (Telecommunications Approval Authority)

§24-50-135, C.R.S. (Exemptions from Personnel System)

§24-50-501, et seq., C.R.S. (Contracts for Personal Services)

§24-75-302, C.R.S. (Capital Construction Fund)

§24-101-101, et seq., C.R.S. (Procurement Code)

§§33-1-105 and 105.5, C.R.S. (Acquisition of Property – Parks and Wildlife Commission)

§33-10-107, C.R.S. (Acquisition of Property – Parks and Wildlife Commission)

2. DEFINITIONS:

The following definitions include terms used in this Fiscal Rule as well as various types of Agreements entered into by State Agencies and Institutions of Higher Education.

- 2.1.** Agreement – A legal agreement between a State Agency or Institution of Higher Education and another individual or entity that may or may not constitute a State Contract under this Fiscal Rule.
- 2.2.** Capital Construction – A Capital Construction Project or Controlled Maintenance Project funded wholly or in part by the State Capital Construction Fund (§24-75-302, C.R.S.) or wholly or in part with any cash resources of a State Agency or Institution of Higher Education. See Fiscal Rule 4-2.
- 2.3.** Central Approvers – Certain division directors, executive directors of State Agencies, and Elective Officers, or their respective delegates, whose prior approval is required by statute or Fiscal Rule for certain types of State Contracts. Central approvers include, without limitation, the State Personnel Director, the State Architect, the Director of the Real Estate Programs, the State Communications Coordinator, the State Attorney General, the Director of the Division of Central Services, the State Risk Manager, and the Executive Director of the Governor’s Office of Information Technology.
- 2.4.** Central Services Contract – A State Contract between a State Agency or Institution of Higher Education and another Party for the acquisition of services, services related to equipment, and software related to services. Centralized services include, without limitation, motor pool operation, motor vehicle maintenance, mail or messenger services, office copying, graphic design for print media, printing and binding, microfilming, or design of forms. See §24-30-1104, C.R.S.
- 2.5.** Contingency-Based Contract – A State Contract for services between a State Agency or Institution of Higher Education and a contractor where all or part of the contractor’s compensation is computed by multiplying a stated percentage by the measurable savings in the State Agency’s or Institution of Higher Education’s expenditures or costs of operation attributable to the contractor’s services under the State Contract. The term “Contingency-Based Contract” does not include State Contracts where the contingency-based compensation is specifically authorized by statute, as described in §24-17-203, C.R.S, including State Contracts where the contractor collects a debt on behalf of the State Agency or Institution of Higher Education and receives a portion of those amounts collected as payment. Contingent fees are prohibited in Professional Services Contracts. See §24-30-1404(4), C.R.S.
- 2.6.** Debt Contract – A State Contract in which the State receives money from a lender and agrees to repay the money to the lender, including the payment of any interest due. All Debt Contracts must comply with the requirements of the Taxpayer Bill of Rights. Examples of Debt Contracts include lease purchase agreements, short-term debt, notes, bonds, and certificates of participation.
- 2.7.** Delegated State Agency or Delegated Institution of Higher Education – A State Agency or Institution of Higher Education whose controller has been granted delegated signature authority by the State Controller.
- 2.8.** Employee Voluntary Separation Agreement – An Agreement between a State Agency or Institution of Higher Education and a State employee setting forth the terms of the employee’s voluntary separation from State employment.
- 2.9.** Expenditure Contract – A State Contract where a State Agency or Institution of Higher Education is required to make a payment, either in funds or in-kind, to another Party, directly or indirectly, and includes any agreements that divert revenue that would otherwise be due to the State. An agreement where the State is required to perform a service for another Party is an Expenditure Contract if it is likely that the State’s failure to perform would result in the payment of State funds to the other Party.

- 8.4.3.** Statutory Violation – Any obligation created under a contract that has not been signed by the State Controller or delegate or has been disapproved by the State Controller or delegate constitutes a Statutory Violation as described in Fiscal Rule 3-1, §8. Any obligation created under an Information Technology Contract for a Major Information Technology Project that has not been signed by the State’s Chief Information Officer or delegate constitutes a Statutory Violation as described in Fiscal Rule 3-1, §8.

9. ACCOUNTING FOR STATE CONTRACTS:

- 9.1.** Encumbrances – All State Agencies and Institutions of Higher Education shall encumber Expenditure Contracts in accordance with Fiscal Rule 3-1 and the Fiscal Procedures Manual.
- 9.2.** Outsource Contracts – Third Party Payor – State Agencies and Institutions of Higher Education shall record all gross revenues and expenditures for each Outsource Contract in the State Financial System or on an approved State Agency or Institution of Higher Education accounting system and shall not net the expenditures against the revenues, unless specifically exempted by State statute.

10. MONITORING OF STATE CONTRACTS

- 10.1.** All State Agencies and Institutions of Higher Education shall designate a contract manager with subject matter expertise who will be responsible for day-to-day management of each State Contract. See §24-106-107(3), C.R.S.
- 10.2.** Each State Agency and Institution of Higher Education shall monitor its Expenditure Contracts and Other Contract Types that result in an expenditure of State funds with respect to all of the following elements, as well as any additional elements a State Agency or Institution of Higher Education may choose to monitor:
 - 10.2.1.** Compliance with requirements, standards, and measures of the Expenditure Contract provisions in §5.1 of this Fiscal Rule;
 - 10.2.2.** Completion of the State Contract according to the State Contract's performance schedule;
 - 10.2.3.** Satisfactory performance and completion of the State Contract's scope of work; and
 - 10.2.4.** Extent to which the contractor met or exceeded budgetary requirements of the State Contract
- 10.3.** Contract Management System – State Agencies and Institutions of Higher Education shall include all information specified in CRS §24-106-103(3) for all State Contracts for personal services subject to that statute.
- 10.4.** This §10 shall not apply to the following State Contracts:
 - 10.4.1.** Any State Contract under Medicare;
 - 10.4.2.** Any State Contract for indigent care under §25.5-3-101 et seq., C.R.S.;
 - 10.4.3.** Any State Contract under the Colorado Medical Assistance Act. See §25.5-4-101 through §25.5-6-101, et seq., C.R.S.;
 - 10.4.4.** Any State Contract under the Children's Basic Health Plan. See §25.5-8-101 et seq., C.R.S.; and
 - 10.4.5.** Any State Contract for Sponsored Projects

budgeted, and otherwise made available.

3. GOVERNMENTAL IMMUNITY. Liability for claims for injuries to persons or property arising from the negligence of the State, its departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the Colorado Governmental Immunity Act, §24-10-101, et seq., C.R.S.; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State's risk management statutes, §§24-30-1501, et seq. C.R.S. No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.
4. INDEPENDENT CONTRACTOR. Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability, or understanding, except as expressly set forth herein. **Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Contract. Contractor shall (a) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by the State, and (c) be solely responsible for its acts and those of its employees and agents.**
5. COMPLIANCE WITH LAW. Contractor shall comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.
6. CHOICE OF LAW, JURISDICTION, AND VENUE. Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. All suits or actions related to this Contract shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.
7. PROHIBITED TERMS. Any term included in this Contract that requires the State to indemnify or hold Contractor harmless; requires the State to agree to binding arbitration; limits Contractor's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be void ab initio. Nothing in this Contract shall be construed as a waiver of any provision of §24-106-109 C.R.S. Any term included in this Contract that limits Contractor's liability that is not void under this section shall apply only in excess of any insurance to be maintained under this Contract, and no insurance policy shall be interpreted as being subject to any limitations of liability of this Contract.
8. SOFTWARE PIRACY PROHIBITION. State or other public funds payable under this Contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this Contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Contract, including, without limitation, immediate termination of this Contract and any remedy consistent with federal

copyright laws or applicable licensing restrictions.

9. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. §§24-18-201 and 24-50-507 C.R.S. The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.
10. VENDOR OFFSET AND ERRONEOUS PAYMENTS. §§24-30-202 (1) and 24-30-202.4 C.R.S. [*Not Applicable to intergovernmental agreements*] The State Controller may withhold payment under the State's vendor offset intercept system for debts owed to state agencies for: (a) unpaid child support debts or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in §39-21-101, et seq. C.R.S.; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State as a result of final agency determination or judicial action. The State may also recover, at the State's discretion, payments made to Contractor in error for any reason, including, but not limited to, overpayments or improper payments, and unexpended or excess funds received by Contractor by deduction from subsequent payments under this Contract, deduction from any payment due under any other contracts, grants or agreements between the State and Contractor, or by any other appropriate method for collecting debts owed to the State.
11. PUBLIC CONTRACTS FOR SERVICES. §8-17.5-101 C.R.S. [*Not Applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services*] Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this Contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this contract, through participation in the E-Verify Program or the Department program established pursuant to §8-17.5-102(5)(c), C.R.S. Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract. Contractor (a) shall not use E-Verify Program or the program procedures of the Colorado Department of Labor and Employment ("Department Program") to undertake pre-employment screening of job applicants while this Contract is being performed, (b) shall notify the subcontractor and the contracting state agency or institution of higher education within three days if Contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this Contract, (c) shall terminate the subcontract if a subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and (d) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to §8-17.5-102(5) C.R.S., by the Colorado Department of Labor and Employment. If Contractor participates in the Department program, Contractor shall deliver to the contracting state agency, institution of higher education or political subdivision a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Contractor fails to comply with any requirement of this provision or §8-17.5-101 et seq., C.R.S., the contracting state agency, institution of higher education or political subdivision may terminate this Contract for breach and, if so terminated, Contractor shall be liable for damages.
12. PUBLIC CONTRACTS WITH NATURAL PERSONS. §24-76.5-101 C.R.S. Contractor, if a

natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that Contractor **(a)** is a citizen or otherwise lawfully present in the United States pursuant to federal law, **(b)** shall comply with the provisions of §24-76.5-101, et seq., C.R.S., and **(c)** has produced one form of identification required by §24-76.5-103, C.R.S., prior to the effective date of this Contract.

RULE 3-4: GRANTS

1. AUTHORITY:

- §24-30-202(1-4) and (5)(a), C.R.S. (State Controller Authority)
- §24-106-103, C.R.S. (Centralized Contract Management System)
- §24-102-206, C.R.S. (Contract Performance Outside United States or Colorado)
- §24-106-106, C.R.S. (Right to Audit Records)
- §24-106-107, C.R.S. (Monitoring of Vendor Performance)

2. DEFINITIONS:

- 2.1.** Grant – An agreement in which a State Agency or Institution of Higher Education as grantor transfers anything of value to a grantee to carry out a public purpose of support or stimulation authorized by law instead of acquiring property or services for the direct benefit or use of that State Agency or Institution of Higher Education. A Grant may include a distribution of funds. Grants do not include Donations, as defined in Fiscal Rule 2-1.
- 2.2.** Grantee – The recipient of a Grant.
- 2.3.** Modification Policies – See Fiscal Rule 3-3 (State Contracts).
- 2.4.** Procurement Official – See Fiscal Rule 3-1 (Commitment Vouchers).
- 2.5.** Small Dollar Grant Award – A unilaterally approved Commitment Voucher, the form of which has been approved by the State Controller, issued by a State Agency or Institution of Higher Education as a Grant, as described in this Fiscal Rule, when permitted under Fiscal Rule 3-1 (Commitment Vouchers).

3. RULE:

- 3.1.** Each State Agency or Institution of Higher Education shall use a Grant as described in this Rule when Fiscal Rule 3-1 requires the use of a Grant as the Commitment Voucher.

4. CONTENTS OF GRANTS:

- 4.1.** Standard Provisions – All Grants issued by State Agencies and Institutions of Higher Education shall include all of the following:
 - 4.1.1.** Identification of the State Agency or Institution of Higher Education and the Grantee;
 - 4.1.2.** A description of the work that the Grantee will perform under the Grant and the goals to be achieved under the Grant;
 - 4.1.3.** Payment or reimbursement terms, including the maximum dollar amount;
 - 4.1.4.** The effective date and termination date of the Grant;
 - 4.1.5.** The statutory or regulatory authority authorizing the Grant;
 - 4.1.6.** The Special Provisions, as described in Fiscal Rule 3-3; and
 - 4.1.7.** Any other content required under the State Controller Contract, Grant, and Purchase Order Policies.

5. APPROVED GRANT FORMS:

All Grants and modifications to Grants shall be in a form approved by the State Controller. The State Controller has approved the following Grant forms and may approve additional forms in the State Controller's sole discretion.

- 5.1.** Model Grants – State Agencies and Institutions of Higher Education shall use the Grant forms as described in the State Controller Contract, Grant, and Purchase Order Policies.
- 5.2.** Grant Modifications – All modifications to a Grant, other than modifications to an Intergovernmental Grant described in §5.4 of this Fiscal Rule and Small Dollar Grant Awards issued in accordance with the State Controller Contract, Grant, and Purchase Order Policies, shall be made by a formal written amendment signed by the State Agency or Institution of Higher Education and the Grantee, and approved by the State Controller or a delegate of the State Controller, unless an alternative modification tool has been approved by the State Controller. A Grant cannot be amended or extended (revived) after the Grant term has expired. All such modifications to Grants shall use the amendment form and forms of alternative modification tools set forth in the Modification Policies related to modifications of Grants.
- 5.3.** Small Dollar Grant Award Modifications – All modifications to a Small Dollar Grant Award shall be made by a formal written change order approved by the State Controller or a delegate, unless an alternative modification tool has been approved by the State Controller. A Small Dollar Grant Award cannot be modified or extended (revived) after the award term has expired.
- 5.4.** Intergovernmental Grant Modifications – A Grant between a State Agency or Institution of Higher Education and a political subdivision of the State, such as a city, county, special district or authority, may be modified by any method available to modify any other Grant, as described in §5.2, or by issuing an updated Intergovernmental Grant Award Letter, as described in the State Controller Contract, Grant, and Purchase Order Policies, that replaces the existing Intergovernmental Grant Award Letter.
- 5.5.** Alternative Modification Tools and Forms – A State Agency or Institution of Higher Education may use an approved alternate modification tool to modify a Grant in lieu of a Grant amendment only in the specific circumstances identified in the Modification Policies. A State Agency or Institution of Higher Education shall obtain written approval from the Office of the State Controller prior to making a change to the form of an alternative modification tool, other than non-substantive changes necessary to match terminology to the Grant, or using an alternative modification tool in a manner not described in the Modification Policies. A Grant cannot be modified or extended after the expiration of the Grant term. Approved alternative modification tool forms are set forth in the Modification Policies.
 - 5.5.1.** Required Provision and Attachment – An approved modification tool may be included as a part of a Grant only if the Grant contains a provision referencing the specific modification tool and how it may be used in accordance with the Modification Policies, and the form of the specific modification tool is attached as an exhibit to the Grant.
 - 5.5.2.** Each modification tool shall be used only for its intended purposes, as set forth in the Modification Policies, and shall not be changed or combined with any other modification tool except as specifically allowed in the Modification Policies.
- 5.6.** Other Grant Forms – Any other Grant form which may be approved by the State Controller from time-to-time.

6. GRANT LEGAL REVIEW:

The State Controller may request the Office of the State Attorney General to review any Grant at the State Controller's sole discretion.

7. STATE CONTROLLER REVIEW AND APPROVAL:

7.1. Performance of Controller Functions.

7.1.1. Delegated State Agencies – Delegated State Agencies shall be responsible for determining the level of risk for their Grants. A Delegated State Agency shall classify the risk of each of its Grants in accordance with the State Controller Contract, Grant, and Purchase Order Policies regarding review and approval for delegated State Agencies. The individual or individuals at the Delegated State Agency who have a delegation from the State Controller to sign Grants may sign Grants on behalf of the State Controller that are not required to be sent to the Office of the State Controller in accordance with their delegation agreement and the State Controller Contract, Grant, and Purchase Order Policies.

7.1.2. Non-delegated State Agencies and Institutions of Higher Education – Non-delegated State Agencies and non-delegated Institutions of Higher Education shall submit all Grants to the Office of the State Controller for review and approval in accordance with the State Controller Contract, Grant, and Purchase Order Policies regarding review and approval for non-delegated State Agencies and Institutions of Higher Education.

7.1.3. Delegated Institutions of Higher Education – Delegated Institutions of Higher Education shall determine if a Grant requires legal review prior to execution in accordance with the State Controller Contract, Grant, and Purchase Order Policies regarding review and approval for delegated Institutions of Higher Education. The individual or individuals at the Delegated Institution of Higher Education who have a delegation from the State Controller to sign Grants may sign Grants on behalf of the State Controller that are not required to be sent to the Office of the State Controller and that either do not require legal review or have been signed by a Reviewing Attorney in accordance with their delegation agreement and the State Controller Contract, Grant, and Purchase Order Policies.

7.2. Process for Review, Approval, and Signature

7.2.1. Review – All Grants shall be reviewed by a Procurement Official or delegate, or a member of the unit or section in the Agency or Institution of Higher Education responsible for Grants, as determined by Agency policy. The State Controller or delegate signing the Grant shall also review all Grants to determine if the Grant complies with Fiscal Rule 3-1, §3.

7.2.2. Approval and Signature – Except for Grants issued as Small Dollar Grant Awards in accordance with the State Controller Contract, Grant, and Purchase Order Policies, the State Controller or delegate shall approve or disapprove the Grant, and, if approved, shall evidence such approval by signing the Grant. For Grants issued as a Small Dollar Grant Award in accordance with the State Controller Contract, Grant, and Purchase Order Policies, the State Controller, a Procurement Official, or a delegate of either shall approve or disapprove the Grant, and, if approved, shall evidence such approval by approving the Grant in the State Financial System or other such system used by the State Agency or Institution of Higher Education in accordance with Fiscal Rule 1-3, or by signing the Grant.

7.3. Grants Not Approved by State Controller

- 7.3.1.** Not Binding – A Grant is not binding on or enforceable against the State unless and until it is approved in accordance with §7.2.2 of this Fiscal Rule.
- 7.3.2.** Null and Void – Any Grant disapproved by the State Controller, a Procurement Official or a delegate or either is null and void.
- 7.3.3.** Statutory Violation – Any obligation created under a Grant that has not been approved in accordance with §7.2.2 of this Fiscal Rule or has been disapproved by the State Controller, a Procurement Official or a delegate or either constitutes a Statutory Violation as described in Fiscal Rule 3-1, §8.

RULE 3-5: INTERAGENCY AGREEMENTS

1. AUTHORITY

§24-30-202(1-4) and (5)(a), C.R.S. (State Controller Authority)

2. DEFINITIONS

2.1. Encumbrance – See Fiscal Rule 3-1

2.2. Interagency Agreement – An agreement between two or more State Agencies, two or more Institutions of Higher Education, or any number of State Agencies and Institutions of Higher Education that involves a transfer of funds from one State Agency or Institution of Higher Education to another. The term Interagency Agreement does not include any agreement that has an entity that is not a State Agency or Institution of Higher Education as a party.

3. RULE

Each State Agency or Institution of Higher Education shall use an Interagency Agreement as described in this Rule when Fiscal Rule 3-1 requires the use of an Interagency Agreement to document the transfer of funds.

4. CONTENT OF INTERAGENCY AGREEMENTS

4.1. Standard Provisions – All Interagency Agreements shall include all of the following:

4.1.1. Identification of the State Agencies and Institutions of Higher Education involved in the Interagency Agreement;

4.1.2. A description of the work that will be performed;

4.1.3. A description of the amounts to be paid or how those amounts will be determined;

4.1.4. The effective date and termination date of the Interagency Agreement; and

4.1.5. Any applicable special terms and conditions required under a grant or by Federal or state laws, regulations, or policies.

4.2. Encumbrances – All Interagency Agreements that will transfer \$100,000.00 or more during a fiscal year shall be encumbered, except for Interagency Agreements charged to a special line item appropriation dedicated to that commitment. A delegate of the State Controller at a State Agency or Institution of Higher Education may choose, in that individual's discretion, to require an Encumbrance on any Interagency Agreement to ensure that proper funding is available for that Interagency Agreement.

5. APPROVED INTERAGENCY FORMS

All Interagency Agreements shall be in a form approved by the State Controller. The State Controller has approved the following forms and may approve additional forms at the State Controller's sole discretion.

5.1. Statement of Work and Encumbrance Document – For Interagency Agreements that will be encumbered, State Agencies and Institutions of Higher Education may develop a mutually agreeable statement of work, which includes all standard provisions required in §4.1 of this Fiscal Rule and has been approved by each State Agency and Institution of Higher Education that is party to the agreement. The State Agency or Institution of Higher Education transferring funds under the Interagency Agreement shall attach that statement of work to the Encumbrance document in the State Financial System or other approved financial system used by that State

Agency or Institution of Higher Education. The statement of work may also be any type of invoice or quote, so long as that invoice or quote contains the standard provisions required in §4.1 of this Fiscal Rule.

- 5.2.** Statement of Work and Transfer Document – For Interagency Agreements that will not be encumbered, State Agencies and Institutions of Higher Education may develop a mutually agreeable statement of work, which includes all standard provisions required in §4.1 of this Fiscal Rule. The statement of work shall be approved by each State Agency and Institution of Higher Education that is party to the Interagency Agreement. The State Agency or Institution of Higher Education transferring funds shall attach that statement of work to the transfer document in the State Financial System or other approved financial system used by that State Agency or Institution of Higher Education. The statement of work may also be any type of invoice or quote, so long as that invoice or quote contains the standard provisions required in §4.1 of this Fiscal Rule.
- 5.3.** Work Completion Documentation – For Interagency Agreements under \$5,000.00, for which the State Agency or Institution of Higher Education will not encumber funds and will make payment outside of the State Financial System or other approved financial system, the State Agency or Institution of Higher Education may use an invoice or quote to document the transfer in the same manner that the State Agency or Institution of Higher Education would for Small Purchase Documentation as described in Fiscal Rule 3-1.
- 5.4.** Commitment Vouchers and Other Agreements - State Agencies and Institutions of Higher Education may develop a mutually agreeable statement of work, which includes all standard provisions required in §4.1 of this Fiscal Rule. The statement of work shall be approved by each State Agency and Institution of Higher Education and attached to any model Commitment Voucher form or any other form of agreement. In this event, the State Agencies and Institutions of Higher Education may make any modifications to such form as they determine is appropriate.

6. APPROVALS REQUIRED FOR INTERAGENCY AGREEMENTS

- 6.1.** Approval of Transferring Entity – A State Agency or Institution of Higher Education shall obtain all of the following approvals for all Interagency Agreements for which the State Agency or Institution of Higher Education will engage in an exchange with another State Agency or Institution of Higher Education:
 - 6.1.1.** For all Interagency Agreements the approval of the State Controller or a delegate of the State Controller. This approval shall be evidenced either by the State Controller’s or a delegate’s signature on the document which contains the required items in §4.1 of this Fiscal Rule. Approval also may be evidenced by electronic scans of the signature, or by an approval of the Encumbrance or transfer document in the State Financial System or other financial system used by the State Agency or Institution of Higher Education to which the document which contains the required items in §4.1 is attached.
 - 6.1.1.1.** For Interagency Agreements of \$100,000 or less the State Controller delegate may further delegate this approval authority in that individual’s discretion.
 - 6.1.2.** For all Interagency Agreements the approval of an individual with authority to bind the State Agency or Institution of Higher Education to the amount to be paid. This authority shall be based on the policies of the State Agency or Institution of Higher Education and a proper delegation from the Chief Executive Officer of the State

Agency or Institution of Higher Education, if required by the policies of that State Agency or Institution of Higher Education. Approval shall be evidenced by the individual's signature, including electronic scans of the signature, on the document which contains the required items in §4.1 of this Fiscal Rule.

6.2. Approval of Receiving Entity – A State Agency or Institution of Higher Education shall obtain all of the following approvals for all Interagency Agreements for which the State Agency or Institution of Higher Education will receive funds from another State Agency or Institution of Higher Education:

6.2.1. For all Interagency Agreements the approval of an individual with authority to bind the State Agency or Institution of Higher Education to the work to be performed. This authority shall be based on the policies of the State Agency or Institution of Higher Education and a proper delegation from the Chief Executive Officer of the State Agency or Institution of Higher Education, if required by the policies of that State Agency or Institution of Higher Education. Approval shall be evidenced by the individual's signature on the document which contains the required items in §4.1 of this Fiscal Rule, including electronic scans of the signature.

7. RESOLUTION OF DISPUTES IN INTERAGENCY AGREEMENTS

In the event of disputes concerning performance under or related to any Interagency Agreement, the State Agencies or Institutions of Higher Education that are parties to the Interagency Agreement shall attempt to resolve them at the divisional level. If that fails, the dispute shall be referred to senior State Agency or Institution of Higher Education management staff designated by each State Agency or Institution of Higher Education for resolution. If that fails, the dispute shall be referred to the Chief Executive Officers of the State Agencies or Institutions of Higher Education for resolution. If this fails, the matter shall be submitted for resolution, in writing by both parties, to the State Controller, whose decision shall be final.