

SECTION V: CONTRACTS

FISCAL RULE NUMBER

5-1 College Contracts

Rule 5-1 COLLEGE CONTRACTS

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1. CATEGORIES

1.1 Expenditure Contracts

- *Capital Construction* contracts;
- *Employee Voluntary Separation Agreements*;
- *Fund Management Services* agreements;
- *Goods Contracts*;
- *Information Technology Contracts*;
- *Investment Advisory Services* agreements;
- Personal property leases/*Licenses* -College as lessee or licensee;
- Personal services review exempted contracts;
- *Professional Services Contracts*;
- *Real Property Leases/Licenses* – College as tenant or licensee;
- *Real Property Purchase Agreements* – College as buyer; and
- *Settlement Agreements*.

1.2 Revenue Contracts

- *Franchise Agreements*;
- *Real Property Leases/Licenses* – College as landlord or licensor; and
- *Real Property Purchase Agreements* – College as seller.

1.3 Other Contract Types

- *Debt Contracts*;
- *Grant Contracts*;
- *Interagency Agreements*;
- *Intergovernmental Agreements*;
- *Loan Contracts*;
- No cost/non- cash contracts;
- *Price Agreements*;
- *Sale of Securities* agreements; and

- *Sponsored Project Agreements.*

2. RULE

A *College Contract* that meets the form, content and approval requirements described in this Section 5 shall constitute a *Commitment Voucher* for purposes of College Fiscal Rule 4-2.

3. CONTENT OF COLLEGE CONTRACTS

3.1 Expenditure Contracts, Debt Contracts and Price Agreements. The form and content requirements of this §3.1 shall apply to all *Expenditure Contracts, Debt Contracts and Price Agreements* except as limited or excluded herein. This section shall not apply to *Real Property Leases, Settlement Agreements, Employee Voluntary Separation Agreements, Insurance Coverage Agreements or Health Benefits Agreements.*

3.1.1 General Provisions. The following General Provisions shall be included in all contracts covered by this §3.1:

- Identification of the parties;
- Statement of Work;
- Payment terms, including maximum dollar amount;
- Performance period;
- General terms and conditions;
- Special Provisions (see Appendix to this Fiscal Rule);
- Signature page; and
- Statement that the contract shall not be valid until it has been approved by the Vice President for Finance and Administration.

3.1.2 Real Property Purchases (College as Buyer), Leases (College as Tenant) and Licenses (College as licensee). *College Contracts* for the purchase, lease, or *License* of real property shall contain the following provisions:

3.1.2.1 If the College is the buyer, tenant or licensee, the contract shall include the following Special Provisions:

- College Controller's Approval;
- Funds Availability; and
- Vendor Offset.

3.1.2.2 If the College is the buyer, tenant or licensee, the contract may include the other Special Provisions, at the discretion of the College.

3.1.2.3 If the College is the tenant or licensee, the contract shall include provisions specifying cancellation rights, if the real property leased or licensed is destroyed by fire and/or becomes subject to eminent domain.

3.1.3 Capital Construction Contracts. See Fiscal Rule 6-1, "*Capital Construction Administration.*" See also approved contract forms, available on the website of the Office of the State Architect.

3.2 Content for other Contract Types

3.2.1 *Interagency Agreements.* All *Interagency Agreements* require approval of the Vice President for Finance and Administration. Each *Interagency Agreement* shall include, at a minimum, the following elements:

- Identification of the parties;
- Statement of work;
- Statement of consideration (if applicable);
- Payment and other performance terms; and
- Definition of breach and remedies.

3.2.2 *Intergovernmental Agreements*

3.2.2.1 *Special Provisions.* The College, when contracting with governmental entities outside of the College, shall not agree to modify the Special Provision requiring the governance of Colorado law, but, if requested, may agree to strike the Choice of Law Special Provision, resulting in contractual silence as to governing law. Any other change to the Choice of Law Special Provision shall require the prior written approval of the Office of the Vice President for Finance and Administration and a *Reviewing Attorney*.

3.2.2.2 *Federal Government Contracts.* All *Intergovernmental Agreements* with any *Agency* of the Federal Government shall be reviewed by the Office of the Vice President for Finance and Administration or a *Reviewing Attorney*.

3.2.2.3 *Sponsored Project Agreements.* See applicable College policies governing sponsored projects.

3.3 Provisions for All Contract Types

3.3.1 *Indemnification* – See Board of Trustees policy manual, section 14.

3.3.2 *Limitation of Liability:*

3.3.2.1 *Limitation of Vendor’s Liability - Bodily Injury and Property Damage.* The College shall not limit the vendor’s liability for claims or damages, including consequential damages, arising out of bodily injury (including death) and damage to tangible property, if tangible risk is inherent in the nature of the contract.

3.3.2.2 *Limitation of Vendor’s Liability - Other Types of Damages.* The College may accept commercially reasonable limitations of liability and/or remedies provisions, or the exclusion of consequential damages, if the benefits are deemed to outweigh the risks and this determination is documented in the contract file. Such action requires approval of the Vice President for Finance and Administration or such other individuals specified in a delegation letter from the Vice President for Finance and Administration.

4. APPROVED COLLEGE CONTRACT FORMS

All College *Expenditure Contracts* shall be in a form approved by the Chief Procurement Officer. The Chief Procurement Officer has approved the following contract forms and may approve additional forms at his or her sole discretion.

4.1 Capital Construction Contracts – See Fiscal Rule 6-1, “*Capital Construction Administration*”. See also approved contract forms available on the website of the Office of the State Architect.

4.2 Model Contracts – The Chief Procurement Officer, in consultation with College Counsel, may adopt model contracts, as appropriate.

4.3 Contract Amendments – All modifications to a *College Contract* shall be made by a formal written amendment signed by the parties to the contract and approved by the Vice President for Finance and Administration, unless an alternative modification tool has been approved by the Chief Procurement Officer. A contract cannot be amended or extended (revived) after the contract term has expired.

4.4 Real Property Lease Agreements – Lease agreements involving real property shall be in a form approved by and set forth on the website of the Office of the State Architect, except for leases exempted by statute (see §5.8 of this Fiscal Rule).

4.5 Special Provisions – All College (a) *Expenditure Contracts* and (b) *Grant Contracts* where the College is the grantor and provides funds from College, federal government, or other sources to the other *Party*, (c) *Intergovernmental Agreements* where the College provides funds to another governmental entity, (d) *Debt Contracts*, (e) *Price Agreements*, and (f) *Capital Construction Contracts* shall contain the Special Provisions. See §12 to this Fiscal Rule. No modification shall be made to a Special Provision without the prior written approval of the Vice President for Finance and Administration, or as authorized by the Vice President for Finance and Administration in consultation with a *Reviewing Attorney*, except as otherwise expressly provided herein.

4.6 Waived Contracts – Where the College will enter into multiple contracts containing identical provisions, except for the date, contractor and consideration amount, the Vice President for Finance and Administration may waive any requirement as to contract format.

4.7 Other contract forms – Any other contract form which may be approved by the Vice President for Finance and Administration or Chief Procurement Officer from time-to-time.

5. COLLEGE CONTRACT APPROVALS

The President has delegated the Vice President for Finance and Administration final authority for all *College Contracts*. No person may enter a *College Contract* on behalf of the College without delegation from the Vice President for Finance and Administration. Any *College Contract* executed without proper delegation shall be deemed null and void unless it is ratified. The College shall obtain all required approvals and signatures and retain documentation thereof in its files for any period specified in the applicable College document retention policy.

No *Expenditure Contract* is valid unless it has been approved as required by this §5. Any person who causes a contract to be executed in contravention to this §5 may be personally liable for any obligation incurred thereby. CRS §24-30-202(3).

Additional approvals are required as follows:

5.1 Capital Construction and Controlled Maintenance Contracts require the approval of the State Architect or delegate, unless otherwise exempted by statute or waived by the State Architect. See CRS §24-30-1303(1)(d).

5.2 Central Services Contracts require the approval of the Chief Procurement Officer.

5.3 Contingency-Based Contracts require the approval of the Vice President for Finance and Administration and any other approvals deemed necessary by the Vice President for Finance and Administration. See C.R.S. §24-17-204.

5.4 Debt Collection Services Contracts require the approval of the College Controller. See CRS §24-30202.4.

5.5 Financial Information Contracts used by the College to record financial transactions and information, develop *Financial Reports*, or prepare *Financial Statements* require the approval of the College Controller. See CRS §24-30-202(12).

5.6 Legal Services Contracts require the approval of the Vice President for Finance and Administration and College Counsel, on behalf of the State Attorney General or delegate.

5.7 Real Property Contracts, including leases where the College is the tenant, easements, and rights-of-way contracts, require the approval of the State Architect/Director of Real Estate Programs, Department of Personnel and Administration, or delegate, unless otherwise exempted by statute and *Reviewing Attorney*.

5.8 Utility Cost-Savings Contracts require the approval of the State Personnel Director or delegate. See CRS §24-30-2003(1)(b).

6. COLLEGE CONTRACT LEGAL REVIEW

At the discretion of the Vice President for Finance and Administration, a *College Contract* may be subject to legal review and approval of *Reviewing Attorney*. Also, based on the complexity and perceived risk, any contract \$100,000 or greater requires review and approval of *Reviewing Attorney*.

6.1 Mandatory Review. Legal review shall include, without limitation, scrutiny of contract provisions to ensure that the following requirements are met:

- Compliance with the United States and Colorado Constitutions, federal and state statutes, state regulations, and applicable College policies and Rules;
- Authority of the College representative/s;
- All essential elements of a legally binding contract;
- A statement of work or comparable provisions and business or commercial terms, which are sufficiently clear and definite, under the applicable circumstances, to be enforceable;
- Required signatures.

6.2 Discretionary Review. At the discretion of the Vice President for Finance and Administration, legal review also may include:

- Review and analysis of the significant risks and issues of a particular transaction;
- Inquiry into the availability of specific remedies; and
- Review of compliance with grant conditions, federal funding requirements, and required assurances, where provided by the College.

7. Vice President for Finance and Administration Review and Approval

The Vice President for Finance and Administration's review and approval is required for all *Expenditure Contracts, Intergovernmental Agreements* and *Price Agreements*, except as expressly provided in these Fiscal Rules. The Vice President for Finance and Administration will review other contracts as requested. The Vice President for Finance and Administration may delegate in writing authority to approve *College Contracts* as required by §5 of this Rule. Any such delegation is personal to the delegee and may not be further delegated.

7.1 Process for Review, Approval, and Signature

7.1.1 Review - The Vice President for Finance and Administration shall review all *Expenditure Contracts* to determine if the Expenditure:

- Is authorized by the fund to which it will be charged;
- Does not exceed the unencumbered balance of the fund;
- Complies with all applicable constitutional and statutory provisions, and College policies; and
- Is encumbered; and

7.1.1.1 Prices or rates are fair and reasonable and in accordance with state law and administrative Rules;

7.1.1.2 Form and Content of the contract are sufficient and appropriate for the parties and subject matter under applicable state and federal laws, and College policies; and

7.1.1.3 Risk of the contract is outweighed by the contract's benefits.

7.1.2 Approval and Signature After review, the Vice President for Finance and Administration shall approve or disapprove the *College Expenditure Contract*. If approved, the Vice President for Finance and Administration shall evidence such approval by signing the contract.

7.2 Contracts Not Approved by the Vice President for Finance and Administration

7.2.1 Not Binding. An *Expenditure Contract* is not binding on or enforceable against the College unless and until it is signed by the Vice President for Finance and Administration.

7.2.2 Null and Void. Any *Expenditure Contract* disapproved by the Vice President for Finance and Administration is null and void.

8. ENCUMBRANCES

The College shall encumber *Expenditure Contracts* in accordance with College accounting and financial policies.

9. MONITORING OF STATE CONTRACTS

9.1 Implementation. The College is exempt from the requirements of sections 24-102-205, 24-103.5 and 24102-105, C.R.S.

10. INDEPENDENT CONTRACTOR RELATIONSHIP

The College shall take care in maintaining the distinctions between services performed by persons who are employees of the College and services performed by independent contractors, and their employees, agents and representatives. The College's responsibilities and obligations with respect to employee/employer arrangements differ from its responsibilities and obligations with respect to independent contractors. The College may be liable to a *Party* for the actions of its employees, whereas independent contractors and their employees, agents and representatives are liable for their own actions. The College is responsible for retirement contributions and

Benefits for its employees, whereas independent contractors are responsible for social security taxes and *Benefits* of their employees. The College shall follow guidelines issued by the Internal Revenue Service, the Colorado Division of Human Resources, Colorado statutes, and opinions of the State Attorney General in determining whether an individual is an employee or independent contractor.

11. SPECIAL PROVISIONS

These Special Provisions apply to all contracts except where noted in *italics*.

1. **VICE PRESIDENT'S APPROVAL.** This contract shall not be valid until it has been approved by the Vice President for Finance and Administration.
2. **FUND AVAILABILITY.** Financial obligations of the College payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.
3. **GOVERNMENTAL IMMUNITY.** 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, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.
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 College. Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation Benefits through the College and the College shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Unemployment insurance Benefits will be available to Contractor and its employees and agents only if such coverage is made available by Contractor or a third Party. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this contract. Contractor shall not have authorization, express or implied, to bind the College to any agreement, liability or understanding, except as expressly set forth herein. 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 College, and (c) be solely responsible for its acts and those of its employees and agents.
5. **COMPLIANCE WITH LAW.** Contractor shall strictly comply with all applicable federal and state laws, College policies, Rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.
6. **CHOICE OF LAW.** 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. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this contract, to the extent capable of execution.
7. **BINDING ARBITRATION PROHIBITED.** Fort Lewis College does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this contract or incorporated herein by reference shall be null and void.
8. **EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. CRS §§24-18-201 and 24-50-507.** The signatories aver that to their knowledge, no employee of the College 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.

9. VENDOR OFFSET. *[Not Applicable to Intergovernmental Agreements]* If required by CRS §24-30-202.4 (3.5), the College Controller may withhold payment under the state's vendor offset intercept system for debts owed for: (a) unpaid child support debts or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, et seq.; (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.

10. PUBLIC CONTRACTS FOR SERVICES. CRS §8-17.5-101. *[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 CRS §8-17.5102(5)(c), 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 Department program Rules to undertake pre-employment screening of job applicants while this contract is being performed, (b) shall notify the subcontractor and the College 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 CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If Contractor participates in the Department program, Contractor shall deliver to the College 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 CRS §8-17.5-101 et seq., the College may terminate this contract for breach and, if so terminated, Contractor shall be liable for damages.

11. PUBLIC CONTRACTS WITH NATURAL PERSONS. CRS §24-76.5-101. Contractor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she (a) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (b) shall comply with the provisions of CRS §24-76.5-101 et seq., and (c) has produced one form of identification required by CRS §24-76.5-103 prior to the effective date of this contract.