

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 §5.4 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.

| <u>TYPE OF AGREEMENT</u> | <u>DOLLAR LIMIT</u> | <u>REQUIRED DOCUMENT FOR COMMITMENT</u> |
|--------------------------|---------------------|---|
|--------------------------|---------------------|---|

| | | |
|---|---|--|
| | | <u>VOUCHER</u> |
| | | |
| 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 §5.4 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