

## CHAPTER 3: CONTRACTS

### Policy 3-1 UNIVERSITY CONTRACTS

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### 3.1 CATEGORIES

#### 3.1.1 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 - University as Lessee or Licensee;
- Personal Services Contracts;
- Personal Services Review Exempted Contracts;
- Professional Services Contracts;
- Real Property Leases/Licenses – University as Tenant or Licensee;
- Real Property Purchase Agreements – University as Buyer;
- Settlement Agreements;
- Energy Performance Contracts;
- Solar Host Agreements;
- Power Purchase Agreements.

#### 3.1.2 Revenue Contracts

- Franchise Agreements;
- Real Property Leases/Licenses – University as Landlord or Licensor;
- Real Property Purchase Agreements – University as Seller;
- Fee for Service Contracts;
- Facilities Use Agreements.

### 3.1.3 Other Contract Types

- Debt Contracts;
- Grant Contracts;
- Interagency Agreements;
- Intergovernmental Agreements;
- Loan Contracts;
- No Cost/Non-Cash Contracts;
- Price Agreements;
- Sale of Securities Agreements;
- Sponsored Project Agreements;
- Donation Agreements;
- Utilities Agreements.

## 3.2 POLICY

A University contract that meets the form, content, and approval requirements described in this Chapter 3 shall constitute a *Commitment Voucher* for purposes of University Financial Policy 2-2.

## 3.3 CONTENT OF UNIVERSITY CONTRACTS

### 3.3.1 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, Voluntary Separation Agreements, Insurance Coverage Agreements, or Health Benefits Agreements (including dental, vision, pharmacy, and wellness benefits).

#### 3.3.1.1 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 C](#) to this Financial Policy); and
- Signature page.

#### 3.3.1.2 Real Property Purchases (University as Buyer), Leases (University as Tenant) and Licenses (University as licensee)

University Contracts for the purchase, lease, or license of real property shall contain the following provisions:

- 3.3.1.2.1. If the University is the buyer, tenant, or licensee, the contract shall include the following Special Provisions:

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

**3.3.1.2.2.** If the University is the buyer, tenant, or licensee, the contract may include the other Special Provisions, at the discretion of the University.

**3.3.1.2.3.** If the University 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.

### **3.3.1.3 Capital Construction Contracts, Solar Host Contracts, and Power Purchase Agreements**

[See Financial Policy 4-1](#), "Capital Construction Administration." See also approved contract forms, available on the website of the Office of the State Architect. For Solar Host Contracts, Energy Performance Contracts, and Power Purchase Agreements see the approved contract forms on the website of the Governor's Energy Office.

## **3.3.2 Content for other Contract Types**

### **3.3.2.1 Interagency Agreements**

All interagency agreements, not related to sponsored research, require approval of the University's Office of Business Operations. 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.

### **3.3.2.2 Intergovernmental Agreements**

**3.3.2.2.1 Special Provisions.** The University, when contracting with governmental entities outside of the University, shall not agree to modify the Special Provision requiring the governance of Colorado law; however, if requested, the University 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 University's Contracts Office and a reviewing attorney where appropriate.

**3.3.2.2.2 Federal Government Contracts.** The University's Office of Business Operations shall review all intergovernmental agreements with any agency of the federal government not related to sponsored research.

**3.3.2.2.3 Sponsored Project Agreements.** See applicable University policies governing sponsored projects.

### **3.3.3 Provisions for All Contract Types**

#### **3.3.3.1 Indemnification by the University Prohibited**

Unless specifically authorized by statute, the University shall not indemnify and/or hold harmless another Party against any liability incurred as a result of the acts or omissions of the University or its officers, employees or agents. See [Constitution of Colorado](#), Article V, §33 and Article XI, §1.

#### **3.3.3.2 Limitation of Liability**

##### **3.3.3.2.1 Limitation of Vendor's Liability - Bodily Injury and Property Damage.**

The University 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. If a determination is made that no tangible risk is inherent in the nature of the contract this decision must be supported in writing by the University Risk Manager.

##### **3.3.3.2.2 Limitation of Vendor's Liability - Other Types of Damages.**

The University may accept commercially reasonable limitations of liability and/or remedy 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 University Risk Manager or such other individuals specified in a delegation letter from the University Risk Manager.

### **3.4 APPROVED UNIVERSITY CONTRACT FORMS**

All University Expenditure Contracts shall be in a form approved by the Director of Business Operations. The following contract forms are approved and additional forms may be approved at their sole discretion.

#### **3.4.1 Capital Construction Contracts**

See [Financial Policy 4-1](#), "Capital Construction Administration". See also approved contract forms available on the website of the Office of the State Architect.

#### **3.4.2 Model Contracts**

The Director of Business Operations, in consultation with the University Counsel, may adopt model contracts, as appropriate.

#### **3.4.3 Contract Amendments**

All modifications to a University Contract shall be made by a formal written amendment signed by the parties to the contract and approved the Director of Business Operations and other parties as this policy requires. A contract cannot be amended or extended (revived) after the contract term has expired.

#### **3.4.4 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 section 3.5.8 of this Financial Policy).

#### **3.4.5 Special Provisions**

All University (a) Expenditure Contracts and (b) Grant Contracts where the University is the grantor and provides funds from University, federal government, or other sources to the other Party, (c) Intergovernmental Agreements where the University provides funds to another governmental entity, (d) Debt Contracts, (e) Price Agreements, and (f) Capital Construction Contracts shall contain the Special Provisions. See Section 3.13 of this Financial Policy. No modification shall be made to a Special Provision without the prior written approval of the Director of Business Operations in consultation with a Reviewing Attorney, except as otherwise expressly provided herein.

#### **3.4.6 Waived Contracts**

Where the University will enter into multiple contracts containing identical provisions, except for the date, contractor and consideration amount, the Director of Business Operations may waive any requirement as to contract format.

#### **3.4.7 Other contract forms**

From time-to-time, the AVP of Administration (Business Operations) may approve other contract forms.

### **3.5 UNIVERSITY CONTRACT APPROVALS**

The President and the Board of Trustees of the Colorado School of Mines have final authority for all University Contracts. No person may enter into a University contract on behalf of the University without delegation from the Board of Trustees through the President and any University contract executed without proper delegation shall be deemed null and void unless the President or appropriate delegate ratifies it. The University shall obtain all required approvals and signatures as per [Board Policy 10.2](#) and retain documentation thereof in its files for the period specified in the applicable University document retention policy.

No Expenditure Contract is valid unless it has been approved as required by §3.5. Any person who causes a contract to be executed in contravention to §3.5 may be personally liable for any obligation incurred thereby. C.R.S. §24-30-202(3).

Additional approvals are required as follows:

#### **3.5.1 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 C.R.S. §24-30-1303(1)(d).

#### **3.5.2 Central Services Contracts**

Require the approval of the AVP of Administration (Business Operations.)

### **3.5.3 Contingency-Based Contracts**

Require the approval of the CFO and any other approvals deemed necessary by the CFO. See C.R.S. §24-17-204.

### **3.5.4 Debt Collection Services Contracts**

Require the approval of the Controller. See C.R.S. §24-30-202.4.

### **3.5.5 Financial Information Contracts**

Require the approval of the Controller. These include anything used to record financial transactions and information, develop financial reports, or prepare financial statements.

### **3.5.6 Legal Services Contracts**

Require the approval of the President and University Counsel, on behalf of the State Attorney General or delegate.

### **3.5.7 Personal Services Contracts**

Require the approval of the Associate Vice President for Human Resources or delegate as provided by C.R.S. §24-50-501, et seq.

### **3.5.8 Real Property Contracts**

Require the approval of the State Architect/Director of Real Estate Programs, or delegate, unless otherwise exempted by statute. These include leases where the University is the tenant, easements, and rights-of-way contracts.

### **3.5.9 Utility Cost-Savings Contracts**

Require the approval of the State Personnel Director or delegate except where exempted by standard form through the Colorado Governor's Energy Office. See C.R.S. §24-30-2003(1)(b).

## **3.6 UNIVERSITY CONTRACT LEGAL REVIEW**

At the discretion of the University's Contract Office, any University Contract may be subject to legal review by and approval of University Counsel. Any contract with a total value of more than \$50,000; that requires the disclosure of sensitive or confidential information held by the University; that has a material risk to the University; that contains complex legal issues; or, that is a non-standard template must be reviewed by University Counsel. In accordance with Board of Trustees policy 10.2 Section III.J, any doubt about the requirement for legal review should be resolved in favor of seeking legal review.

### **3.6.1 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 University policies and procedures;
- Authority of the University 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; and
- Required signatures.

### **3.6.2 Discretionary Review**

At the discretion of the University's Contract Office and/or the Office of Research Administration and Legal Counsel, 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 University.

## **3.7 BUSINESS OPERATIONS REVIEW AND APPROVAL**

The Office of Business Operations, which includes Contracts, Risk Management, and Purchasing, must review all expenditure contracts, except Capital Construction Contracts. The Office of Business Operations and the University's Risk Manager must review any contract, regardless of contract type, with a total value exceeding \$5,000 or that has a potential material risk to the University.

### **3.7.1 Mandatory Review**

**3.7.1.1** Prices or rates are fair and reasonable and in accordance with state law and administrative procedures;

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

**3.7.1.3** Risk of the contract is outweighed by the contract's benefits.

### **3.7.2 Discretionary Review**

The University's Risk Manager may review and approve any contract as requested by the Office of Legal Counsel, the Controller's Office, the Office of Research Administration, Human Resources, or any other office initiating a contract.

## **3.8 ENCUMBRANCES**

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

## **3.9 MONITORING OF STATE CONTRACTS**

The University is exempt from the requirements of §24-102-205, §24-103.5, and §24-102-105, C.R.S.

### **3.10 INDEPENDENT CONTRACTOR RELATIONSHIP**

The University shall take care in maintaining the distinctions between services performed by persons who are *Employees* of the University and services performed by independent contractors, and their employees, agents and representatives, pursuant to a Personal Services Contract. The University's responsibilities and obligations with respect to employee/employer arrangements differ from its responsibilities and obligations with respect to independent contractors. The University 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 University is responsible for benefits for its employees, whereas independent contractors are responsible for social security taxes and benefits of their employees. The University 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.

### **3.11 EXCEPTIONS**

#### **3.11.1 Personal Services Contracts**

This Financial Policy does not apply to University Contracts for personal services paid through an authorized University payroll system, which are exempted from the State Personnel System pursuant to C.R.S. §24-50-135.

### **3.12 SPECIAL PROVISIONS**

See [Appendix C](#). These Special Provisions apply to all contracts except where noted in *italics*.