**STATE OF COLORADO**
**DEPARTMENT OF HIGHER EDUCATION**
**PERFORMANCE CONTRACT**

This Performance Contract is by and between the Department of Higher Education (hereinafter referred to as the "Department") and the Board of Trustees for the Colorado School of Mines (hereinafter referred to as the "Governing Board").

## RECITALS

**WHEREAS**, the General Assembly enacted the College Opportunity Fund Act, title 23, Article 18, Section 101 *et seq.*, Colorado Revised Statutes, which states that performance contracts should provide for greater flexibility and a more focused accountability for institutions to students and the people of Colorado.

**WHEREAS**, Title 23, Article 1, Section 108(1.5)(a), Colorado Revised Statutes, requires that the Colorado Commission on Higher Education (hereinafter referred to as the "Commission") shall develop and submit to the Governor and General Assembly, a new master plan (hereinafter referred to as the "Master Plan") for Colorado postsecondary education, which shall be developed in collaboration with the governing boards and chief executive officers of the state institutions of higher education.

**WHEREAS**, Title 23, Article 1, Section 108(1.5)(f), Colorado Revised Statutes, requires the Commission to ensure that the Master Plan is implemented through the performance contracts authorized pursuant to Sections 23-5-129 and 23-41-104.6 by negotiating with the governing boards individualized goals and expectations for the public institutions of higher education, which goals and expectations support achievement of the statewide goals identified in Section 108(1.5)(c) and in the Master Plan.

**WHEREAS**, Title 23, Article 1, Section 108(1.7), Colorado Revised Statutes, requires that the Commission, working with the governing boards and the institutions of higher education, shall collect data, including but not limited to research conducted by national policy organizations and agencies or institutions of higher education in other states, as necessary to support development and implementation of the Master Plan and to use in negotiating the performance contracts authorized pursuant to Sections 23-5-129 and 23-41-104.6.

**WHEREAS**, Title 23, Article 1, Section 108(1.9), Colorado Revised Statutes, requires the Commission to create a performance-based funding plan on or before December 1, 2013, to appropriate to each governing board, including the governing boards for the junior colleges and area vocational schools, a portion of the performance funding amount for the applicable state fiscal year based on the success demonstrated by the institutions under each governing boards' control in meeting the goals and expectations specified in the institutions' respective performance contracts. Pursuant to Title 23, Article 1, Section 108(1.9)(c)(I), Colorado Revised Statutes, the "performance funding amount" means twenty-five percent of the amount by which the general fund appropriation for the state system of higher education, excluding any amount appropriated for student financial aid, exceeds six hundred fifty million dollars when total general fund appropriations have reached or exceed the "restored level" of seven hundred six million dollars.

## GENERAL PROVISIONS

1. Effective Date and Term of Contract. Pursuant to Title 23, Article 41, Section 104.6(4)(a), Colorado Revised Statutes, this Performance Contract is subject to approval by the General Assembly, and shall be effective on the day after the date on which the Governor signs the joint resolution by the General Assembly during the 2013 regular legislative session approving this Performance Contract, and shall remain in effect until the date on which the governor signs the joint resolution passed during the 2023 regular legislative session that approves the next performance contract.

2. Scope of Contract. This Performance Contract, and Addenda A and B, which are expressly incorporated herein, sets forth the mutually agreed-upon performance goals and expectations of the Colorado School of Mines (hereinafter referred to as the "Institution"), as well as the measurements for determining progress towards those goals. The goals and expectations set forth in this Performance Contract reflect the statewide goals set forth in Title 23, Article 1, Section 108(1.5)(c), Colorado Revised Statutes, and the Master Plan, and are tailored to the role and mission of the Institution. This Performance Contract also sets forth the mutually agreed-upon resource, programmatic and management flexibility for the Institution, as set forth in Addendum B.

3. Authority to enter Performance Contracts. The Institution is a state institution of higher education pursuant to Title 23, Article 5, Section 129(1)(b), Colorado Revised Statutes, and this Performance Contract is authorized by Title 23, Article 5, Section 129(2)(a), and Title 23, Article 1, Section 108(1.5)(f), and Title 23, Article 41, Section 104.6.

4. Prior Agreements. This Performance Contract supersedes and replaces any previously executed performance contract, including amendments and modifications thereto, entered into by the Parties.

5. Performance Goals and Measurements. The Institution agrees to make those efforts and implement the performance goals and expectations set forth in Addendum A, within the time frames established in Addendum A. The Institution agrees and understands that its progress towards those performance goals and expectations shall be evaluated based on the measurements set forth in Addendum A.

6. Performance Goal Achievement. This Performance Contract sets forth those goals, standards and requirements upon which the Department and the Governing Board have mutually agreed.

7. Resource, Programmatic and Management Flexibility. As authorized by Title 23, Article 5, Section 129(2)(a), Colorado Revised Statutes, the Institution's compliance with the goals set forth herein are in lieu of many of the requirements of Article 1 of Title 23 for the period of the Performance Contract, as set forth in Addendum B.

8. Academic and Vocational Program Approval. Pursuant to Title 23, Article 5, Section 129(6)(a)-(b) and Title 23, Article 41, Section 104.6(5)(a)-(b), Colorado Revised Statutes, and the Commission's Policy I-V, while operating pursuant to this Performance Contract, the Governing Board shall continue to operate as the Governing Board for the Institution, and shall not be required to consult with or obtain approval from the Commission to create, modify, or eliminate academic and vocational programs offered by the Institution, so long as such creations, modifications, and eliminations are consistent with the Institution's statutory role and mission. The Commission shall have the authority to override the creation or modification of an academic or vocational program if the change made by the Governing Board is inconsistent with the Institution's statutory role and mission.

9. Tuition and Other Increases. Pursuant to Title 23, Article 41, Section 104.6(5)(c), Colorado Revised Statutes, during the period this Performance Contract remains in effect, the Governing Board shall have sole authority to establish resident and nonresident tuition rates for the Institution, so long as the Institution continues to meet the goals specified in this Performance Contract and to comply with the provisions of Article 23, Title 41, Section 104.7, Colorado Revised Statutes, except that for fiscal years 2011-2012 through 2015-16, the annual percentage increase in resident tuition rates shall not exceed a percentage equal to two times the rate of the percentage change in the consumer price index for the Denver metropolitan area or nine percent, whichever is greater, unless the Colorado commission on higher education approves a greater tuition increase pursuant to Title 23, Article 5, Section 130.5, Colorado Revised Statutes.

10. Institution's Eligibility for State Funding. Pursuant to Title 23, Article 5, Section 129(7)(a) and Title 23, Article 41, Section 104.6(6)(a), Colorado Revised Statutes, while operating pursuant to this Performance Contract, the Institution shall remain eligible for state-funded capital construction projects and controlled maintenance projects as provided in Title 23, Article 1, Section 106.

11. Resident Applicant Admission Requirements. Pursuant to Title 23, Article 5, Section 129(7)(b) and Title 23, Article 41, Section 104.6(6)(b), Colorado Revised Statutes, while operating pursuant to this Performance Contract, the Institution shall continue to admit Colorado resident applicants within the requirements of Title 23, Article 1, Section 113.5 who meet the admissions criteria of the Institution and provide equal educational opportunities to all students.

12. Data Reporting Requirements. The Governing Board shall transmit to the Department all annual reports and data required in this Performance Contract including those set forth in Addendum A, in the form and manner prescribed herein or as required by Commission policy. The Governing Board shall provide the Department of Higher Education with data upon formal request, including data requested pursuant to Title 23, Article 1, Section 108(1.7), Colorado Revised Statutes, and shall continue to report information through the Commission for the Student Unit Record Data Systems (SURSD) and the Integrated Post-secondary Education Data System (IPEDS) of the United States Department of Education.

13. Issue Resolution. The parties agree to use their best efforts to resolve any disputes that may arise with respect to performance of the terms and conditions set forth herein. In the event that a party to this Performance Contract has reason to believe that the other party is not complying with the terms and conditions set forth herein, that party shall first provide written notice to the non-complying party setting forth the nature of the alleged failure to act or perform. If the dispute is not resolved, the official representatives of the parties shall meet to discuss a remediation plan or modification of this Performance Contract as may be required by the circumstances.

14. Performance Report. Performance on this Performance Contract shall be reported by the Department to the Governor and General Assembly pursuant to Title 23, Article 5, Section 129(5). The Institution understands that, pursuant to Title 23, Article 1, Section 108(1.9)(b) and (c), Colorado Revised Statutes, after the 2015-16 state fiscal year, in each state fiscal year in which the general assembly appropriates the restored level of general fund appropriations for the state system of higher education, the Commission, based on the performance-based funding plan adopted in the Master Plan, shall recommend to the joint budget committee the portion of the performance funding amount to be appropriated to the Governing Board, based on the demonstrated performance of the Institution in meeting the goals and expectations set forth in this Performance Contract. Pursuant to Title 23, Article 1, Section 108(1.9)(c)(II), Colorado Revised Statutes, the "restored level of general fund appropriations" means an amount of general fund appropriations for the state system of higher education, excluding any amount appropriated for student financial aid, that equals or exceeds seven hundred six million dollars.

15. Notice and Representatives. For the purposes of this Performance Contract, notices required under this Performance Contract shall be in writing and shall be sent by prepaid certified mail, return receipt requested, by facsimile, with confirmation of transmission, by overnight delivery such as Federal Express, or by hand delivery, with confirmation of receipt, to the individuals identified below who are hereby designated as the official representatives of the respective Parties. Either Party may from time to time designate in writing a new or substitute representative or address.

For the Department:

Lt. Gov. Joseph A. Garcia
Executive Director
Colorado Department of Higher Education
1560 Broadway, Suite 1600
Denver, CO 80202

For the Board of Trustees for the Colorado School of Mines:

Dr. M. W. Scoggins
President
Colorado School of Mines
1500 Illinois Street
Golden, CO 80401

16. No Third-Party Beneficiary. Nothing in this Performance Contract shall be construed or implied to confer third-party beneficiary status on any person or entity. Any services or benefits which third parties receive as a result of this Agreement are incidental and do not create rights for such third parties.

17. Assignment. The rights and obligations of each Party hereunder are personal to such Party and may not be transferred, assigned or subcontracted without the prior, written consent of the other Party.

18. Severability. To the extent that this Performance Contract may be executed and performance of the obligations of the parties may be accomplished within the intent of the Performance Contract, the terms of the Performance Contract are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof.

19. Renewal of Agreement. The Governing Board and the Department may agree to renew this Performance Contract prior to its expiration. Any such renewal must be approved by the Commission.

20. Entire Agreement. This Performance Contract, including the Addenda hereto and any documents to be delivered hereunder, are intended as the complete integration of all understandings between the parties regarding performance contracts authorized by Title 23, Article 5, Section 129 and Title 23, Article 1, Section 108(1.5)(f). No prior or contemporaneous addition, deletion or other amendment hereto shall have any force or effect whatsoever, unless embodied herein in writing. No subsequent novation, renewal, addition, deletion or other amendment hereto shall have any force or effect unless embodied in a writing executed and approved by both Parties to this Performance Contract and the Commission.

21. Modification. This Performance Contract shall be subject to such modifications as may be required by changes in federal or state law or regulations or as may be agreed to by the parties and approved by the Commission. Any such modifications shall be agreed to by the parties in writing and incorporated into and made a part of this Performance Contract as if fully set forth herein. Any modification or addition to this Performance Contract shall not become effective until approved by the Commission.

22. Force Majeure. Neither party shall be considered to have materially failed to perform its obligations under this Performance Contract, including, for the Institution, its failure to meet a Performance Goal, to the extent that such failure arises out of causes beyond the reasonable control of a party. Such causes may include, but are not limited to, acts of God or of the public enemy, acts of the state or the United States in either its sovereign or contractual capacity, fires, floods, epidemics, strikes, and unusually severe weather, but, in every case, delay or failure to perform must be beyond the reasonable control of and without the fault or negligence of the party.

## SIGNATURE PAGE

## THE PARTIES HERETO HAVE EXECUTED THIS PERFORMANCE CONTRACT

| GOVERNING BOARD | DEPARTMENT |
|---|---|
| Board of Trustees for the Colorado School of Mines | COLORADO DEPARTMENT OF HIGHER EDUCATION |
| BY: _____ Dr. M. W. Scoggins, President | BY: _____ Lt. Gov. Joseph A. Garcia, Executive Director |
| Date: 5-30-2013 | Date: 6/7/13 |
| APPROVED | APPROVED |
| BY: _____ James R. Spaanstra, Chair, Board of Trustees for the Colorado School of Mines | BY: _____ Richard Kaufman, Chair, Colorado Commission on Higher Education |
| Date: 5-20-13 | Date: 6-7-2013 |

## Addendum A

This Addendum A sets forth those goals, standards and requirements upon which the Department and the Governing Board have mutually agreed.

The Institution agrees to make those efforts and implement the performance goals and expectations set forth in this Addendum A, within the time frames established in Addendum A. The Institution agrees and understands that its progress towards those performance goals and expectations shall be evaluated based on the measurements set forth in Addendum A.

NOW THEREFORE, the Parties agree as follows.

**Goal #1: Increasing Attainment**
Increase the attainment of high quality postsecondary credentials across the academic disciplines and throughout Colorado by at least 1,000 new certificates and degrees each year to meet anticipated workforce demands by 2025.

| | Metric | Weight |
|---|---|---|
| **1.3** | "Maintain excellence" by maintaining graduation rates at or among the top 25% of peer institutions | 25% |
| **1.7** | *INSTITUTION DEVELOPED INDICATOR:* Annually award over 90% of undergraduate degrees in STEM disciplines | 10% |

**Goal #2: Improving Student Success**
Improve student success through better outcomes in basic skills education, enhanced student support services and reduced average time to credential for all students.

| | Metric | Weight |
|---|---|---|
| **2.6** | *INSTITUTION DEVELOPED INDICATOR:* Maintain excellence in outcomes rate by having at least 90% of bachelor degree recipients either enrolling in graduate school or be employed in a job related to their course of study within one year of graduation | 10% |
| **2.7** | *INSTITUTION DEVELOPED INDICATOR:* Maintain excellence by maintaining retention rates at or above 25% of peer institutions | 20% |

**Goal #3: Reducing Gaps**

Enhance access to, and through, postsecondary education to ensure that the system reflects the changing demographics of the state while reducing attainment gaps among students from underserved communities.

| | Metric | Weight |
|---|---|---|
| **3.1** | Annually reduce disparities in graduation rates between resident underserved and resident non-underserved students | 10% |
| **3.9** | *INSTITUTION DEVELOPED INDICATOR:* Maintain excellence by maintaining proportion of undergraduate degrees awarded to women at or among the top 25% nationally as measured and reported by the American Society of Engineering Education (ASEE) | 10% |

**Goal #4: Restoring Fiscal Balance**

Develop resources, through increases in state funding, that will allow public institutions of higher education to meet projected enrollment demands while promoting affordability, accessibility and efficiency.

| | Metric | Weight |
|---|---|---|
| **4.1** | Maintain the institution's rank relative to peers regarding the number of degrees awarded per $100,000 in total operating (E&G) revenues | 5% |
| **4.5** | *INSTITUTION DEVELOPED INDICATOR:* Maintain excellence by remaining at or among top 25% of public institutions in endowment per FTE as ranked by the National Association of College and University Business Officers (NACUBO) | 10% |