

TOPIC: PERFORMANCE CONTRACTS EXTENSION

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I. BACKGROUND & SUMMARY

The College Opportunity Fund (COF) Act included a provision for each governing board to enter into a performance contract with the Commission and department. These contracts specify various performance goals and reporting requirements for each institution, based on the institution's role and mission and particular characteristics. These initial performance contracts expire on June 30, 2009 for all institutions except the Colorado School of Mines, which has a contract expiring June 30, 2011.

The recent evaluation of the COF program by the Western Interstate Commission for Higher Education identified several areas in which the performance contracts might be strengthened to be more effective in advancing state goals. Another agenda item for this Commission meeting describes a proposed a long-range, comprehensive planning effort to be undertaken by the Commission and department.

II. STAFF ANALYSIS

A major objective of the proposed planning effort is to better connect the state's allocation of financial and other resources with the attainment of key state goals for higher education. Revised performance contracts should be an important tool for effecting that connection. It is appropriate to extend the terms of the current performance contracts during the period of the comprehensive planning effort and for a sufficient time thereafter to enable the applicable results of the planning effort to be reflected in new performance contracts. The proposed action would authorize extensions of the current contracts through June 30, 2011.

III. STAFF RECOMMENDATION

That the Commission authorize agreements with the governing boards to extend through June 30, 2011, the performance contracts that otherwise expire June 30, 2009.

IV. STATUTORY AUTHORITY

College Opportunity Fund Act, Title 23, Article 18, Section 101 *et seq.*

V. ACCOMPANYING MATERIALS

The generic form of the proposed Extension Agreement is attached as Attachment A.

Attachment A

**STATE OF COLORADO
DEPARTMENT OF HIGHER EDUCATION
PERFORMANCE CONTRACT AMENDMENT NO. 1**

1. PARTIES

THIS CONTRACT AMENDMENT NO. 1 (hereinafter called this "Amendment") to the Performance Contract entered into by and between the Department of Higher Education (hereinafter referred to as the "Department") and the Board of Trustees for _____ (hereinafter the "Original Contract"), made this ___th day of June, 2009, is entered into by and between the Department and the Board of Trustees for _____ (hereinafter called "Governing Board").

2. EFFECTIVE DATE AND ENFORCEABILITY

This Amendment shall be effective and enforceable upon signature of the parties (hereinafter its "Effective Date") and upon review and approval by the Colorado Commission of Higher Education, in accordance with its provisions. The Department shall not be liable to pay or reimburse the Governing Board for any performance hereunder, including, but not limited to, costs or expenses incurred, or be bound by any provision hereof prior to the Effective Date.

3. FACTUAL RECITALS

The Parties entered into the Original Contract, made on _____, 2005, in order to comply with the statutory requirements of the College Opportunity Fund Act, Title 23, Article 18, Section 101 *et seq.*

4. CONSIDERATION

Consideration for this Amendment consists of the payments to be made hereunder and the obligations, promises, and agreements herein set forth.

5. LIMITS OF EFFECT

This Amendment is incorporated by reference into the Original Contract, and the Original Contract and all prior amendments thereto, if any, remain in full force and effect except as specifically modified herein.

6. MODIFICATIONS

The Original Contract and all prior amendments thereto, if any, are modified as follows:

- A. Section 2 of the Original Contract is amended to extend the Term of this contract by eighteen months, with the new termination date to be on June 30, 2011.

