EMPLOYMENT AGREEMENT BETWEEN

MARK KENNEDY

AND

THE REGENTS OF THE UNIVERSITY OF COLORADO
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EMPLOYMENT AGREEMENT  
BETWEEN MARK KENNEDY  
AND  
THE REGENTS OF THE UNIVERSITY OF  
COLORADO

THIS EMPLOYMENT AGREEMENT ("Agreement") is entered into on this ___th day of April 2019 by and between Mark Kennedy ("Kennedy") and the Regents of the University of Colorado, a body corporate, (the “Regents”).

WHEREAS, the Regents desire that Kennedy serve as the president ("President") of the University of Colorado ("University") and Kennedy agrees to serve in such capacity;

WHEREAS, the Regents have determined that entering this contract for Kennedy's employment is necessary for retaining Kennedy in light of prevailing market conditions and competitive employment practices in other states;

NOW, THEREFORE, in consideration of the mutual representations, agreements, and promises contained herein, the parties agree as follows:

1. Employment. The Regents employ Kennedy to perform such duties and services on behalf of the Regents as may be consistent with his position as President. The Regents agree that they shall not change the terms and conditions of Kennedy’s employment or directly or indirectly reassign Kennedy to any position other than President without Kennedy’s consent.

2. Term. This Agreement shall be for a term of three (3) years and fifteen (15) days, commencing on June 15, 2019 and extending through June 30, 2022 unless earlier terminated as set forth herein. Kennedy will be the President beginning July 1, 2019. Whenever the term “Contract Year” is used in this Agreement, it refers to that period between July 1 and June 30 of the same year.

3. Duties. During the term of this Agreement, Kennedy shall report to and be under the immediate supervision of the Regents. Kennedy shall regularly confer with the Regents on matters of institutional governance.

Kennedy agrees to undertake and diligently perform his duties and responsibilities in the advancement of the University.

Except as otherwise permitted herein, Kennedy shall devote his attention, diligence, and skill on a full-time basis to performing his duties as President. Kennedy’s duties shall be those normally associated with the position of president of a major university system. Kennedy may participate in charitable, personal and other activities, so long as such activities do not interfere with the performance of his duties hereunder.
Kennedy’s duties and responsibilities as the President shall include, but not be limited to, the following:

a. Planning, coordinating, administering, and supervising the activities of the University system with integrity and in a manner that is consistent with federal and state law, the Laws of the Regents, Regent Policy, University Administrative Policy Statements, and the mission the University.

b. Conducting himself and administering the University system in a manner that is in material compliance with and does not result in material or repeated violation of federal or state law, the Laws of the Regents, Regent Policy, or University Administrative Policy Statements.

c. Performing all reasonable duties, tasks, and activities as may be required by the Regents in connection with the President’s supervision and administration of the University system.

d. Serving as the principal executive officer of the University system and overseeing the administrative and fiscal matters of the University.

e. Serving as the chief academic officer of the University, providing academic leadership for the University in meeting the needs of the state, and advancing the academic policies of the University.

f. Exercising appropriate oversight of and supervising the President’s senior leadership team, including all chancellors and vice presidents. The president may delegate responsibilities to members of the senior leadership team, so long as the delegation is consistent with other University laws and policies, but the President is expected to set performance expectations for the senior leadership team, oversee the performance of those delegated functions, and evaluate the senior leadership team members on a regular basis.

g. Engaging with the University’s shared governance organizations and meaningfully participating in the shared governance processes.

h. Serving as the chief spokesperson for the University and interpreter of University policy.

i. Representing the University and the higher education community throughout the state and elsewhere.

j. Upholding board-approved policies and initiatives, including those promoting a broad range of diversity, creating financial accountability, protecting freedom of expression and academic freedom, and ensuring access and equality of educational opportunity.

k. Setting the direction for the University system and creating a leadership culture of ethics, accountability, transparency, and integrity.
l. Engaging in strategic planning for the University system in collaboration with the Regents and the President’s senior leadership team.

m. Identifying and supporting collaborative efforts between the University campuses.

n. Identifying and fostering collaborative efforts between the University system and other public and private sector entities.

o. Leading the University system’s efforts to innovate and succeed in higher education environment that is rapidly changing, becoming more globalized, and increasingly using technology, including online and digital education, to expand educational opportunities.

p. Engaging with elected officials and policymakers at both the state and federal level in a nonpartisan manner to advance the interests of the University system.

q. Engaging in fundraising and advancement activities for the benefit of the University system, heading major fundraising initiatives for the University, and fostering relationships with the philanthropic community.

r. Engaging in such other activities as are reasonably requested by the Regents, which are normally associated with the position of president of a major university system.

4. Base Salary. Kennedy will be paid a base salary of Six Hundred Fifty Thousand Dollars ($650,000.00) during the contract year from June 15, 2019 to June 14, 2020 (the “First Contract Year”) paid in monthly pay periods, in accordance with and subject to the University’s normal payroll process. In the remaining contract years, Kennedy shall be paid a base salary of Eight Hundred and Fifty Thousand Dollars ($850,000.00) (“Base Salary”), unless the University and Kennedy mutually agree that part of his Base Salary shall be converted to incentive salary payable as permitted in Paragraph 5 of this Agreement. As a University employee, Kennedy shall be eligible for and participate in applicable employee benefits for senior staff, including annual and other permitted leave, retirement plans and health plans. If Kennedy’s employment is terminated pursuant to Paragraphs 10 or 13 of this Agreement, Kennedy shall be entitled to payment under this provision up to the termination date only. Upon termination under Paragraphs 11 or 12 of this Agreement, any future obligations of the parties shall be controlled by the operative Paragraphs related to the conditions under which the termination occurred.

5. Incentive Salary. Kennedy shall be eligible to earn incentive salary during any contract year based upon his attaining performance objectives mutually agreed to between him and the University. Kennedy shall be eligible to earn up to Two Hundred Thousand Dollars ($200,000) of incentive salary during the First Contract Year based upon his attaining the following performance objectives:
a. Kennedy shall be paid Fifty Thousand Dollars ($50,000.00) for initiating a strategic planning process, in collaboration with campus leadership and University-wide shared governance organizations for the University system. Kennedy shall earn this incentive when he submits a framework for the strategic planning process to the Regents’ Governance Committee for its consideration and recommendation to the Regents.

b. Kennedy shall be paid Fifty Thousand Dollars ($50,000.00) for engaging in outreach efforts on behalf of rural communities in the State of Colorado. Kennedy shall earn this incentive after he hosts forums or visits in at least four communities outside of the Denver/Boulder/Colorado Springs communities.

c. Kennedy shall be paid Fifty Thousand Dollars ($50,000.00) for engaging in outreach efforts with governmental leaders, donors, and University of Colorado alumni. Kennedy shall earn this incentive by working with the University’s governmental relations and advancement staffs to coordinate these visits and shall submit an outreach plan to the Regents’ Governance Committee for its consideration and recommendation to the Regents.

d. Kennedy shall be paid Fifty Thousand Dollars ($50,000.00) for initiating a campaign, in collaboration with campus leadership and University-wide shared governance organizations, to support diversity and inclusion within the University system. Kennedy shall earn this incentive when he submits a proposal for this campaign to the Regents’ University Affairs Committee for its consideration and recommendation to the Regents.

The relevant incentive salary shall be paid to Kennedy in the next regular payroll following a determination by the Regents in good faith that an applicable performance objective has been met.

6. **Annual Evaluation.** The Regents shall evaluate Kennedy on an annual basis. The annual evaluation period shall be July 1 through July 30. The performance evaluation will be conducted in accordance with Regent Policy 3.F.3 and will include an assessment of the President’s core competencies, as well as the President’s attainment of mutually agreed upon performance goals. The Regents may establish financial incentives that Kennedy may earn by meeting goals and expectations defined in the annual evaluation process.

7. **Allowances and Other Benefits.**

   a. **Moving Expenses and Temporary Housing.** The University will provide a one-time payment of Eighty Thousand Dollars ($80,000.00) to be used as needed for Kennedy’s moving and transportation expenses as well as Kennedy’s temporary housing costs. This will be paid in Kennedy’s first full paycheck.
b. **Annual Automobile Allowance.** The University shall provide Kennedy with supplemental salary in the amount of Fifteen Thousand Dollars and No Cents ($15,000.00) per year in lieu of reimbursement of any expenses (including mileage and parking) for in-state automobile travel.

c. **Tickets.** To further his institutional representation associated with the services performed during the term of the Agreement, the University shall provide Kennedy with access to a suite at Folsom Field for home football games and up to four (4) season tickets to home games for both men’s and women’s basketball programs.

d. **Club Initiation Fee.** The University shall pay the initiation or sponsorship fee to one (1) Boulder or Denver, Colorado area social or country club on behalf of Kennedy. The University and Kennedy will mutually agree on the social or country club subject to this provision. All dues and other ongoing membership payments to such club shall be paid by Kennedy.

e. **Expense Reimbursement:** The University shall reimburse Kennedy for reasonable expenses incurred in the performance of his duties. The expenses eligible for reimbursement are defined within current University policy.

f. **Retirement Funds.** The University agrees that Kennedy shall be eligible to participate in all University benefit programs, including retirement benefit programs, with the University providing a maximum of 10% contribution of base salary to University sponsored retirement plans subject to Kennedy’s contributions to those plans at the normal 5% contribution limits. The University represents that it has retirement benefit plans that will allow Kennedy to maximize his retirement contributions and that he will not exceed any contribution limits for participation.

g. **Tax Reporting.** The University will report items a) and b) above as income in accordance with University policy and procedures on the tax treatment of such items. Items c), d) and f) above will be reported as income to the extent required by applicable state and federal tax rules and regulations.

8. **Resignation Before End of Term.** Kennedy acknowledges that the President is a unique and specialized position and that his serving the entire term of this Agreement is important to the University. Kennedy also acknowledges that the Regents desire to promote long term stability of the University system in order to assist in recruiting senior leadership and faculty, building relationships with alumni, the business community, and the philanthropic community, and effectively representing the University’s interests with elected officials and policymakers at both the state and federal level. This stability would be damaged if Kennedy were to resign or otherwise terminate his employment with the University prior to the expiration of its term in order to take an executive position with another college or university. Kennedy further acknowledges that the Regents are making a valuable investment in his continued employment and that this investment would be lost were he to resign or otherwise terminate employment in order to take an executive position
with another college or university before the expiration of this Agreement. Accordingly, should Kennedy desire to resign his position as President during the term of this Agreement, other than for Good Reason (as defined below), to accept employment in an executive capacity at another college or university, Kennedy agrees that as a condition of accepting such employment:

a. **Advance Notice.** Kennedy shall provide the University with sixty (60) days’ written notice prior to such termination specifying the name of the college or university and the effective date of termination; and

b. **Recruitment Fee.** Such college or university shall agree to pay to the University the following recruitment fee within fourteen (14) days of the commencement of Kennedy’s employment:
   i. Seven Hundred Fifty Thousand Dollars ($750,000.00), if terminated on or before June 30, 2020;
   ii. Five Hundred Thousand Dollars ($500,000.00), if terminated on or before June 30, 2021; and
   iii. Two Hundred Fifty Thousand Dollars ($250,000.00), if terminated on or before June 30, 2022.

9. **Reporting of and Approval for Outside Benefits and Income.** Kennedy’s duties require a full-time commitment of his professional efforts. Consequently, Kennedy’s participation in outside employment activities is permitted only subject to the following conditions.

a. To the extent that Kennedy is allowed to participate in outside employment activities, he shall comply with all applicable state laws, and University laws and policies, including the policy regarding employment of staff in a consultative capacity and the policy regarding conflicts of interest.

b. Kennedy further agrees that he shall provide to the Secretary of the Board of Regents by September 1 of each year a written description of all outside income earned for compensated service on non-university boards of directors, professional speaking engagements, publications, consultation services, and other services from which he earns income as an employee or independent contractor.

c. Kennedy further agrees that he shall disclose and obtain prior written permission from the Chair of the Board of Regents, which shall not be unreasonably withheld, before entering any arrangements for compensated service on non-university boards of directors, professional speaking engagements, publications, and consultation services, or other income earned as an employee or independent contractor. The Chair of the Board of Regents may deny Kennedy permission to engage in any such activities
if the Chair reasonably determines those activities are inconsistent with the University’s interests or would interfere with the President’s ability to perform his duties.

10. Suspension or Termination for Cause. Kennedy’s employment may be suspended without pay, for up to one hundred and twenty (120) days or terminated for Cause upon written notice to Kennedy based upon any one or more of the following grounds:

a. Failure to follow the specific directions of the Regents, provided that Kennedy has been given written notice of the conduct at issue within ten (10) calendar days of such conduct and is then allowed thirty (30) days after receipt of such written notice to remedy and/or cure such conduct.

b. Use or consumption by Kennedy of alcoholic beverages, drugs, or controlled substances under circumstances as to significantly impair his ability to perform the ongoing duties of the presidency with such determination to be made by a qualified third-party health care provider mutually chosen by the University and Kennedy.

c. Arrest or indictment of Kennedy upon charges that are likely to result in a conviction of a felony or a crime of moral turpitude with such determination of likelihood to be made by the Board of Regents in good faith.

d. Conviction or an entry of a plea of guilty or of nolo contendere to a felony or crime of moral turpitude.

e. A finding by the University Department of Internal Audit of fraud, misappropriation, or fiscal misconduct by Kennedy; provided that all reviews and appeals related to any such finding have been exhausted.

f. Dishonesty or other conduct that falls below the minimum standards of professional integrity expected of the president of a major university system that results in significant and continuing damage to the University with such determination to be made by the Regents in good faith.

g. Any material violation by Kennedy any state or federal law, Laws of the Regents, Regent Policy, or University Administrative Policy Statements directly related to the execution of Kennedy’s essential duties as President; provided that all reviews and appeals related to any such finding have been exhausted.

h. Being found responsible by the University Office of Institutional Equity and Compliance for violating Administrative Policy Statement 5014 or any corresponding policy related to discrimination, harassment, or sexual misconduct; provided that all reviews and appeals related to any such finding have been exhausted.
i. Soliciting, placing, or accepting by Kennedy of a bet on any intercollegiate or professional athletic contest, or knowingly permitting, condoning, or encouraging of any illegal gambling, bookmaking, or illegal betting involving any intercollegiate or professional athletic contest.

j. Knowing failure to promptly report to the Regents serious misconduct of the President or any person reporting to the President which is known by or should reasonably be known by Kennedy. Nothing in this Paragraph shall be construed to relieve Kennedy of any other reporting obligations imposed upon him by the Laws of the Regents, Regent Policy, or University Administrative Policy Statements, including but not limited to: reporting obligations to law enforcement as a Campus Security Authority; reporting obligations of fiscal misconduct to the Department of Internal Audit; or reporting obligations to the Office of Institutional Equity and Compliance.

k. Knowing failure to reasonably cooperate with investigation of possible University violations of federal or state law, the Laws of the Regents, Regent Policy, or University Administrative Policy Statements.

l. Any material failure of Kennedy to perform in all material respects the duties set forth in Paragraph 3 above (or to comply with a material term or obligation of this Agreement) of which Kennedy is provided written notice within ten (10) calendar days of such failure and then allowed thirty (30) days after receipt of such written notice to remedy and/or cure such failure.

In addition to the notice and cure periods above in this Paragraph 11, prior to suspension without pay or termination for cause, Kennedy shall be given written notice of the alleged grounds for suspension or termination and shall have five (5) calendar days from the date of the notice to provide the Secretary of the Board of Regents with written notice of a request for a meeting. If no written notice of a request for a meeting is received, the suspension or termination shall become final.

If requested, the meeting shall take place in executive session, as permitted by the Colorado Open Meetings, within a reasonable time and shall consist of an explanation of the University’s position and an opportunity for Kennedy to present his response. The Regents may also request that the President provide a written response. Kennedy may have an advisor present, but the advisor may not participate actively in the meeting without permission being granted by the Regents.

The Regents may only act to terminate the President through a vote taken in accordance with the Colorado Open Meetings Act.

If Kennedy’s employment is terminated for Cause, the University shall have no further obligation to make further payments and/or to provide any other consideration or benefits under this Agreement as of the effective date of the termination, except for compensation or benefits earned or owing before the effective date of termination or that are otherwise required by law.
11. **Resignation for Good Reason.** Notwithstanding anything else to the contrary herein, Kennedy may resign his employment for Good Reason if any of the following occur:

a. A material diminution in the authority, duties or responsibilities of Kennedy’s position without his written consent.

b. Any change in any material element of Kennedy’s compensation or benefits without his written consent.

c. Any action or inaction that constitutes a material breach of this Agreement by the Regents of the University.

Notwithstanding the above, the occurrence of any of the events described above will not constitute Good Reason unless (a) Kennedy gives the Regents written notice within ten (10) days after the initial occurrence of an event that Kennedy believes constitutes Good Reason and describes in such notice the details of such event; (b) the Regents thereafter fail to cure any such event within thirty (30) days after receipt of such notice; and (c) Kennedy terminates his employment with the University as a result of such event within 180 days after the initial occurrence of such event.

12. **Termination Without Cause or Resignation for Good Reason.**

a. If Kennedy is terminated without Cause (as defined in Paragraph 10) or resigns for Good Reason (as defined in Paragraph 11), then University shall pay Kennedy:

i. The remaining balance of the Base Salary described in Paragraph 4 through the end of the term of this Agreement. The Base Salary shall be fixed at the date of termination and shall not be increased for any salary adjustment that might have occurred at a future date.

ii. The total amount of Base Salary, incentive salary, or other compensation or amounts owed, if any, that has or have already been earned or are owing but that is or are unpaid as of the date of termination.

Notwithstanding the foregoing, the University shall not be liable for any consequential, indirect, lost profit, punitive, special or similar damages even if the University has been advised of the possibility of such damages.

b. If Kennedy is terminated without Cause or resigns for Good Reason and has not otherwise waived his rights to the payment of the balance of his Base Salary pursuant to the provisions of Paragraph 12.a.i. immediately above, Kennedy agrees that he has
a duty to use commercially reasonable efforts to obtain comparable professional employment to mitigate the University’s obligations under Paragraph 12.a.i. above. In recognition of this duty, the parties expressly agree any payment required by Paragraph 12.a.i. above shall be made in monthly payments, in accordance with and subject to the University’s normal payroll process from the date of termination through the stated term of this Agreement. Each monthly payment shall be reduced by any base pay amounts Kennedy receives in that month for services for comparable professional employment by Kennedy, including, for example, employment in the position of a university president, chancellor, or other administrator, employment as a faculty member at any university, employment as a speaker, consultant, or advisor, employment as an executive in any business or enterprise, or self-employment. If Kennedy accepts employment for comparable professional employment, signs an employment agreement or otherwise agrees to perform such services, he shall promptly give notice to the Regents of such employment, the effective date of such employment and the amount of all compensation provided or to be provided in the future, if known, for duties performed during the period when Kennedy would have been employed by the University under this Agreement had it not been terminated.

c. To the extent Kennedy is employed in comparable professional employment as described above in Paragraph 12.b., Kennedy must be paid actual market rate in new position. If Kennedy accepts any employment described above, the actual market rate shall be defined as the average base pay for the similarly situated positions as published in sources like the Chronicle of Higher Education or by using compensation analyses prepared by entities such as Mercer LLC or Aon PLC. If Kennedy is not paid actual market rate, the University reserves the right to adjust the compensation due and owing if Kennedy’s new compensation appears contrived to rely upon payments to Kennedy by the University. Examples would include, but are not limited to, if Kennedy’s new position apportions compensation so that it increases or balloons after the University’s payments to Kennedy cease, or if the subsequent employment arrangement otherwise attempts to avoid the intended net effect of this provision. The University shall assign a reasonable and supportable market value of compensation to Kennedy’s new position based upon its assessment of similar positions.

d. Financial obligations of the University payable after the current fiscal year are contingent upon funds being appropriated, budgeted and otherwise made available by the State of Colorado. The Regents represent that historically funds have been appropriated to the University and that, provided such an
appropriation is made, Kennedy’s salary will be paid in accordance with the terms of this Agreement. If no such appropriation is made by the State of Colorado to the University, the Regents may, but are not required to, terminate the Agreement without penalty. The Regents agree that, before exercising any right of termination otherwise permitted under this provision, they shall, in good faith, determine whether Kennedy’s salary can be paid through other available revenues.

13. **Termination on Death or Disability.** This Agreement will automatically terminate if Kennedy dies or becomes disabled.

   a. If this Agreement is terminated because of Kennedy’s death or disability, Kennedy’s salary and all other benefits shall end in the month of Kennedy’s death or disability except that any insurance or other similar benefits may continue in accordance with their terms or University policy.

   b. “Disabled” as used herein means that Kennedy is unable to perform the essential functions of his duties under this Agreement with or without reasonable accommodation for a period of sixteen or more consecutive weeks in a Contract Year.

14. **Reporting of Income.** The parties acknowledge and agree that all compensation payable to Kennedy under this Agreement shall be subject to applicable federal and state taxes, including withholding taxes. All Form W-2 reportable compensation included in this Agreement shall be subject to all applicable withholding and subject to all applicable employer contributions, including contributions as required under the University’s retirement plan.

15. **Entire Agreement.** This Agreement contains the entire Agreement of the parties and shall be binding upon the parties, their heirs, administrators, successors and assigns. This Agreement represents the complete integration of all understandings between the parties and all prior representations and understandings, oral or written, are merged herein. Prior or contemporaneous additions, deletions, or other changes hereto shall not have any force or affect whatsoever, unless embodied herein.

16. **Severability.** If any provision of this Agreement is determined to be void, invalid or unenforceable for any reason, it shall be considered severed from this Agreement and such invalidity shall not affect the validity or enforceability of the remaining provisions.

17. **Waiver.** Waiver by any party of a breach of any provision of this Agreement shall not operate as or be construed as a continuing waiver or a waiver of any subsequent breach hereto.

18. **Applicable Law.** This Agreement shall be governed by and construed under the laws of the State of Colorado without reference to conflicts of law principles thereunder.
19. **Consent to Jurisdiction and Venue.** Any action brought under this Agreement shall be brought only in the District Court of Boulder County, Colorado, or the United States District Court for the District of Colorado in Denver, Colorado and each party waives the right to seek a change of venue to any courts other than those courts.

20. **Amendments or Modifications.** This Agreement may not be amended or modified except as mutually agreed upon by the parties in a document that is reduced to writing and signed by both parties.

21. **Mediation.** The parties agree that, if they have a bona fide dispute between them that cannot be mutually resolved, that they will submit the dispute to a mediation process to be mutually agreed upon by the University and Kennedy. The parties agree that neither will commence legal action against the other for a period of no less than thirty (30) days after requesting mediation unless legal action is needed to seek declaratory or injunctive relief to prevent other irremediable harm. All statements, documents, admissions, or other materials exchanged by the parties in mediation shall be considered confidential to the extent permitted by law.

22. **Notice.** Any notice or other communication hereunder will be in writing, and hand-delivered or sent via registered or certified mail, overnight courier, or confirmed facsimile transmission or email and will be deemed provided, if, (a) hand-delivered, on the date of delivery; (b) mailed, when deposited, postage prepaid, in the United States mail; (c) sent by overnight courier, one business day after delivery to such courier; (d) sent by confirmed facsimile, the day of transmission; (e) emailed on the date of sending as verified by a copy of such email. Any notice or other communication will be addressed as set forth below, or to such other address as any party will advise the others in writing:

   If to the University: Secretary of the Board of Regents/University Counsel, 1800 Grant Street, Suite 800, Denver, Colorado 80203, Patrick.O'Rourke@cu.edu.

   If to Kennedy: The address on file in the University’s most current records and to mark@markkennedy.com with a copy to Mary L. Will, Faegre Baker Daniels LLP, 3200 Wells Fargo Center, 1700 Lincoln Street, Denver, Colorado, 80203, mary.will@faegrebd.com.

23. **Approval by the Board of Regents.** This Agreement shall not be binding upon the University until it is approved by the Board of Regents and signed by both Kennedy and the Chair of the Board of Regents.

   [Signature page follows.]
IN WITNESS WHEREOF, the parties hereto have set their hands as of the date set forth above.

THE REGENTS OF THE UNIVERSITY OF COLORADO, a body Corporate

By: ____________________________
   Sue Sharkey
   Chair of the Board of Regents

Dated: __________________________

Approved as to Legal Sufficiency:
For The Regents of the University

By: ____________________________
   Patrick T. O'Rourke
   University Counsel

PRESIDENT

By: ____________________________
   Mark Kennedy

Dated: __________________________