

**BUSINESS AFFAIRS AND HUMAN RESOURCES
MARCH 10, 2005**

TAB	DESCRIPTION	ACTION
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	BOISE STATE UNIVERSITY	
1	Head Football Coach Contract – Amendment Ratification	Motion to approve
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	BOISE STATE UNIVERSITY	
2	Vice President of Advancement Appointment	Motion to approve
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	IDAHO STATE UNIVERSITY	
3	Head Football Coach Contract	Motion to approve
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INSTITUTION / AGENCY AGENDA
BOISE STATE UNIVERSITY

SUBJECT

Boise State University (BSU) requests approval of the addendum to the contract for head football coach Dan Hawkins.

REFERENCE

December, 2004 Approval of contract offer

APPLICABLE STATUTE, RULE OR POLICY

Idaho State Board of Education Governing Policies and Procedures, Section II.H.1.

DISCUSSION

In December, 2004, the SBOE approved an offer of a contract extension and addendum to head football coach Dan Hawkins. The Board's minutes from that meeting read "**M/S (Hall/Stone): To approve of BSU's intention to offer the amended Addendum No. 3 to Employment Contract to Coach Hawkins; and have it approved and effective upon his signature.** *Motion carried unanimously.*" Following that meeting, the University made the contract offer to Coach Hawkins. The ensuing negotiations lead to the addendum presented with this agenda as Attachment I.

IMPACT

Attachment #1, which is Addendum #3 to the original employment agreement, differs from the version approved in December in the following respects only (highlighted in bold print in Attachment I). First, it now contains a clause making it subject to SBOE approval since there are changes from the version approved by the Board in December. Second, the University and Coach Hawkins identified that there was a date specifically mentioned in the original contract (see Attachment 2) that corresponded with the original contract end date. This should have been updated with an earlier contract addendum but was not discovered until now. This was updated with the end of the current extension being inserted to replace the prior date. Third, and the only real substantive change to the prior approved version, is that the amount of liquidated damages is reduced each year by an amount of \$150,000. Thus the beginning amount of \$850,000 for year one will be reduced annually to \$700,000 for year two, \$550,000 for year three and then \$400,000 for years four and five.

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INSTITUTION / AGENCY AGENDA
BOISE STATE UNIVERSITY - continued

STAFF AND COMMENTS AND RECOMMENDATIONS

Staff has discussed this item with officials from Boise State University, has reviewed the request for compliance with Board policy and recommends approval.

BOARD ACTION

A motion to approve the request by Boise State University for approval of the Addendum Number 3 to the Employment Agreement for head football coach Dan Hawkins.

Moved by _____ Seconded by _____ Carried Yes_____ No_____

ADDENDUM NO. 3 TO EMPLOYMENT AGREEMENT

1. This is an Addendum to the Employment Agreement (Agreement) between BOISE STATE UNIVERSITY (BSU) and Dan Hawkins (EMPLOYEE) and dated and effective the ____ day of January, 2005, **subject to the approval of the State Board of Education**. This Addendum No. 3 is intended by the parties to replace the Addendum No. 2 to the Employment Agreement dated December 6, 2002.
2. The EMPLOYEE is being hired for the position of Head Football Coach and Associate Athletic Director.
3. Accordingly, the following terms as used in the Agreement will be defined as indicated:
 - a. "Position" will mean the position described in paragraph 2, above.
 - b. "Relevant season" will mean the Football season commencing on the first day of fall practice and ending with the last game of the regular season of the Boise State University Broncos.
 - c. "Program" shall mean the Football program.
 - d. "Applicable conference" as of the date of this Addendum means the Western Athletic Conference.
 - e. "NCAA" means the National Collegiate Athletic Association.
 - f. "Athletic Director" means the BSU Director of Athletics or his designee.
 - g. "Coaching" means to direct and supervise the athletes participating in the program.
 - h. "BAA" means the Bronco Athletic Association.
 - i. "Post-season" means participation in a Bowl game which takes place after the regular football season.
 - j. "Summer camp" means short-term program of instruction which offers to its participants information and coaching designed to improve the skills utilized in any field of athletic competition.

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- k. "Cumulative Salary" means the total of the base salary and media/public appearance pay as described in sections 7.a. in any one year period, as enhanced by any merit pay described in section 7.b. of this Addendum.

4. The term of this Agreement shall commence immediately and shall continue until the Agreement terminates on the 31st day of January, 2010; provided, however, that this provision is subject to the terms and conditions of Article IV of the Agreement concerning termination (provided, however, that those terms of Article IV of the Agreement shall be amended as follows: the EMPLOYEE cannot be dismissed for mere minor violations of the items enumerated in said Article IV; EMPLOYEE cannot be reassigned within the department of athletics; and the payout for dismissal without cause under 4.01.e shall be a lump sum at the time of dismissal **with the new contract end date of January 31, 2010 replacing the "January 31, 2007" date in said paragraph of the Agreement**). Neither party shall have the right to terminate the Agreement prior to its date of expiration except as provided therein.

5. Specific duties and responsibilities of EMPLOYEE. The EMPLOYEE is expected to devote full-time to coaching and recruitment involving the Football team as the Head Coach. Additional duties and responsibilities not listed will be those customarily attendant to the position of a Head Football Coach at a Division 1-A university. If EMPLOYEE is required to perform any such additional duties that are not defined in the contract, EMPLOYEE will be notified of his responsibility to perform these duties within a reasonable time frame.

EMPLOYEE will attend all staff meetings, public relation functions, dinners, awards banquets and make appearances as directed by the Director of Athletics unless excused by the Director of Athletics. The Athletic Director shall not unreasonably withhold approval for non-attendance. Such functions shall include, but are not limited to the following:

- ◆ The annual BAA Bar-b-que
- ◆ The weekly BAA noon luncheons during the relevant season
- ◆ The annual BAA Endowment Dinner
- ◆ The BSU Athletic Hall of Fame Dinner
- ◆ The BAA Bronze Bronco Award Banquet
- ◆ The BAA/Alumni Auction Dinner
- ◆ All Athletic Department staff meetings called by the Director of Athletics
- ◆ Athletic Department Graduation Reception
- ◆ Bronco Golf Series Tournaments

6. EMPLOYEE agrees to supervise any staff serving under EMPLOYEE and to insure, to the maximum extent possible, that all staff persons follow all applicable University policies, NCAA, or applicable conference rules and regulations at all times.

7. Compensation: EMPLOYEE will be compensated for services under the Agreement more specifically as follows

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a. Base salary as referred to in paragraph 2.01 of the Agreement shall be as follows:

<u>YEAR</u>	<u>COMPENSATION</u>
February 1, 2005 – January 31, 2006	\$525,000

The compensation outlined above may be paid to the EMPLOYEE by the UNIVERSITY or by radio or television stations that own the rights to UNIVERSITY broadcasts or by a combination of the UNIVERSITY, radio station and television station. EMPLOYEE understands this potential for payment from multiple sources as it has been the course of performance between the parties for several years.

b. Merit raises: Notwithstanding the provisions of section 2.02 of the Agreement to the contrary, merit increases shall be made to EMPLOYEE'S cumulative salary annually, based upon performance in the last immediate regular and post season as follows:

- ◆ 6 wins = 5% increase in cumulative salary
- ◆ 8 wins = 10% increase in cumulative salary
- ◆ 10 wins = 15% increase in cumulative salary

c. Shoe, Apparel and Equipment Contracts: Compensation to the EMPLOYEE shall be negotiated on a contract-by-contract basis.

d. Supplemental pay relating to regular season and post-season competition as follows:

- (i) 1/12th of cumulative salary if the football team is ranked in the top 25 of either the AP or USA Today Coaches' polls at the conclusion of the season (regular and post season games); and
- (ii) \$10,000 additional pay if the football team is ranked in the top 10 of either the AP or USA Today Coaches' polls at the conclusion of the season (regular and post season games); and
- (iii) 1/12th of the cumulative salary for winning the conference championship and receiving the automatic bowl berth from the appropriate conference;
- (iv) an amount to be determined if the football team competes in a post season bowl game under the Bowl Championship Series (one of the four or five designated BCS Bowl games)

or,

- (i) 5% of cumulative salary for a post season bowl invitation without a conference championship.

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In order to qualify for supplemental pay as outlined above, the football team's "retention rate" as defined in section 8.b. below, must be at least 50% for the academic year in which the supplemental pay is earned.

Any supplemental pay earned pursuant to this paragraph shall be paid on February 1st following the football season in which earned.

8. Academic Incentive Pay. Because of new NCAA rules governing academic progress, a new criteria will be established within the next six (6) months and will be included as an attachment to this addendum.

9. EMPLOYEE shall have a "Public Relations" account in the amount of \$2,000.00 per year to be used for reimbursement for meals and other acceptable activities relating to the furtherance of the business of the UNIVERSITY per UNIVERSITY policies.

10. Longevity Incentive.

- a. If EMPLOYEE successfully stays employed in the position until January 31, 2008, and thus completes three full years of this Agreement, i.e., does not terminate the Agreement nor is in material breach of the Agreement, then the UNIVERSITY shall pay EMPLOYEE a sum of \$350,000 on February 15, 2008.
- b. If EMPLOYEE successfully stays employed in the position until January 31, 2010, and thus completes the entire five years of this Agreement, i.e., does not terminate the Agreement nor is in material breach of the Agreement, then the UNIVERSITY shall pay EMPLOYEE a sum of \$150,000 on February 15, 2010.

11. Liquidated damages: The sum provided for in section 4.02.b. of the Agreement for liquidated damages if the EMPLOYEE terminates the contract prior to the end of the term is increased to \$850,000 **until the day after the final game (including any bowl game) of the 2005 football season. From the end of the 2005 season until the day after the final game (including any bowl game) of the 2006 football season, the liquidated damages amount shall be \$700,000. From the end of the 2006 season until the day after the final game (including any bowl game) of the 2007 football season, the liquidated damages amount shall be \$550,000. From the end of the 2007 football season until the end date of this contract, the liquidated damages amount shall be \$400,000.** EMPLOYEE acknowledges that this amount was specifically and extensively negotiated between the parties and is not a penalty, but that it fairly represents the investment the UNIVERSITY is making in the EMPLOYEE and further fairly represents the costs the UNIVERSITY would incur in replacing the EMPLOYEE upon the event of his early departure.

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EMPLOYEE

Dan Hawkins
Head Football Coach

Date

BOISE STATE UNIVERSITY

By:_____
Robert Kustra
President

Date

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EMPLOYMENT AGREEMENT

This Employment Agreement is made this ____ day of _____, 2002 between **BOISE STATE UNIVERSITY** (the UNIVERSITY) and **DAN HAWKINS** (the EMPLOYEE) and it cancels and replaces any and all prior employment agreements between these two parties.

The UNIVERSITY and the EMPLOYEE have entered into this Agreement because the UNIVERSITY desires to hire the EMPLOYEE as Head Football Coach for a term as stated herein with the assurance that the EMPLOYEE will serve the entire term of this Agreement, a multi-year commitment by the EMPLOYEE being critical to the UNIVERSITY'S desire to run a stable athletics program. The UNIVERSITY and the EMPLOYEE agree that coaches of intercollegiate athletic teams at the UNIVERSITY conduct their professional activities under circumstances unique in the family of UNIVERSITY employees, including evaluation and scrutiny of team performances by the public and the media and control by external rules and regulations. These circumstances justify job security and commitment by the EMPLOYEE for a term of five years for a period beginning February 1, 2002 and continuing through January 31, 2007.

ARTICLE 1

1.01. EMPLOYMENT AS EMPLOYEE OF UNIVERSITY. The EMPLOYEE is hereby employed by the UNIVERSITY for a period beginning February 1, 2002 and continuing through January 31, 2007. Throughout the term of this Employment Agreement, the EMPLOYEE shall use EMPLOYEE'S best full-time energies and abilities except as otherwise provided for by this Agreement for the exclusive benefit of the UNIVERSITY. The EMPLOYEE shall serve in the position of Head Football Coach.

1.02. DESCRIPTION OF EMPLOYEE'S DUTIES AND RESPONSIBILITIES.

a. Recognition of Duties and Responsibilities. The EMPLOYEE agrees to devote the EMPLOYEE'S best efforts full time to the performance of the assigned duties, except as otherwise provided by this agreement, to give proper time and attention to the fulfillment of all duties and responsibilities to the UNIVERSITY and to comply with all rules, regulations, policies, and decisions established or issued by the UNIVERSITY. The EMPLOYEE also agrees that except as provided by the provisions of Section 3.01., during the term of this Agreement EMPLOYEE will not engage, directly or indirectly, in any business or activities which would detract from the ability to apply EMPLOYEE'S best efforts to the performance of those duties and responsibilities which are expressly or impliedly a part of this Agreement.

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b. General Duties and Responsibilities of EMPLOYEE. The EMPLOYEE agrees to undertake and to perform properly, efficiently, to the best of EMPLOYEE's ability and consistent with the UNIVERSITY policies, all duties and responsibilities described herein and those duties and responsibilities that are customarily associated with a Division 1-A Head football coach. The EMPLOYEE further agrees to abide by and comply with the constitution, bylaws, rules and regulations, and interpretations thereof of the NCAA, the applicable conference and UNIVERSITY rules and regulations relating to the conduct and administration of the football program, including recruiting rules, as now constituted or as any of the same may be amended during the term hereof. In the event that the EMPLOYEE becomes aware that violations of such constitution, bylaws, interpretations, rules or regulations may have taken place, the Athletic Director will be promptly advised. The EMPLOYEE agrees to follow the academic standards and requirements of the UNIVERSITY in regard to the recruiting and eligibility of prospective and current student-athletes.

For the purposes of this Employment Agreement, the terms "UNIVERSITY policies," "UNIVERSITY rules and regulations," and similar terms shall mean the rules and policies of the State of Idaho, the State Board of Education, Boise State University, and the Boise State University Athletic Department.

1.03. EMPLOYEE MAY BE DISCIPLINED FOR VIOLATIONS OF RULES AND REGULATIONS. If the EMPLOYEE is found to be in violation of NCAA rules and regulations, whether while employed by the UNIVERSITY or during prior employment at another NCAA member institution, the EMPLOYEE shall be subject to disciplinary or corrective action by the UNIVERSITY as set forth in the NCAA enforcement procedure. The EMPLOYEE may be suspended for a period of time without pay, disciplined, or terminated as provided in Section 4.01. hereof if the EMPLOYEE is found to have been involved in serious or intentional violations of NCAA, applicable conference or UNIVERSITY policies.

1.04. REPORTING RELATIONSHIP. The EMPLOYEE shall report to the Athletic Director. The job duties and responsibilities assigned to the EMPLOYEE are those set forth in Section 1.02. hereof and in the Addendum. The EMPLOYEE is expected to work closely with a variety of Athletic Department and UNIVERSITY staff on all matters affecting the program or otherwise connected with the discharge of employment duties.

1.05. EMPLOYEE NOT ENTITLED TO TENURE. The parties hereby confirm their understanding that the EMPLOYEE's employment under this Agreement in the position of Head Football Coach is not a tenure-track position and will not lead to tenure.

1.06. UNIVERSITY'S EDUCATIVE PURPOSE IS PRIMARY. The parties agree that, although this Employment Agreement is sports-related, the primary purpose of the UNIVERSITY and, accordingly, of all its legal arrangements, including this Employment Agreement, is educative.

ARTICLE II - COMPENSATION

In consideration for the promises EMPLOYEE has made in entering into this Employment Agreement, the EMPLOYEE shall be entitled to the following forms of compensation: guaranteed base salary payments; the possibility of merit increases in base salary; fringe benefits; opportunities to earn outside income; and opportunities to earn supplemental compensation as a form of incentive bonus. Each of these items is described below and in the Addendum that is attached hereto and incorporated herein by reference. All payments received from the UNIVERSITY are subject to normal deductions and withholding for State, local and federal taxes and for any retirement or other benefits to which the EMPLOYEE is entitled or in which EMPLOYEE participates, and are subject to the terms and conditions of Article IV hereof concerning termination of this Agreement and Article III hereof concerning restrictions on outside income.

2.01. GUARANTEED BASE SALARY. The guaranteed base salary paid by the UNIVERSITY to the EMPLOYEE shall be at the rate described in the Addendum, payable in bi-weekly installments by the UNIVERSITY to the EMPLOYEE on the regular payday(s) of the UNIVERSITY in each calendar month during the term of this Agreement, or if the Agreement is terminated by UNIVERSITY without cause, then as provided by Section 4.01.e.

2.02. MERIT INCREASES BASED ON PERIODIC EVALUATIONS. During the term of this Employment Agreement, the EMPLOYEE shall be eligible for merit raises (above the guaranteed base salary amount set forth in Section 2.01. hereof) on the following terms and conditions.

a. Annual Personnel Evaluations. The EMPLOYEE's performance of job duties and responsibilities shall be evaluated by the Athletic Director annually on the same basis as performance evaluations are done for other non-classified employees within the UNIVERSITY. These evaluations shall also take into account prior evaluations and the expectations and goals set forth for the EMPLOYEE in such prior evaluations.

b. Eligibility for Merit Raise. The EMPLOYEE shall be eligible to be paid at a merit raise level (above the guaranteed base salary amount set forth in Section 2.01. hereof) if justified by the annual evaluations of the Athletic Director. The amount of any merit increase monies available to the UNIVERSITY which are to be awarded to the EMPLOYEE as a merit raise shall be determined by using the same process for evaluating and rewarding meritorious performance as is used for other non-classified employees. In determining eligibility for or the amounts of any such merit raise, any supplemental compensation paid to the EMPLOYEE under Article III, Section, 3.01. or Article II, Section 2.04. hereof shall not be considered.

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2.03. FRINGE BENEFITS. During the term of this Employment Agreement, the UNIVERSITY will provide the EMPLOYEE with the fringe benefits described in this Section and the addendum to this Agreement and no others.

a. Standard University Fringe Benefits. The EMPLOYEE shall be entitled to the standard UNIVERSITY fringe benefits, including (among other things) social security, group life insurance, disability insurance, vacation with pay, sick leave, family medical coverage and portable retirement (i.e., TIAA/CREF or Valic) contributions. If any benefit is based in whole or in part upon salary paid to the EMPLOYEE, such consideration shall be made without including any outside income or supplemental compensation paid in accordance with the provisions set forth in Article II, Section 2.04. and Article III, Section 3.01. hereof, except as required by law.

b. Club Membership. The UNIVERSITY shall pay the EMPLOYEE's annual membership dues if any, to Plantation Country Club during the term of the AGREEMENT.

c. Season Tickets. The UNIVERSITY shall provide the EMPLOYEE with ten (10) season Football tickets and six (6) season Basketball tickets to UNIVERSITY's teams' games, including post-season games or tournaments.

2.04. SUPPLEMENTAL SALARY IF TEAM PARTICIPATES IN POST-SEASON PLAY. During his employment as Coach, the EMPLOYEE shall receive the supplemental salary described in the Addendum in consideration of EMPLOYEE's efforts in contributing to the exceptional performance of the football team and which relate to post-season competition as described in the Addendum.

ARTICLE III - OUTSIDE INCOME

3.01. CONTRACTS AND OUTSIDE INCOME RELATED TO COACHING DUTIES. While the EMPLOYEE is representing the UNIVERSITY as Head Football Coach, EMPLOYEE shall be entitled to pursue supplemental income through participation in activities related to EMPLOYEE's duties and responsibilities. However, such related activities shall not interfere with the full and complete performance by the EMPLOYEE of assigned duties and responsibilities as a UNIVERSITY employee, recognizing always that the EMPLOYEE's primary obligations lie with the UNIVERSITY. Further, in no event shall the EMPLOYEE accept or receive directly or indirectly any monies, benefits, or any other gratuity whatsoever from any person, corporation, university booster club, or alumni association or other benefactor, if such action would violate the constitution, bylaws, rules and regulations or interpretations thereof of the NCAA, the applicable conference, or the UNIVERSITY policies as now or hereafter enacted.

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a. Media, Shoe, Apparel and Equipment Contracts. Agreements requiring EMPLOYEE to participate in media productions related to duties as an EMPLOYEE of Boise State University and agreements with shoe, apparel, or equipment manufacturers or sellers which provide that the UNIVERSITY's athletes shall wear or utilize the manufacturer's or seller's shoes, apparel, or equipment during competition or that the EMPLOYEE shall wear, promote, endorse, or consult on the design and/or marketing of such items are the property of the UNIVERSITY. However, the UNIVERSITY agrees to seek advice and consult with EMPLOYEE with regard to any such agreements or proposed agreements. The UNIVERSITY shall have the exclusive right to negotiate and contract with the producers, manufacturers, or sellers, as the case may be, and all payments made pursuant to such agreements will be made directly to the UNIVERSITY. The UNIVERSITY shall provide reasonable supplemental compensation to the EMPLOYEE in connection with the EMPLOYEE's service under such agreements. This paragraph does not apply to routine news media interviews or speeches, appearances, etc., for which no compensation is provided to EMPLOYEE or to EMPLOYEE's assignee.

b. On-Campus Summer Youth Camps. EMPLOYEE may operate a summer youth camp at the UNIVERSITY under the following conditions:

EMPLOYEE may be assigned additional duties to operate clinics and/or summer camps. The EMPLOYEE will have the opportunity to lease UNIVERSITY facilities in connection with a summer sports camp. EMPLOYEE is responsible for scheduling all facilities and for the general management of the camp. The summer camp will be operated as a UNIVERSITY-sponsored activity, in which case the UNIVERSITY shall pay the EMPLOYEE a reasonable supplemental income, based in part upon the revenue and expenses of the summer camp.

The EMPLOYEE shall provide proof of liability insurance as follows:

- Liability coverage: Spectator and staff, \$1,000,000.00
- Catastrophic coverage: Camper and staff, \$1,000,000.00 maximum coverage, with \$100 deductible

In the event of termination of this Agreement by either party, or by expiration, the UNIVERSITY shall be under no obligation to permit a summer youth camp to be held by the EMPLOYEE, after the effective date of such termination or expiration, (whether or not one has been planned), and the UNIVERSITY shall be released from all obligations relating thereto upon such termination or expiration.

c. Disclosure of Outside Income. The EMPLOYEE shall receive prior written approval from the President of the UNIVERSITY through the Athletic Director of all income received from sources outside the UNIVERSITY as required by the constitution, bylaws, rules and regulations, or interpretations thereof, of the NCAA, the appropriate Conference, and the State Board of Education.

ARTICLE IV - TERMINATION

4.01. TERMINATION BY UNIVERSITY. The EMPLOYEE recognizes that EMPLOYEE's promise to remain as a UNIVERSITY employee through the entire term of this Agreement is a material provision of the Agreement except as otherwise provided in this Agreement. It is also recognized, however, that certain limited circumstances may make it appropriate for the UNIVERSITY to terminate this Agreement prior to the completion of its entire term.

a. Automatic Termination Upon Death or Disability of EMPLOYEE. This Employment Agreement shall terminate automatically if the EMPLOYEE dies, or if the EMPLOYEE becomes permanently disabled to the extent that the EMPLOYEE can no longer perform the essential job functions with or without reasonable accommodation.

If this Agreement is terminated pursuant to this section because of the EMPLOYEE's death, the EMPLOYEE's salary and all other benefits shall terminate as of the last day worked, except that the EMPLOYEE's personal representative or other designated beneficiary shall be paid all compensation due or unpaid and death benefits, if any, as may be contained in the benefit plan now in force or hereafter adopted by the UNIVERSITY and due to the EMPLOYEE's estate or beneficiaries thereunder.

If this Agreement is terminated pursuant to this section because the EMPLOYEE becomes permanently disabled, all salary and other benefits shall terminate, except that the EMPLOYEE shall be entitled to receive any compensation due or unpaid and any disability benefits to which he is entitled under the Department of Administration, Office of Group Insurance, State of Idaho, and as a participant in The Optional Retirement Plan.

b. Termination By University for Just Cause. The UNIVERSITY shall have the right to terminate this Agreement for "just cause" prior to the expiration of the term of this Agreement. Termination for "just cause" shall be effectuated by the UNIVERSITY as follows: before the effective date of the termination, the Athletic Director or his designee shall provide the EMPLOYEE with notice, which notice shall be accomplished in the manner provided for in this Agreement and shall include the reason(s) for the termination. The EMPLOYEE shall then have an opportunity to respond. After EMPLOYEE responds or fails to respond, the UNIVERSITY shall notify the EMPLOYEE whether, and if so when, the termination will be effective.

The term "just cause" means: a) a material breach of the terms and conditions of this Agreement which is not remedied after thirty (30) days' written notice thereof to EMPLOYEE; b) Any conduct of EMPLOYEE in violation of any criminal statute or ordinance which may in the reasonable judgement of the UNIVERSITY reflect adversely upon the UNIVERSITY or its athletic program; c) a deliberate or

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serious violation of any law, rule, regulations, constitutional provision, bylaw of the UNIVERSITY, the athletic conference of which the UNIVERSITY is a member, or the NCAA by the EMPLOYEE, which violation results in the UNIVERSITY being placed on probation by the athletic conference to which the UNIVERSITY belongs or by the NCAA, and including any violation which may have occurred during prior employment of the EMPLOYEE at another NCAA or NAIA member institution. EMPLOYEE shall not be responsible for the misconduct of any assistant coach unless EMPLOYEE was aware of such misconduct and failed to promptly report it to UNIVERSITY or should have known of the misconduct and could have prevented it by ordinary supervision of the assistant coach: d) Ten working days' absence from duty without the UNIVERSITY's consent; e) Failure of EMPLOYEE to fully and promptly cooperate with the NCAA, UNIVERSITY, or UNIVERSITY employees in any investigation of possible violations of NCAA, conference or UNIVERSITY rules or regulations, or State or Federal laws.

c. University's Obligations Upon Termination for Just Cause. In the event this Employment Agreement is terminated for just cause, all obligations of the UNIVERSITY to make further payments and/or to provide any other consideration hereunder shall cease as of the end of the day on which such termination occurs except that UNIVERSITY shall be liable to make payments for any salary and benefits already due and owed and any other benefits to which EMPLOYEE is entitled by law. In no case shall the UNIVERSITY be liable to the EMPLOYEE for the loss of any collateral business opportunities or any other benefits, perquisites or income resulting from activities such as, but not limited to, summer camps, clinics, media appearances, apparel or shoe contracts, consulting relationships or from any other sources.

d. Termination by University Without Just Cause. The UNIVERSITY shall have the right to terminate this Employment Agreement prior to its normal expiration without just cause. Termination by the UNIVERSITY without just cause shall be effectuated by delivering to the EMPLOYEE written notice of the UNIVERSITY's decision to terminate this Agreement without just cause. Termination shall be effective 7 (seven) days from the date set forth in such notice. If the UNIVERSITY exercises its right under this Section to terminate this Agreement without cause, the EMPLOYEE shall be entitled to damages only as provided for in Section 4.01.e. below.

e. Liquidated Damages Upon Termination by University Without Cause. If the UNIVERSITY exercises its right under this Section to terminate this Agreement without cause, the UNIVERSITY shall pay to the EMPLOYEE, as liquidated damages, an amount equal to all sums which EMPLOYEE would have received under this Agreement if the Agreement had not terminated on the termination date but, rather, had terminated on January 31, 2007 . This includes all amounts payable to EMPLOYEE under Article II of this Agreement and the amounts payable to the EMPLOYEE pursuant to the Addendum of this

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Agreement. If the employment is terminated without cause prior to the end of a calendar year, the UNIVERSITY shall also pay to EMPLOYEE, at the time of termination, the pro-rata share of benefits for such partial year that would have vested in EMPLOYEE at the end of such calendar year if EMPLOYEE has been employed by UNIVERSITY at the end of such calendar year; it is understood that EMPLOYEE must make a documented, good faith effort in order to find alternative employment and to mitigate damages. If EMPLOYEE finds alternative employment, the amounts due to EMPLOYEE under this paragraph shall be reduced by the amount of money received by the EMPLOYEE pursuant to EMPLOYEE's alternative employment. A unilateral resignation by EMPLOYEE voids all of EMPLOYEE's post-contract rights and entitles EMPLOYEE to no damages or further payments of any kind except that EMPLOYEE shall be entitled to receive any payments earned by EMPLOYEE prior to said resignation but not yet paid by UNIVERSITY. Failure to timely pay said liquidated damages shall constitute a breach of this Agreement and said sum shall be actionable, together with reasonable attorney fees and the costs of such.

4.02. TERMINATION BY EMPLOYEE. The EMPLOYEE recognizes that the promise to work for the UNIVERSITY is of the essence of this Agreement to the UNIVERSITY. The EMPLOYEE also recognizes that the UNIVERSITY is making a valuable investment in EMPLOYEE's continued employment by entering into this Employment Agreement and that its investment would be lost were EMPLOYEE to resign or otherwise terminate employment with the UNIVERSITY prior to the expiration of the term of this Agreement. While recognizing these recitations and the purpose of this entire Agreement, the parties agree that the EMPLOYEE may, nevertheless, terminate this Agreement prior to its expiration, but only upon the following terms and conditions.

a. Written Notice by EMPLOYEE. The EMPLOYEE may terminate this Employment Agreement during its term by giving the UNIVERSITY seven (7) days advance written notice. While the EMPLOYEE is assigned the position, such termination by the EMPLOYEE must occur at a time outside the relevant playing season, so as to minimize the impact of such termination upon the UNIVERSITY's program. This Employment Agreement and, particularly, Section 4.02.b below concerning liquidated damages shall continue in full force and effect for all applicable purposes if EMPLOYEE terminates employment pursuant to this Section.

b. Liquidated Damages Upon Termination by EMPLOYEE. If the EMPLOYEE terminates this Agreement prior to its expiration or fails to provide UNIVERSITY with notice as required by 4.02.a, the UNIVERSITY shall require the EMPLOYEE to pay the UNIVERSITY as liquidated damages the sum of \$75,000.00.

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Such liquidated damages shall be due and payable within ten (10) days after the effective date of termination of this Agreement by EMPLOYEE. Failure to timely pay said liquidated damages or enter into a payment agreement with UNIVERSITY shall constitute a breach of this Agreement and said sum shall be actionable, together with reasonable attorney fees and the costs of suit. The EMPLOYEE will be entitled to continue group life insurance at EMPLOYEE's expense for up to three (3) months from the effective date of termination, but EMPLOYEE will not be entitled to any other employee benefits except as otherwise provided herein or required by law. In no case shall the UNIVERSITY be liable for the loss of any collateral business opportunities or any other benefits, perquisites or income resulting from activities such as, but not limited to, summer camps, clinics, media appearances, apparel or shoe contracts, consulting relationships or from any other sources where those losses are a result of the EMPLOYEE's termination of this Agreement. The parties have bargained for and agreed to the foregoing liquidated damages provision, giving consideration to the fact that the UNIVERSITY will incur administrative, recruiting and resettlement costs in obtaining a replacement for the EMPLOYEE in addition to potentially increased compensation costs and loss of ticket revenues if the EMPLOYEE terminates this Agreement while serving as Coach, which damages are extremely difficult to determine with certainty or adequately. The parties further agree that the payment of such liquidated damages by the EMPLOYEE and acceptance thereof by the UNIVERSITY shall constitute adequate and reasonable compensation to the UNIVERSITY for the damages and injury suffered by it because of such termination by the EMPLOYEE and shall constitute the sole and exclusive remedy available to UNIVERSITY because of termination by EMPLOYEE. The foregoing shall not be, nor be construed to be, a penalty. Failure to timely pay said liquidated damages shall constitute a breach of this Agreement and said sum shall be actionable, together with reasonable attorney fees and the costs of such.

c. EMPLOYEE Cannot Seek or Accept Another Coaching Position Without Notification to UNIVERSITY.

The parties agree that should another coaching opportunity be presented to the EMPLOYEE or should the EMPLOYEE elect to pursue in another position as a coach at any institution of higher education which is a member of the NCAA or the NAIA, or any team participating in any professional league or conference in the United States or elsewhere requiring the performance of duties prior to the expiration date of the term of this Agreement or any extension thereof, the EMPLOYEE must notify the UNIVERSITY's Director of Athletics before any discussions can be held by the EMPLOYEE with the prospective employer.

The EMPLOYEE further agrees, and hereby specifically promises, not to negotiate for or accept employment, under any circumstances, as a coach at any institution of higher education which is a member of the NCAA or NAIA, or any team participating in any professional league or conference in the United States

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or elsewhere requiring performance of duties prior to the expiration date of the term of this Agreement without first giving 7 (seven) days written notice to the Director of Athletics. The UNIVERSITY agrees that it will not divulge or disclose any knowledge it comes into possession of that EMPLOYEE is negotiating with any other individual or entity with regard to alternative employment without first obtaining consent of EMPLOYEE.

ARTICLE V – MISCELLANEOUS

5.01. COMPENSATION CONDITIONAL. The payment of all forms of compensation set forth in this Agreement is subject to the approval of the annual operating budget by the UNIVERSITY's governing body and the sufficiency of appropriations or the availability of sufficient funds within the Athletic Department's budget to pay such compensation. The UNIVERSITY's and the Board of Education's rules and policies regarding Financial Exigency and Program Discontinuance shall apply. If the payment of all forms of compensation and benefits set forth in this Agreement are not approved by the UNIVERSITY's governing body for any period covered by this Agreement, EMPLOYEE, at EMPLOYEE's option, shall be entitled to immediately terminate this Agreement and, in the event of termination pursuant to this Section, shall not be responsible or liable to UNIVERSITY for liquidated damages as provided by Section 4.02.b of this Agreement or any other damage sustained by UNIVERSITY of any kind whatsoever.

5.02. CHOICE OF LAW. It is the intent of the parties hereto that this Agreement shall be governed by and construed in accordance with the laws of the State of Idaho, and the laws of the State of Idaho shall govern the validity, performance and enforcement of this Agreement.

5.03. MERGER CLAUSE. This Agreement constitutes the full and complete understanding and agreement of the parties with respect to the employment of the EMPLOYEE by the UNIVERSITY and supersedes all prior understandings and agreements, oral or written, regarding the EMPLOYEE's employment by the UNIVERSITY; provided, however, that this Agreement is acknowledged to be subject to all UNIVERSITY and State Board of Education policies and regulations.

5.04. AMENDMENTS TO AGREEMENT. This Agreement may be amended at any time only by a written instrument duly approved by the UNIVERSITY through its designated representative and accepted by the EMPLOYEE, such approval and acceptance to be acknowledged in writing, except that the foregoing shall not apply to increases in compensation and/or enhancements of fringe benefits which may be accomplished at any time in accordance with the terms and conditions of Article II hereof without the necessity for written modification or amendment to this Agreement.

**BUSINESS AFFAIRS AND HUMAN RESOURCES
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5.05. SEVERABILITY. If any provision or provisions hereof, shall be deemed invalid or unenforceable, either in whole or in part, this Agreement shall be deemed amended to delete or modify, as necessary, the offending provision or provisions or to alter the bounds thereof in order to render it valid and enforceable to the fullest extent permissible under applicable law, but that the unenforceability (or modification to conform to such law) of said Article IV shall not render unenforceable or impair the remainder of this Agreement.

5.06. NO WAIVER OF DEFAULT. No waiver by the parties hereto of any default or breach of any covenant, term or condition of this Agreement shall be deemed to be a waiver of any other default or breach of the same or any other covenant, term or condition contained herein.

5.07. ACKNOWLEDGMENT. The EMPLOYEE acknowledges that he/she has read and understands the foregoing provisions of this Agreement and that such provisions are reasonable and enforceable and EMPLOYEE agrees to abide by this Agreement and the terms and conditions set forth herein.

5.08. CONFIDENTIALITY. The EMPLOYEE hereby consents and agrees that this document and any Addendum may be released and made available to the public after it is signed by the EMPLOYEE.

5.09. APPROVAL OF THE STATE BOARD OF EDUCATION: This Agreement is subject to approval by the State Board of Education and will be of no force or effect without that approval.

IN WITNESS WHEREOF, the parties hereto have executed this Employment Agreement or caused this Agreement to be executed by its provisions, the EMPLOYEE acknowledging that the EMPLOYEE has reviewed this Employment Agreement with EMPLOYEE's attorney.

EMPLOYEE

Dan Hawkins
Head Football Coach

Date: _____

BOISE STATE UNIVERSITY

By: _____
Charles P. Ruch
President

Date: _____

ADDENDUM NO. 2 TO EMPLOYMENT AGREEMENT

1. This is an Addendum to the employment agreement (Agreement) between BOISE STATE UNIVERSITY (BSU) and Dan Hawkins (EMPLOYEE) and dated the ____ day of _____, 2002.
2. The EMPLOYEE is being hired for the position of Head Football Coach.
3. Accordingly, the following terms as used in the Agreement will be defined as indicated:
 - a. "Position" will mean the position described in paragraph 2, above.
 - b. "Relevant season" will mean the Football season commencing on the first day of fall practice and ending with the last game of the regular season of the Boise State University Broncos.
 - c. "Program" shall mean the Football program.
 - d. "Applicable conference" as of the date of this AGREEMENT means the Big West Conference
 - e. "NCAA" means the National Collegiate Athletic Association.
 - f. "Athletic Director" means the BSU Director of Athletics or his designee.
 - g. "Coaching" means to direct and supervise the athletes participating in the program.
 - h. "BAA" means the Bronco Athletic Association.
 - i. "Post-season" means participation in a Bowl game which takes place after the football season.
 - j. "Summer camp" means short-term program of instruction which offers to its participants information and coaching designed to improve the skills utilized in any field of athletic competition.
4. The term of the Agreement shall commence on the 1st day of February, 2002, and shall continue until the Agreement terminates on the 31st day of January, 2007; provided, however, that this provision is subject to the terms and conditions of Article IV of the Agreement concerning termination. Neither party shall have the right to terminate the Agreement prior to its date of expiration except as provided therein.
5. Specific duties and responsibilities of EMPLOYEE. The EMPLOYEE is expected to devote full time to coaching and recruitment involving the Football team as the Head Coach. Additional duties and responsibilities not listed will be those customarily attendant to the position of a Head Football Coach at a Division 1-A school. If Employee is required to perform any such additional duties that are not defined in the contract, EMPLOYEE will be notified of his responsibility to perform these duties within a reasonable time frame.

EMPLOYEE will attend all staff meetings, public relation functions, dinners, awards banquets and make appearances as directed by the Director of Athletics unless excused by the Director of Athletics. The Athletic Director shall not unreasonably

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withhold approval for non-attendance. Such functions shall include, but are not limited to the following:

- < The annual BAA Bar-b-que
- < The weekly BAA noon luncheons during the relevant season
- < The annual BAA Endowment Dinner
- < The BSU Athletic Hall of Fame Dinner
- < The BAA Bronze Bronco Award Banquet
- < The BAA/Alumni Auction Dinner
- < All Athletic Department staff meetings called by the Director of Athletics
- < Athletic Department Graduation Reception
- < BAA or alumni Lyle Smith Golf Tournaments

6. EMPLOYEE agrees to supervise any staff serving under EMPLOYEE and to insure, to the maximum extent possible, that all staff persons follow all applicable University policies, NCAA, or applicable conference rules and regulations at all times.

7. Compensation: EMPLOYEE will be compensated for services under the AGREEMENT more specifically as follows: A. Base salary as referred to in paragraph 2.01 of the AGREEMENT shall be as follows:

<u>YEAR</u>	<u>COMPENSATION</u>
February 1, 2002 - January 31, 2003	\$141,750.00

B. Media Agreements with Radio and Television as follows:

<u>YEAR</u>	<u>COMPENSATION</u>
February 1, 2002 - January 31, 2003	\$15,750

The compensation outlined above may be paid by the UNIVERSITY or by the radio and television stations that own the rights to UNIVERSITY broadcasts, or by a combination of the UNIVERSITY, radio station and television station.

C. . Merit raises: These may be granted as discussed in section 2.02(b) of the AGREEMENT.

D. . Media, Shoe, Apparel and Equipment Contracts: Compensation to the EMPLOYEE shall be negotiated on a contract-by-contract basis. E. Supplemental pay relating to regular season and post-season competition as follows:

- (ii) 1/12 of the annual base salary (specified in section 7.A above) for winning the Conference Championship; or,
- (iii) 6% of annual base salary (specified in section 7.A above) for a post season Bowl invitation

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In order to qualify for supplemental pay as outlined above, the football team's "retention rate" as defined in section G below, must be at least 50% for the academic year in which the supplemental pay is earned. Any supplemental pay earned pursuant to this paragraph shall be paid on February 1st following the football season in which earned.

G. Incentive pay as follows:

- (i) Employee shall qualify for \$1,500 in supplemental pay if the following conditions are met: (Note: When calculating the retention rate and the team GPA, the individuals considered shall be those football players receiving athletic grant-in-aid who are on the team roster the first day of September each year.)
 - (a) At least 90% of the scholarship football players must return to Boise State for the fall semester of the following academic year and be enrolled full-time (unless said player needs less than full-time enrollment to fulfill the requirements of graduation from Boise State University at the end of that semester) on the first day of September of the fall semester (regardless of whether or not they return on scholarship) unless they graduate prior to the first day of September following the football season in which they last played or if they do not return to Boise State because they are on a National Football League team roster.
 - (b) The grade point average of the scholarship football players on Boise State's team roster shall, taken as a whole by averaging the grade point averages of all said scholarship football players, be no less than 2.5. This calculation shall be made by using the grades received by the scholarship football players for coursework taken in the fall and spring semesters immediately preceding the date of the calculation.
 - (c) The team must win a minimum of four games during the academic year being considered.
 - (d) The retention rate will be calculated anew each year and will not be cumulative.
- (ii) Said bonus shall be paid by the UNIVERSITY in October of each year following the academic year to those football coaches who were employed during the previous football season and who are still employed at the UNIVERSITY.

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H. EMPLOYEE shall have a "Public Relations" account in the amount of \$1,000.00 per year to be used for reimbursement for meals and other acceptable activities relating to the furtherance of the business of the UNIVERSITY per UNIVERSITY regulations.

EMPLOYEE

Dan Hawkins
Head Football Coach

Date

BOISE STATE UNIVERSITY

By:_____
Charles P. Ruch
President

Date

REFERENCE - APPLICABLE STATUTE, RULE, OR POLICY

Idaho State Board of Education

GOVERNING POLICIES AND PROCEDURES

SECTION: II. HUMAN RESOURCES POLICIES AND PROCEDURES

Subsection: H. Policies Regarding Coaching Personnel and Athletic Directors April 2002

**H. Policies Regarding Coaching Personnel and Athletic Directors
(Institution Employees Only)**

1. Agreements Longer Than One Year

The chief executive officer of an institution is authorized to enter into a contract for the services of a head coach or athletic director with that institution for a term of more than one (1) year, but not more than five (5) years, subject to approval by the Board as to the terms, conditions, and compensation thereunder, and subject further to the condition that the contract of employment carries terms and conditions of future obligations of the coach or athletic director to the institution for the performance of such contracts. Each contract for the services shall follow the general form approved by the Board as a model contract. Such contract shall define the entire employment relationship between the Board and the coach or athletic director and may incorporate by reference applicable Board and institutional policies and rules, and applicable law.

BUSINESS AFFAIRS AND HUMAN RESOURCES
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INSTITUTION / AGENCY AGENDA
BOISE STATE UNIVERSITY

SUBJECT

Boise State University (BSU) requests approval of the terms of employment for Richard Frisch as Vice President for University Advancement.

APPLICABLE STATUTE, RULE OR POLICY

Idaho State Board of Education Governing Policies and Procedures, Section II.B.3.b; Section II.F.2.6; and Section II.J.

BACKGROUND

Boise State University has recently completed a national search for an individual to fill the position of Vice President for University Advancement. President Kustra is pleased to appoint Mr. Richard Frisch to this position. Mr. Frisch is not only the best qualified candidate for the position, but is also uniquely qualified to provide leadership for the Office of University Advancement at this critical time in Boise State's history. Rick brings with him over 25 years of experience in fundraising and development in both public and private organizations including experience with major comprehensive campaigns and service as the Executive Director of Campaign Arizona, a \$1 billion effort. He has most recently been serving as Vice President for Development and President of the Washington State University Foundation. Boise State is poised to prepare for a comprehensive campaign that will provide significant support for programs, buildings and scholarships. Rick's background and experience are critical to the University's preparation for such a campaign and ideal for this vice presidential position.

The negotiated terms of employment include a salary that is within 75% of the chief executive officer's salary, and a car (provided through the Athletic Department's trade-out program). In accordance with the Board policies listed above, these terms of employment require Board approval before the appointment can be official.

DISCUSSION / IMPACT

The salary for this appointment is within 75% of the CEO salary, at \$165,000. This salary is below the College and University Professional Association for Human Resources (CUPA) median for institutions within Boise State's budget quartile (median for institutions with a budget quartile over \$131 million dollars) for the chief development officer, the equivalent of this position. The CUPA median salary is \$168,432. Boise State has budgeted accordingly to provide for this salary and believes it is reasonable and necessary in order to ensure the most qualified individual in the position.

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INSTITUTION / AGENCY AGENDA
BOISE STATE UNIVERSITY - continued

A car is provided through the trade-out program under our Athletic Department. The car will not be paid for with local or appropriated university funds, but rather will be provided by a local dealer through a program whereby the university "trades out" tickets, advertising, etc in exchange for use of a vehicle. This is the same program that provides cars to many coaches at Boise State. Because the Vice President for University Advancement provides oversight for the Bronco Athletic Association staff and provides support for development activities in the Athletic Department, this arrangement fits the program and serves the university's need to provide a benefit without a direct impact on the university budget.

STAFF AND COMMENTS AND RECOMMENDATIONS

Board policy states that institutions are to include salary comparison data when making new appointments to senior positions (II.F.2.b.(1)). In recent years this information has not been consistently provided with agenda material. BSU is to be complimented in this instance for providing the appropriate data for Board and staff review (see first paragraph of "Discussion / Impact" section, above).

Staff has reviewed the material provided and discussed the proposed agreement with officials at Boise State University. The terms of employment are consistent with Board policy.

Staff recommends approval.

BOARD ACTION

A motion to approve the request by Boise State University for approval of the terms of employment for Richard Frisch as Vice President for University Advancement, at an annual salary of \$165,000. A vehicle will also be provided through the Athletic Department "trade-out" program.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

REFERENCE - APPLICABLE STATUTE, RULE, OR POLICY

Idaho State Board of Education

GOVERNING POLICIES AND PROCEDURES

SECTION: II. HUMAN RESOURCES POLICIES AND PROCEDURES

Subsection: B . Appointment Authorities and Procedures

January, 2005

Subsection: F. Policies Regarding Non-classified Employees

April 2002

Subsection: J. Other Benefits, All Employees

April 2002

B. Appointment Authority and Procedures

3. Specifically Reserved Board Authority

(Note: This is not an exclusive or exhaustive list and other reservations of Board authority may be found in other areas of these policies and procedures.) Board approval is required for the following:

- b. The initial appointment of all employees to any type of position at a salary that is equal to or higher than 75% of the chief executive officer's annual salary.

F. Policies Regarding Nonclassified Employees

2. Compensation

- b. Salaries, Salary Increases and other Compensation related items

(6) Automobile Exclusion - Unless expressly authorized by the Board, no nonclassified employee will receive an automobile or automobile allowance as part of his or her compensation.

J. Other Benefits – All Employees

Employees are eligible for health or other insurance programs established by the State of Idaho (or by the University of Idaho for its employees), for unemployment compensation as provided by the Employment Security Law of Idaho, workers compensation, disability and for such additional benefits as may be established by any institution, agency or school for its employees subject to prior approval by the Board.

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INSTITUTION / AGENCY AGENDA
IDAHO STATE UNIVERSITY

SUBJECT

Idaho State University (ISU) requests approval of a multi-year Employment Agreement with its Head Football Coach, John Larry Lewis.

APPLICABLE STATUTE, RULE OR POLICY

Idaho State Board of Education Governing Policies and Procedures, Section II.H.1.

DISCUSSION

Coach Lewis commenced his employment as Head Football Coach at ISU in November, 1998, recently completing his sixth full season. While the 2004 season was disappointing in terms of the win-loss record, Coach Lewis has brought stability to a program that had previously seen frequent coaching changes. Among the achievements of Coach Lewis and his staff are: three of the five winning ISU football seasons for the past twenty years; a five-year rolling average player retention rate of 77%; the only back-to-back eight win seasons in the 100+ year history of the institution (and its predecessors); the only ISU football coach who has won or tied for the conference championship in the past twenty years; he has recruited and signed a number of Idaho players (nine for the 2005 class).

As the red-line version of the Employment Agreement (Exhibit B) reflects, the model agreement is generally followed, although all areas of supplemental compensation are incorporated into the body of the agreement rather than by way of attachment. ISU believes the incentives are reasonable and designed to produce measurable results. As Exhibit C reflects, the goals established as incentives do indeed heighten requirements and are not designed to be routinely met. The annuity incentive (Section 3.2.12.), is substituted for the liquidated damages clause (5.3. in the model). ISU believes the liquidated damage clause is intended to discourage short-term tenures by head coaches, and that Coach Lewis has demonstrated his commitment to a long-term relationship by his six years of service to ISU. It is believed the annuity, which only vests upon service for the entire four-year period (or on a pro-rata basis if the University terminates the agreement for its convenience), is a fair and reasonable method of creating a positive incentive for the Coach to remain in the position for the entire four-year period.

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INSTITUTION / AGENCY AGENDA
IDAHO STATE UNIVERSITY-continued

DOCUMENTS

Documents relating to the proposed multi-year Employment Agreement are as follows:

Spreadsheet	J. Lawrence Lewis, Head Football Coach - Multi-Year Contract Changes
Exhibit A	Employment Agreement (clean version)
Exhibit B	Employment Agreement (red-line version)
Exhibit C	Supplemental Compensation – History & Summary (prepared by Athletic Director)

IMPACT

The proposed Employment Agreement establishes a base annual salary of \$100,000 for the period January 29, 2005 through January 28, 2009, and provides the opportunity for the Coach to earn supplemental compensation in various amounts for the academic and competitive performance of the ISU football team, for media appearances, summer football camps, etc., as set forth in Exhibits A, B, and C.

STAFF AND COMMENTS AND RECOMMENDATIONS

Staff has reviewed the proposed contract for conformance with Board policy and recommends approval.

BOARD ACTION

A motion to approve the request by Idaho State University for a multi-year employment agreement for the Head Football Coach (1.0 FTE), Department of Intercollegiate Athletics, supported by state funds.

Moved by _____ Seconded by _____ Carried Yes_____ No_____

J. LAWRENCE LEWIS, HEAD FOOTBALL COACH - MULTI-YEAR CONTRACT CHANGES

	MODEL CONTRACT SECTION	ISU CONTRACT SECTION	JUSTIFICATION FOR MODIFICATION
1	3.1 Regular Compensation	3.1.1 (d)	Provides that Coach receives courtesy car through Courtesy Car Program
2	3.2 Supplemental Compensation	3.2 Supplemental Compensation	Provides that supplemental compensation is cumulative but ceases upon termination except to the extent actually earned prior to termination. (Note: All forms of supplemental compensation are included in body of agreement - instead of addendum).
3		3.2.1	Incentive for winning or tying for conference championship (amount equal to 1 week's pay)
4		3.2.2	Incentives for advancing to NCAA 1-AA playoffs and incremental incentives for winning playoff games, up to and including national championship
5		3.2.3	Incentive for ranking in national polls
6		3.2.4	Incentives for number of season wins - beginning with a minimum 7 wins
7		3.2.5	Incentive for wins against Division 1-A opponents
8		3.2.6	Incentive for Coach being named Big Sky coach of the year
9		3.2.7	Measurable incentives for Team's academic performance and conduct
10		3.2.8	Summer camps - ISU permits only University operated summer camps
11		3.2.10	Compensation for weekly radio show
12		3.2.11	Compensation for weekly television show
13		3.2.12	Annuity incentive for Coach remaining entire 4 year period of agreement. This replaces the model liquidated damages provision (5.3.3). Coach has completed six seasons at ISU.
14	4.6 Other Opportunities	4.6 Other Opportunities; language added	Requires Athletic Director or designee to respond within 3 business days to request for approval by Coach to interview with other prospective employers
15	5.1.1. (c)	5.1.1. (c) Language changed	For clarification, changes "A deliberate or major" to "significant or repetitive" in relation to violations
16	5.1.1. (d)	5.1.1. (d) Language added	Adds language excepting "illness or injury" from absence cause for dismissal
17	5.3.4. Counsel	5.3.4. Revised	Reference to consultation with attorney deleted in light of 6.16
18	6.8 Force Majeure	6.8 Language added	Adds language to include "financial circumstances beyond the University's control" within the force majeure clause

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EMPLOYMENT AGREEMENT

This Employment Agreement (Agreement) is entered into by and between Idaho State University (University) and J. Lawrence Lewis, Head Football Coach (Coach).

ARTICLE 1

1.1. Employment. Subject to the terms and conditions of this Agreement, the University shall employ Coach as the Head Coach of its intercollegiate Football team (Team). Coach represents and warrants that Coach is fully qualified to serve, and is available for employment, in this capacity.

1.2. Reporting Relationship. Coach shall report and be responsible directly to the University's Director of Athletics (Director) or the Director's designee. Coach shall abide by the reasonable instructions of Director or the Director's designee and shall confer with the Director or the Director's designee on all administrative and technical matters. Coach shall also be under the general supervision of the University's President (President).

1.3. Duties. Coach shall manage and supervise the Team and shall perform such other duties in the University's athletic program as the Director may assign and as may be described elsewhere in this Agreement. The University shall have the right, at any time, to reassign Coach to duties at the University other than as head coach of the Team, provided that Coach's compensation and benefits shall not be affected by any such reassignment, except the opportunity to earn supplemental compensation as provided in sections 3.2.1 through 3.2.12 shall cease.

ARTICLE 2

2.1. Term. This Agreement is for a fixed-term appointment of four (4) years, commencing on January 29, 2005, and terminating, without further notice to Coach, on January 28, 2009, unless sooner terminated in accordance with other provisions of this Agreement.

2.2. Extension or Renewal. This Agreement is renewable solely upon an offer from the University and an acceptance by Coach, both of which must be in writing and signed by the parties. Any renewal is subject to the prior approval of the University's Board. This Agreement in no way grants to Coach a claim to tenure in employment, nor shall Coach's service pursuant to this agreement count in any way toward tenure at the University.

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ARTICLE 3

3.1. Regular Compensation.

3.1.1. In consideration of Coach's services and satisfactory performance of this Agreement, the University shall provide to Coach:

- a) An annual salary of \$100,000.00 per year, payable in biweekly installments in accordance with normal University procedures, and such salary increases as may be determined appropriate by the Director and President and approved by the University's Board of Trustees;
- b) The opportunity to receive such employee benefits as the University provides generally to non-faculty exempt employees;
- c) The opportunity to receive such employee benefits, as the University's Department of Athletics (Department) provides generally to its employees of a comparable level. Coach hereby agrees to abide by the terms and conditions, as now existing or hereafter amended, of such employee benefits; and
- d) A courtesy car will be provided to Coach during employment as Head Football Coach through the Courtesy Car Program as assigned by the Director.

3.2. Supplemental Compensation. The following described supplemental compensation shall be cumulative. In the event this Employment Agreement is terminated, such supplemental compensation shall cease as of the date of said termination, except to the extent Coach has actually earned such supplemental compensation prior to the date of termination.

3.2.1. Each year the Team wins or ties for the regular Big Sky Conference Championship, the University will pay to Coach an amount equal to one week's pay of Coach's annual salary.

3.2.2. Each year the Team receives the automatic conference berth or an at-large berth to the NCAA 1-AA Playoffs, the University will pay to Coach an amount equal to one week's pay of Coach's annual salary.

In the event the Team, either by automatic qualification or as an at-large choice competes in the NCAA 1-AA Playoffs, the University shall compensate Coach for advancing in the tournament bracket as follows:

Round 1	16 teams	1 st win \$2,000	
Round 2	8 teams	2 nd win	\$4,000

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Round 3 4 teams 3rd win \$6,000
Round 4 2 teams 4th win \$8,000
Possible bonus computation total \$20,000
for winning National Championship.

3.2.3. Each year the Team is ranked in the top 10 in the final CSTV/Sports Network or ESPN/USA Today Coaches poll, the University shall pay Coach supplemental compensation in an amount equal to one week's pay of Coach's annual salary in effect on the date of the final poll.

3.2.4. Coach shall receive supplemental compensation for the following number of wins during each season:

7 wins	\$1,000
8 wins	\$2,000
9 wins	\$3,000
10 wins	\$4,000
11 wins	\$5,000
12 wins	<u>\$6,000</u>

Total Compensation possible \$21,000

3.2.5. Each year Team wins a game against a Division 1-A opponent Coach will receive as supplemental compensation an amount equal to one week's pay.

3.2.6. Each year that Coach is chosen as a Big Sky Conference Coach of the Year he shall receive as supplemental compensation an amount equal to one week's pay.

3.2.7. Each year Coach shall be eligible to receive as supplemental compensation an amount equal to one week's pay for each of the following academic achievements of Team members:

(1) the cumulative GPA of the entire Team as computed at the end of the academic year is 2.65 or higher; (2) the retention rate for all freshman through junior Team members who are scholarship athletes is 75% or higher; (3) the graduation rate is 70% or higher for all Team members who have exhausted eligibility in any given academic year; (4) acceptable conduct of all team members on the University campus, at University activities, in the community and elsewhere, as determined in the sole discretion of the President in consultation with the Director. Any such supplemental compensation based on the factors listed above and such justification shall be separately reported to the Board of Trustees as a document available to the public under the Idaho Public Records Act.

3.2.8. Summer Camp Operated by University. Coach agrees that the University has the exclusive right to operate youth football camps on its campus using University facilities. The University shall allow Coach the opportunity to earn supplemental compensation by directing or administering University's camps in

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Coach's capacity as a University employee. Coach hereby agrees to direct the marketing, supervision, and general administration of the University's football camps. Coach also agrees that Coach will perform all obligations mutually agreed upon by the parties. In exchange for Coach's participation in the University's summer football camps, the University shall pay Coach the net revenues resulting from each summer camp as supplemental compensation during each year of his employment as Head Football Coach at the University. This amount shall be paid within 30 days of the end of each summer camp. Alternatively, Coach may direct that such net revenues be used to enhance the budget of the football program.

In the event of termination of this Agreement, suspension, or reassignment, University shall not be under any obligation to permit a summer youth camp to be held by the Coach after the effective date of such termination, suspension, or reassignment, and the University shall be released from all obligations relating hereto.

3.2.9. Coach agrees that the University has the exclusive right to select footwear, apparel and/or equipment for the use of its student-athletes and staff, including Coach, during official practices and games and during times when Coach or the Team is being filmed by motion picture or video camera or posing for photographs in their capacity as representatives of University. Coach agrees that, upon the University's reasonable request, Coach will consult with appropriate parties concerning company's product's design or performance, shall act as an instructor at a clinic sponsored in whole or in part by such company, or give a lecture at an event sponsored in whole or in part by such company, or make other educationally-related appearances as may be reasonably requested by the University. Notwithstanding the foregoing sentence, Coach shall retain the right to decline such appearances as Coach reasonably determines to conflict with or hinder his duties and obligations as Head Football Coach. In order to avoid entering into an agreement with a competitor of such company, Coach shall submit all outside consulting agreements to the University for review and approval prior to execution. Coach shall also report such outside income to the University in accordance with NCAA rules. Coach further agrees that Coach will not endorse any athletic footwear, apparel, equipment, and products, including such company, and will not participate in any messages or promotional appearances which contain a comparative or qualitative description of athletic footwear, apparel or equipment products.

3.2.10. Coach shall participate in the Athletic Departments weekly coaches radio broadcast and shall receive supplemental compensation as follows:

2005	\$10,000
2006	\$10,500
2007	\$11,000
2008	\$11,500

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Without the prior written approval of the Director, Coach shall not appear in any commercial endorsements which are broadcast on radio or television that conflict with those broadcast on the University=s designated media outlets.

3.2.11. Coach shall participate in the Athletic Departments weekly coaches television show (Bengal Review) and receive supplemental compensation as follows:

2005	\$1,500
2006	\$2,000
2007	\$2,500
2008	\$3,000

3.2.12. Coach shall receive in supplemental compensation a deferred income annuity with a cash value of \$100,000 after the successful completion of this Employment Agreement. Coach must fulfill the entire four (4) year period to be eligible to receive the proceeds of the annuity, and should he fail to fulfill the entire period, he will forfeit the entire amount. Provided, however, if Coach is terminated by the University for its convenience only, (Section 5.2), coach will be entitled to a pro-rata portion of the annuity proceeds to the date of such termination.

3.3. General Conditions of Compensation. All compensation provided by the University to Coach is subject to deductions and withholdings as required by law or the terms and conditions of any fringe benefit in which Coach participates. However, if any fringe benefit is based in whole or in part upon the compensation provided by the University to Coach, such fringe benefit shall be based only on the compensation provided pursuant to section 3.1.1, except to the extent required by the terms and conditions of a specific fringe benefit program.

ARTICLE 4

4.1. Coach's Specific Duties and Responsibilities. In consideration of the compensation specified in this Agreement, Coach, in addition to the obligations set forth elsewhere in this Agreement, shall:

4.1.1. Devote Coach's full time and best efforts to the performance of Coach's duties under this Agreement;

4.1.2. Develop and implement programs and procedures with respect to the evaluation, recruitment, training, and coaching of Team members which enable them to compete successfully and reasonably protect their health, safety, and well-being;

4.1.3. Observe and uphold all academic standards, requirements, and

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policies of the University and encourage Team members to perform to their highest academic potential and to graduate in a timely manner; and

4.1.4. Know, recognize, and comply with all applicable laws and the policies, rules and regulations of the University, the University's governing board, the conference, and the NCAA; supervise and take appropriate steps to ensure that Coach's assistant coaches, any other employees for whom Coach is administratively responsible, and the members of the Team know, recognize, and comply with all such laws, policies, rules and regulations; and immediately report to the Director and to the Department's Director of Compliance if Coach has reasonable cause to believe that any person or entity, including without limitation representatives of the University's athletic interests, has violated or is likely to violate any such laws, policies, rules or regulations. Coach shall cooperate fully with the University and Department at all times. The names or titles of employees whom Coach supervises are attached as Exhibit C. The applicable laws, policies, rules, and regulations include: (a) State Board of Education and Board of Regents of the University of Idaho Governing Policies and Procedures and Rule Manual; (b) University's Handbook; (c) University's Administrative Procedures Manual; (d) the policies and procedures of the Athletic Department; (e) NCAA rules and regulations; and (f) the rules and regulations of the Big Sky Conference of which the University is a member.

4.2. Outside Activities. Coach shall not undertake any business, professional or personal activities, or pursuits that would prevent Coach from devoting Coach's full time and best efforts to the performance of Coach's duties under this Agreement, that would otherwise detract from those duties in any manner, or that, in the opinion of the University, would reflect adversely upon the University or its athletic program. Subject to the terms and conditions of this Agreement, Coach may, with the prior written approval of the Director, who may consult with the President, enter into separate arrangements for outside activities and endorsements which are consistent with Coach's obligations under this Agreement. Coach may not use the University's name, logos, or trademarks in connection with any such arrangements without the prior written approval of the Director and the President.

4.3. NCAA Rules. In accordance with NCAA rules, Coach shall obtain prior written approval from the University's President for all athletically related income and benefits from sources outside the University and shall report the source and amount of all such income and benefits to the University's President whenever reasonably requested, but in no event less than annually before the close of business on June 30th of each year or the last regular University work day preceding June 30th. The report shall be in a format reasonably satisfactory to University. In no event shall Coach accept or receive directly or indirectly any monies, benefits, or gratuities whatsoever from any person, association, corporation, University booster club, University alumni association, University foundation, or other benefactor, if the acceptance or receipt of the monies, benefits, or gratuities would violate applicable law or the policies, rules, and regulations of the University, the University's governing board, the conference, or the NCAA.

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4.4. Hiring Authority. Coach shall have the responsibility and the sole authority to recommend to the Director the hiring and termination of assistant coaches for the Team, but the decision to hire or terminate an assistant coach shall be made by the Director and shall, when necessary or appropriate, be subject to the approval of President and the University's Board of Trustees.

4.5. Scheduling. Coach shall consult with, and may make recommendations to, the Director or the Director's designee with respect to the scheduling of Team competitions, but the final decision shall be made by the Director or the Director's designee.

4.6. Other Coaching Opportunities. Coach shall not, under any circumstances, interview for, negotiate for, or accept employment as a coach at any other institution of higher education or with any professional sports team, requiring performance of duties prior to the expiration of this Agreement, without the prior approval of the Director. Such approval shall not be unreasonably withheld, and University's Director of Athletics or the Director's designee shall reply in writing within three business days of a request by Coach.

ARTICLE 5

5.1. Termination of Coach for Cause. The University may, in its discretion, suspend Coach from some or all of Coach's duties, temporarily or permanently, with or without pay; reassign Coach to other duties; or terminate this Agreement at any time for good or adequate cause, as those terms are defined in applicable rules and regulations.

5.1.1. In addition to the definitions contained in applicable rules and regulations, University and Coach hereby specifically agree that the following shall constitute good or adequate cause for suspension, reassignment, or termination of this Agreement:

- a) A deliberate or major violation of Coach's duties under this Agreement or the refusal or unwillingness of Coach to perform such duties in good faith and to the best of Coach's abilities;
- b) The failure of Coach to remedy any violation of any of the terms of this Agreement within 30 days after written notice from the University;
- c) Significant or repetitive violations by Coach of any applicable law or the policies, rules or regulations of the University, the University's governing board, the conference or the NCAA, including but not limited to any such violation which may have occurred during the employment of Coach at another NCAA or NAIA member institution;
- d) Ten (10) working days' absence of Coach from duty, except for illness or injury, without the University's consent;

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e) Any conduct of Coach that constitutes moral turpitude or that would, in the University's judgment, reflect adversely on the University or its athletic programs;

f) The failure of Coach to represent the University and its athletic programs positively in public and private forums;

g) The failure of Coach to fully and promptly cooperate with the NCAA or the University in any investigation of possible violations of any applicable law or the policies, rules or regulations of the University, the University's governing board, the conference, or the NCAA;

h) The failure of Coach to report a known violation of any applicable law or the policies, rules or regulations of the University, the University's governing board, the conference, or the NCAA, by one of Coach's assistant coaches, any other employees for whom Coach is administratively responsible, or a member of the Team; or

i) A violation of any applicable law or the policies, rules or regulations of the University, the University's governing board, the conference, or the NCAA, by one of Coach's assistant coaches, any other employees for whom Coach is administratively responsible, or a member of the Team if Coach knew or should have known of the violation and could have prevented it by ordinary supervision.

5.1.2. Suspension, reassignment, or termination for good or adequate cause shall be effectuated by the University as follows: before the effective date of the suspension, reassignment, or termination, the Director or his designee shall provide Coach with notice, which notice shall be accomplished in the manner provided for in this Agreement and shall include the reason(s) for the contemplated action. Coach shall then have an opportunity to respond. After Coach responds or fails to respond, University shall notify Coach whether, and if so when, the action will be effective.

5.1.3. In the event of any termination for good or adequate cause, the University's obligation to provide compensation and benefits to Coach, whether direct, indirect, supplemental or collateral, shall cease as of the date of such termination, and the University shall not be liable for the loss of any collateral business opportunities or other benefits, perquisites, or income resulting from outside activities or from any other sources.

5.1.4. If found in violation of NCAA regulations, Coach shall, in addition to the provisions of Section 5.1, be subject to disciplinary or corrective action as set forth in the provisions of the NCAA enforcement procedures. This section applies to

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violations occurring at the University or at previous institutions at which the Coach was employed.

5.2. Termination of Coach for Convenience of University

5.2.1. At any time after commencement of this Agreement, University, for its own convenience, may terminate this Agreement by giving ten (10) days prior written notice to Coach.

5.2.2. In the event that University terminates this Agreement for its own convenience, University shall be obligated to pay Coach, as liquidated damages and not a penalty, the salary set forth in section 3.1.1(a), excluding all deductions required by law, on the regular paydays of University until the term of this Agreement ends or until Coach obtains reasonably comparable employment, whichever occurs first. In addition, Coach will be entitled to continue his health insurance plan and group life insurance as if he remained a University employee until the term of this Agreement ends or until Coach obtains reasonable comparable employment, whichever occurs first. Coach shall be entitled to no other compensation or fringe benefits, except as otherwise provided herein or required by law.

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5.3. Termination by Coach for Convenience.

5.3.1. The Coach recognizes that his promise to work for University for the entire term of this Agreement is of the essence of this Agreement. The Coach also recognizes that the University is making a highly valuable investment in his employment by entering into this Agreement and that its investment would be lost were he to resign or otherwise terminate his employment with the University before the end of the contract term.

5.3.2. The Coach, for his own convenience, may terminate this Agreement during its term by giving prior written notice to the University. Termination shall be effective ten (10) days after notice is given to the University.

5.3.3. If the Coach terminates this Agreement for convenience at any time, all obligations of the University shall cease as of the effective date of the termination, including any obligation to pay any portion of the annuity set forth in Section 3.2.12.

5.3.4. Except as provided elsewhere in this Agreement, if Coach terminates this Agreement for convenience, he shall forfeit to the extent permitted by law his right to receive all supplemental compensation and other payments.

5.4. Termination due to Disability or Death of Coach.

5.4.1. Notwithstanding any other provision of this Agreement, this Agreement shall terminate automatically if Coach becomes totally or permanently disabled as defined by the University's disability insurance carrier, becomes unable to perform the essential functions of the position of head coach, or dies.

5.4.2. If this Agreement is terminated because of Coach's death, Coach's salary and all other benefits shall terminate as of the last day worked, except that the Coach's personal representative or other designated beneficiary shall be paid all compensation due or unpaid and death benefits, if any, as may be contained in any fringe benefit plan now in force or hereafter adopted by the University and due to the Coach's estate or beneficiaries thereunder.

5.4.3. If this Agreement is terminated because the Coach becomes totally or permanently disabled as defined by the University's disability insurance carrier, or becomes unable to perform the essential functions of the position of head coach, all salary and other benefits shall terminate, except that the Coach shall be entitled to receive any compensation due or unpaid and any disability-related benefits to which he is entitled by virtue of employment with the University.

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5.5. Interference by Coach. In the event of termination, suspension, or reassignment, Coach agrees that Coach will not interfere with the University's student-athletes or otherwise obstruct the University's ability to transact business or operate its intercollegiate athletics program.

5.6. No Liability. The University shall not be liable to Coach for the loss of any collateral business opportunities or any other benefits, perquisites or income from any sources that may ensue as a result of any termination of this Agreement by either party or due to death or disability or the suspension or reassignment of Coach, regardless of the circumstances.

5.7. Waiver of Rights. Because the Coach is receiving a multi-year contract and the opportunity to receive supplemental compensation and because such contracts and opportunities are not customarily afforded to University employees, if the University suspends or reassigns Coach, or terminates this Agreement for good or adequate cause or for convenience, Coach shall have all the rights provided for in this Agreement but hereby releases the University from compliance with the notice, appeal, and similar employment-related rights provide for in the State Board of Education and Board or Regents of the University of Idaho Rule Manual (IDAPA 08) and Governing Policies and Procedures Manual, and the University Faculty-Staff Handbook.

ARTICLE 6

6.1. Board Approval. This Agreement shall not be effective until and unless approved by the University's Board of Trustees and executed by both parties as set forth below. In addition, the payment of any compensation pursuant to this agreement shall be subject to the approval of the University's Board of Trustees, the President, and the Director; the sufficiency of legislative appropriations; the receipt of sufficient funds in the account from which such compensation is paid; and the University's Board of Trustees and University's rules regarding financial exigency.

6.2. University Property. All personal property (excluding vehicle(s) provided through the University vehicle program), material, and articles of information, including, without limitation, keys, credit cards, personnel records, recruiting records, team information, films, statistics or any other personal property, material, or data, furnished to Coach by the University or developed by Coach on behalf of the University or at the University's direction or for the University's use or otherwise in connection with Coach's employment hereunder are and shall remain the sole property of the University. Within

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twenty-four (24) hours of the expiration of the term of this Agreement or its earlier termination as provided herein, Coach shall immediately cause any such personal property, materials, and articles of information in Coach's possession or control to be delivered to the Director.

6.3. Assignment. Neither party may assign its rights or delegate its obligations under this Agreement without the prior written consent of the other party.

6.4. Waiver. No waiver of any default in the performance of this Agreement shall be effective unless in writing and signed by the waiving party. The waiver of a particular breach in the performance of this Agreement shall not constitute a waiver of any other or subsequent breach. The resort to a particular remedy upon a breach shall not constitute a waiver of any other available remedies.

6.5. Severability. If any provision of this Agreement is determined to be invalid or unenforceable, the remainder of the Agreement shall not be affected and shall remain in effect.

6.6. Governing Law. This Agreement shall be subject to and construed in accordance with the laws of the state of Idaho as an agreement to be performed in Idaho. Any action based in whole or in part on this Agreement shall be brought in the courts of the state of Idaho.

6.7. Oral Promises. Oral promises of an increase in annual salary or of any supplemental or other compensation shall not be binding upon the University.

6.8. Force Majeure. Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefore, governmental restrictions, governmental regulations, governmental controls, enemy or hostile governmental action, civil commotion, fire or other casualty, and other causes beyond the reasonable control of the party obligated to perform (including financial circumstance beyond the University's control), shall excuse the performance by such party for a period equal to any such prevention, delay or stoppage.

6.9. Confidentiality. The Coach hereby consents and agrees that this document may be released and made available to the public after it is signed by the Coach. The Coach further agrees that all documents and reports he is required to produce under this Agreement may be released and made available to the public at the University's sole discretion.

6.10. Notices. Any notice under this Agreement shall be in writing and be delivered in person or by public or private courier service (including U.S. Postal Service Express Mail) or certified mail with return receipt requested or by facsimile. All notices shall be addressed to the parties at the following addresses or at such other addresses as the parties may from time to time direct in writing:

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Director of Athletics
Campus Box 8173
Idaho State University
Pocatello, ID 83209-8173

with a copy to: President
Campus Box 8310
Idaho State University
Pocatello, ID 83209-8410

the Coach: J. Lawrence Lewis or Last known address on file with
Campus Box 8173 University Human Resources
Idaho State University
Pocatello, ID 83209-8173

Any notice shall be deemed to have been given on the earlier of: (a) actual delivery or refusal to accept delivery, (b) the date of mailing by certified mail, or (c) the day facsimile delivery is verified. Actual notice, however and from whomever received, shall always be effective.

6.11. Headings. The headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation hereof.

6.12. Binding Effect. This Agreement is for the benefit only of the parties hereto and shall inure to the benefit of and bind the parties and their respective heirs, legal representatives, successors and assigns.

6.13. Non-Use of Names and Trademarks. The Coach shall not, without the University's prior written consent in each case, use any name, trade name, trademark, or other designation of the University (including contraction, abbreviation or simulation), except in the course and scope of his official University duties.

6.14. No Third Party Beneficiaries. There are no intended or unintended third party beneficiaries to this Agreement.

6.15. Entire Agreement; Amendments. This Agreement constitutes the entire agreement of the parties and supersedes all prior agreements and understandings with respect to the same subject matter. No amendment or modification of this Agreement shall be effective unless in writing, signed by both parties, and approved by the University's Board of Trustees.

6.16. Opportunity to Consult with Attorney. The Coach acknowledges that he has had the opportunity to consult and review this Agreement with an attorney and has not relied upon the advice of any legal counsel acting on behalf of the University.

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Accordingly, in all cases, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any party.

UNIVERSITY

COACH

RICHARD L. BOWEN Date_____

J. Lawrence Lewis Date_____

Approved by the Board of Trustees on this _____ day of _____,
20_____

EMPLOYMENT AGREEMENT

This Employment Agreement (Agreement) is entered into by and between Idaho State University (University) and J. Lawrence Lewis, Head Football Coach (Coach).

ARTICLE 1

1.1. Employment. Subject to the terms and conditions of this Agreement, the University shall employ Coach as the Head Coach of its intercollegiate Football team (Team). Coach represents and warrants that Coach is fully qualified to serve, and is available for employment, in this capacity.

1.2. Reporting Relationship. Coach shall report and be responsible directly to the University's Director of Athletics (Director) or the Director's designee. Coach shall abide by the reasonable instructions of Director or the Director's designee and shall confer with the Director or the Director's designee on all administrative and technical matters. Coach shall also be under the general supervision of the University's President (President).

1.3. Duties. Coach shall manage and supervise the Team and shall perform such other duties in the University's athletic program as the Director may assign and as may be described elsewhere in this Agreement. The University shall have the right, at any time, to reassign Coach to duties at the University other than as head coach of the Team, provided that Coach's compensation and benefits shall not be affected by any such reassignment, except the opportunity to earn supplemental compensation as provided in sections 3.2.1 through 3.2.12 shall cease.

ARTICLE 2

2.1. Term. This Agreement is for a fixed-term appointment of four (4) years, commencing on January 29, 2005, and terminating, without further notice to Coach, on January 28, 2009, unless sooner terminated in accordance with other provisions of this Agreement.

2.2. Extension or Renewal. This Agreement is renewable solely upon an offer from the University and an acceptance by Coach, both of which must be in writing and signed by the parties. Any renewal is subject to the prior approval of the University's Board. This Agreement in no way grants to Coach a claim to tenure in employment, nor shall Coach's service pursuant to this agreement count in any way toward tenure at the University.

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ARTICLE 3

3.1. Regular Compensation.

3.1.1. In consideration of Coach's services and satisfactory performance of this Agreement, the University shall provide to Coach:

- a) An annual salary of \$100,000.00 per year, payable in biweekly installments in accordance with normal University procedures, and such salary increases as may be determined appropriate by the Director and President and approved by the University's Board of Trustees;
- b) The opportunity to receive such employee benefits as the University provides generally to non-faculty exempt employees;
- c) The opportunity to receive such employee benefits, as the University's Department of Athletics (Department) provides generally to its employees of a comparable level. Coach hereby agrees to abide by the terms and conditions, as now existing or hereafter amended, of such employee benefits; and
- d) A courtesy car will be provided to Coach during employment as Head Football Coach through the Courtesy Car Program as assigned by the Director.

3.2. Supplemental Compensation. The following described supplemental compensation shall be cumulative. In the event this Employment Agreement is terminated, such supplemental compensation shall cease as of the date of said termination, except to the extent Coach has actually earned such supplemental compensation prior to the date of termination.

3.2.1. Each year the Team wins or ties for the regular Big Sky Conference Championship, the University will pay to Coach an amount equal to one week's pay of Coach's annual salary.

3.2.2. Each year the Team receives the automatic conference berth or an at-large berth to the NCAA 1-AA Playoffs, the University will pay to Coach an amount equal to one week's pay of Coach's annual salary.

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In the event the Team, either by automatic qualification or as an at-large choice competes in the NCAA 1-AA Playoffs, the University shall compensate Coach for advancing in the tournament bracket as follows:

Round 1	16 teams	1 st win	\$2,000
Round 2	8 teams	2 nd win	\$4,000
Round 3	4 teams	3 rd win	\$6,000
Round 4	2 teams	4 th win	\$8,000
<u>Possible bonus computation total \$20,000</u>			
<u>for winning National Championship.</u>			

3.2.3. Each year the Team is ranked in the top 10 in the final CSTV/Sports Network or ESPN/USA Today Coaches poll, the University shall pay Coach supplemental compensation in an amount equal to one week's pay of Coach's annual salary in effect on the date of the final poll is ranked in the top 25 in the (national rankings, such as final ESPN/USA Today coaches poll of Division IA football teams), and if Coach continues to be employed as University's head football coach as of the ensuing July 1st, the University shall pay Coach supplemental compensation in an amount equal to (amount or computation) of Coach's Annual Salary in effect on the date of the final poll. The University shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.

3.2.4. Each year Coach shall be eligible to receive supplemental compensation for the following number of wins during each season: in an amount up to (amount or computation) based on the overall development of the intercollegiate football program; ticket sales; fundraising; outreach by Coach to various constituency groups, including University students, staff, faculty, alumni and boosters; and any other factors the President wishes to consider. The determination of whether Coach will receive such supplemental compensation and the timing of the payment(s) shall be at the sole discretion of the President in consultation with the Director.

7 wins	\$1,000
8 wins	\$2,000
9 wins	\$3,000
10 wins	\$4,000
11 wins	\$5,000
12 wins	\$6,000

Total Compensation possible \$21,000

3.2.5. Each year Team wins a game against a Division 1-A opponent Coach will receive as supplemental compensation an amount equal to one week's pay.

3.2.6. Each year that Coach is chosen as a Big Sky Conference Coach of the Year he shall receive as supplemental compensation an amount equal to one week's pay.

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3.2.7. Each year Coach shall be eligible to receive as supplemental compensation an amount equal to one week's pay for each of the following academic achievements of Team members:

(1) the cumulative GPA of the entire Team as computed at the end of the academic year is 2.65 or higher; (2) the retention rate for all freshman through junior Team members who are scholarship athletes is 75% or higher; (3) the graduation rate is 70% or higher for all Team members who have exhausted eligibility in any given academic year; (4) acceptable conduct of all team members on the University campus, at University activities, in the community and elsewhere, as determined in the sole discretion of the President in consultation with the Director. ~~Coach shall be eligible to receive supplemental compensation in an amount up to (amount or computation) based on the academic achievement and behavior of Team members. The determination of whether Coach will receive such supplemental compensation and the timing of the payment(s) shall be at the sole discretion of the President in consultation with the Director. The determination shall be based on the following factors: grade point averages; difficulty of major course of study; honors such as scholarships, designation as Academic All-American, and conference academic recognition; progress toward graduation for all athletes, but particularly those who entered the University as academically at-risk student; the conduct of Team members on the University campus, at authorized University activities, in the community, and elsewhere. Any such supplemental compensation based on the factors listed above and such justification shall be separately reported to the Board of Trustees as a document available to the public under the Idaho Public Records Act.~~

3.2.8. Summer Camp Operated by University. Coach agrees that the University has the exclusive right to operate youth football camps on its campus using University facilities. The University shall allow Coach the opportunity to earn supplemental compensation by directing or administering University's camps in Coach's capacity as a University employee. Coach hereby agrees to direct the marketing, supervision, and general administration of the University's football camps. Coach also agrees that Coach will perform all obligations mutually agreed upon by the parties. In exchange for Coach's participation in the University's summer football camps, the University shall pay Coach the net revenues resulting from each summer camp as supplemental compensation during each year of his employment as Head Football Coach at the University. This amount shall be paid within 30 days of the end of each summer camp. Alternatively, Coach may direct that such net revenues be used to enhance the budget of the football program.

In the event of termination of this Agreement, suspension, or reassignment, University shall not be under any obligation to permit a summer youth camp to be held by the Coach after the effective date of such termination, suspension, or reassignment, and the University shall be released from all obligations relating hereto.

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~~(SUMMER CAMP OPERATED BY COACH)~~ Coach may operate a summer youth ~~(Sport)~~ camp at the University (College) under the following conditions:

- a) ~~The summer youth camp operation reflects positively on the University (College) and the Department;~~
- b) ~~The summer youth camp is operated by Coach directly or through a private enterprise owned and managed by Coach. The Coach shall not use University (College) personnel, equipment, or facilities without the prior written approval of the Director;~~
- c) ~~Assistant coaches at the University (College) are given priority when the Coach or the private enterprise selects coaches to participate;~~
- d) ~~The Coach complies with all NCAA (NAIA), Conference, and University (College) rules and regulations related, directly or indirectly, to the operation of summer youth camps;~~

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- e) ~~The Coach or the private enterprise enters into a contract with University (College) and _____ (campus concessionaire) for all campus goods and services required by the camp.~~
- f) ~~The Coach or private enterprise pays for use of University (College) facilities including the _____.~~
- g) ~~Within thirty days of the last day of the summer youth camp(s), Coach shall submit to the Director a preliminary "Camp Summary Sheet" containing financial and other information related to the operation of the camp. Within ninety days of the last day of the summer youth camp(s), Coach shall submit to Director a final accounting and "Camp Summary Sheet." A copy of the "Camp Summary Sheet" is attached to this Agreement as an exhibit.~~
- h) ~~The Coach or the private enterprise shall provide proof of liability insurance as follows: (1) liability coverage: spectator and staff--\$1 million; (2) catastrophic coverage: camper and staff--\$1 million maximum coverage with \$100 deductible;~~
- i) ~~To the extent permitted by law, the Coach or the private enterprise shall defend and indemnify the University (College) against any claims, damages, or liabilities arising out of the operation of the summer youth camp(s)~~
- j) ~~All employees of the summer youth camp(s) shall be employees of the Coach or the private enterprise and not the University (College) while engaged in camp activities. The Coach and all other University (College) employees involved in the operation of the camp(s) shall be on annual leave status or leave without pay during the days the camp is in operation. The Coach or private enterprise shall provide workers' compensation insurance in accordance with Idaho law and comply in all respects with all federal and state wage and hour laws~~

~~In the event of termination of this Agreement, suspension, or reassignment, University (College) shall not be under any obligation to permit a summer youth camp to be held by the Coach after the effective date of such termination, suspension, or reassignment, and the University (College) shall be released from all obligations relating thereto.~~

3.2.9. Coach agrees that the University has the exclusive right to select footwear, apparel and/or equipment for the use of its student-athletes and staff, including Coach, during official practices and games and during times when Coach or

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the Team is being filmed by motion picture or video camera or posing for photographs in their capacity as representatives of University. Coach agrees that, upon the University's reasonable request, Coach will consult with appropriate parties concerning company's product's design or performance, shall act as an instructor at a clinic sponsored in whole or in part by such company, or give a lecture at an event sponsored in whole or in part by such company, or make other educationally-related appearances as may be reasonably requested by the University. Notwithstanding the foregoing sentence, Coach shall retain the right to decline such appearances as Coach reasonably determines to conflict with or hinder his duties and obligations as Head Football Coach. In order to avoid entering into an agreement with a competitor of such company, Coach shall submit all outside consulting agreements to the University for review and approval prior to execution. Coach shall also report such outside income to the University in accordance with NCAA rules. Coach further agrees that Coach will not endorse any athletic footwear, apparel, equipment, and products, including such company, and will not participate in any messages or promotional appearances which contain a comparative or qualitative description of athletic footwear, apparel or equipment products.

3.2.10. Coach shall participate in the Athletic Departments weekly coaches radio broadcast and shall receive supplemental compensation as follows:

2005	\$10,000
2006	\$10,500
2007	\$11,000
2008	\$11,500

~~The Coach shall receive the sum of (amount or computation) from the University (College) or the University (College)'s designated media outlet(s) or a combination thereof each year during the term of this Agreement in compensation for participation in media programs and public appearances (Programs). Coach's right to receive such a payment shall vest on the date of the Team's last regular season or post-season competition, whichever occurs later. This sum shall be paid (terms or conditions of payment). Agreements requiring the Coach to participate in Programs related to his duties as an employee of University (College) are the property of the University (College). The University (College) shall have the exclusive right to negotiate and contract with all producers of media productions and all parties desiring public appearances by the Coach. Coach agrees to cooperate with the University (College) in order for the Programs to be successful and agrees to provide his services to and perform on the Programs and to cooperate in their production, broadcasting, and telecasting. It is understood that neither Coach nor any assistant coaches shall appear without the prior written approval of the Director on any competing radio or television program (including but not limited to a coach=s show, call-in show, or interview show) or a regularly scheduled news segment, except that this prohibition shall not apply to routine news media interviews for which no compensation is received. Without the prior written approval of the Director, Coach shall not appear in any commercial~~

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endorsements which are broadcast on radio or television that conflict with those broadcast on the University=s designated media outlets.

3.2.11. Coach shall participate in the Athletic Departments weekly coaches television show (Bengal Review) and receive supplemental compensation as follows:

2005	\$1,500
2006	\$2,000
2007	\$2,500
2008	\$3,000

3.2.12. Coach shall receive in supplemental compensation a deferred income annuity with a cash value of \$100,000 after the successful completion of this Employment Agreement. Coach must fulfill the entire four (4) year period to be eligible to receive the proceeds of the annuity, and should he fail to fulfill the entire period, he will forfeit the entire amount. Provided, however, if Coach is terminated by the University for its convenience only, (Section 5.2), coach will be entitled to a pro-rata portion of the annuity proceeds to the date of such termination.

3.3. General Conditions of Compensation. All compensation provided by the University to Coach is subject to deductions and withholdings as required by law or the terms and conditions of any fringe benefit in which Coach participates. However, if any fringe benefit is based in whole or in part upon the compensation provided by the University to Coach, such fringe benefit shall be based only on the compensation provided pursuant to section 3.1.1, except to the extent required by the terms and conditions of a specific fringe benefit program.

ARTICLE 4

4.1. Coach's Specific Duties and Responsibilities. In consideration of the compensation specified in this Agreement, Coach, in addition to the obligations set forth elsewhere in this Agreement, shall:

4.1.1. Devote Coach's full time and best efforts to the performance of Coach's duties under this Agreement;

4.1.2. Develop and implement programs and procedures with respect to the evaluation, recruitment, training, and coaching of Team members which enable them to compete successfully and reasonably protect their health, safety, and well-being;

4.1.3. Observe and uphold all academic standards, requirements, and policies of the University and encourage Team members to perform to their highest academic potential and to graduate in a timely manner; and

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4.1.4. Know, recognize, and comply with all applicable laws and the policies, rules and regulations of the University, the University's governing board, the conference, and the NCAA; supervise and take appropriate steps to ensure that Coach's assistant coaches, any other employees for whom Coach is administratively responsible, and the members of the Team know, recognize, and comply with all such laws, policies, rules and regulations; and immediately report to the Director and to the Department's Director of Compliance if Coach has reasonable cause to believe that any person or entity, including without limitation representatives of the University's athletic interests, has violated or is likely to violate any such laws, policies, rules or regulations. Coach shall cooperate fully with the University and Department at all times. The names or titles of employees whom Coach supervises are attached as Exhibit C. The applicable laws, policies, rules, and regulations include: (a) State Board of Education and Board of Regents of the University of Idaho Governing Policies and Procedures and Rule Manual; (b) University's Handbook; (c) University's Administrative Procedures Manual; (d) the policies and procedures of the Athletic Department; (e) NCAA rules and regulations; and (f) the rules and regulations of the Big Sky Conference of which the University is a member.

4.2. Outside Activities. Coach shall not undertake any business, professional or personal activities, or pursuits that would prevent Coach from devoting Coach's full time and best efforts to the performance of Coach's duties under this Agreement, that would otherwise detract from those duties in any manner, or that, in the opinion of the University, would reflect adversely upon the University or its athletic program. Subject to the terms and conditions of this Agreement, Coach may, with the prior written approval of the Director, who may consult with the President, enter into separate arrangements for outside activities and endorsements which are consistent with Coach's obligations under this Agreement. Coach may not use the University's name, logos, or trademarks in connection with any such arrangements without the prior written approval of the Director and the President.

4.3. NCAA Rules. In accordance with NCAA rules, Coach shall obtain prior written approval from the University's President for all athletically related income and benefits from sources outside the University and shall report the source and amount of all such income and benefits to the University's President whenever reasonably requested, but in no event less than annually before the close of business on June 30th of each year or the last regular University work day preceding June 30th. The report shall be in a format reasonably satisfactory to University. In no event shall Coach accept or receive directly or indirectly any monies, benefits, or gratuities whatsoever from any person, association, corporation, University booster club, University alumni association, University foundation, or other benefactor, if the acceptance or receipt of the monies, benefits, or gratuities would violate applicable law or the policies, rules, and regulations of the University, the University's governing board, the conference, or the NCAA.

4.4. Hiring Authority. Coach shall have the responsibility and the sole authority to recommend to the Director the hiring and termination of assistant coaches for the

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Team, but the decision to hire or terminate an assistant coach shall be made by the Director and shall, when necessary or appropriate, be subject to the approval of President and the University's Board of Trustees.

4.5. Scheduling. Coach shall consult with, and may make recommendations to, the Director or the Director's designee with respect to the scheduling of Team competitions, but the final decision shall be made by the Director or the Director's designee.

4.6. Other Coaching Opportunities. Coach shall not, under any circumstances, interview for, negotiate for, or accept employment as a coach at any other institution of higher education or with any professional sports team, requiring performance of duties prior to the expiration of this Agreement, without the prior approval of the Director. Such approval shall not be unreasonably withheld, and University's Director of Athletics or the Director's designee shall reply in writing within three business days of a request by Coach.

ARTICLE 5

5.1. Termination of Coach for Cause. The University may, in its discretion, suspend Coach from some or all of Coach's duties, temporarily or permanently ~~and~~, with or without pay; reassign Coach to other duties; or terminate this Agreement at any time for good or adequate cause, as those terms are defined in applicable rules and regulations.

5.1.1. In addition to the definitions contained in applicable rules and regulations, University and Coach hereby specifically agree that the following shall constitute good or adequate cause for suspension, reassignment, or termination of this Agreement:

- a) A deliberate or major violation of Coach's duties under this Agreement or the refusal or unwillingness of Coach to perform such duties in good faith and to the best of Coach's abilities;
- b) The failure of Coach to remedy any violation of any of the terms of this Agreement within 30 days after written notice from the University;
- c) ~~A deliberate or major~~ Significant or repetitive violations by Coach of any applicable law or the policies, rules or regulations of the University, the University's governing board, the conference or the NCAA, including but not limited to any such violation which may have occurred during the employment of Coach at another NCAA or NAIA member institution;
- d) Ten (10) working days' absence of Coach from duty, except for illness or injury, without the University's consent;

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e) Any conduct of Coach that constitutes moral turpitude or that would, in the University's judgment, reflect adversely on the University or its athletic programs;

f) The failure of Coach to represent the University and its athletic programs positively in public and private forums;

g) The failure of Coach to fully and promptly cooperate with the NCAA or the University in any investigation of possible violations of any applicable law or the policies, rules or regulations of the University, the University's governing board, the conference, or the NCAA;

h) The failure of Coach to report a known violation of any applicable law or the policies, rules or regulations of the University, the University's governing board, the conference, or the NCAA, by one of Coach's assistant coaches, any other employees for whom Coach is administratively responsible, or a member of the Team; or

i) A violation of any applicable law or the policies, rules or regulations of the University, the University's governing board, the conference, or the NCAA, by one of Coach's assistant coaches, any other employees for whom Coach is administratively responsible, or a member of the Team if Coach knew or should have known of the violation and could have prevented it by ordinary supervision.

5.1.2. Suspension, reassignment, or termination for good or adequate cause shall be effectuated by the University as follows: before the effective date of the suspension, reassignment, or termination, the Director or his designee shall provide Coach with notice, which notice shall be accomplished in the manner provided for in this Agreement and shall include the reason(s) for the contemplated action. Coach shall then have an opportunity to respond. After Coach responds or fails to respond, University shall notify Coach whether, and if so when, the action will be effective.

5.1.3. In the event of any termination for good or adequate cause, the University's obligation to provide compensation and benefits to Coach, whether direct, indirect, supplemental or collateral, shall cease as of the date of such termination, and the University shall not be liable for the loss of any collateral business opportunities or other benefits, perquisites, or income resulting from outside activities or from any other sources.

5.1.4. If found in violation of NCAA regulations, Coach shall, in addition to the provisions of Section 5.1, be subject to disciplinary or corrective action as set forth in the provisions of the NCAA enforcement procedures. This section applies to violations occurring at the University or at previous institutions at which the Coach was employed.

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5.2. Termination of Coach for Convenience of University

5.2.1. At any time after commencement of this Agreement, University, for its own convenience, may terminate this Agreement by giving ten (10) days prior written notice to Coach.

5.2.2. In the event that University terminates this Agreement for its own convenience, University shall be obligated to pay Coach, as liquidated damages and not a penalty, the salary set forth in section 3.1.1(a), excluding all deductions required by law, on the regular paydays of University until the term of this Agreement ends or until Coach obtains reasonably comparable employment, whichever occurs first. In addition, Coach will be entitled to continue his health insurance plan and group life insurance as if he remained a University employee until the term of this Agreement ends or until Coach obtains reasonable comparable employment, whichever occurs first. Coach shall be entitled to no other compensation or fringe benefits, except as otherwise provided herein or required by law.

5.3. Termination by Coach for Convenience.

5.3.1. The Coach recognizes that his promise to work for University for the entire term of this Agreement is of the essence of this Agreement. The Coach also recognizes that the University is making a highly valuable investment in his employment by entering into this Agreement and that its investment would be lost were he to resign or otherwise terminate his employment with the University before the end of the contract term.

5.3.2. The Coach, for his own convenience, may terminate this Agreement during its term by giving prior written notice to the University. Termination shall be effective ten (10) days after notice is given to the University.

5.3.3. If the Coach terminates this Agreement for convenience at any time, all obligations of the University shall cease as of the effective date of the termination, including any obligation to pay any portion of the annuity set forth in Section 3.2.12. ~~If the Coach terminates this Agreement for his convenience he shall pay to the University (College), as liquidated damages and not a penalty, for the breach of this Agreement the following sum: (a) if the Agreement is terminated on or before _____, the sum of \$30,000.00; (b) if the Agreement is terminated between _____ and _____ inclusive, the sum of \$20,000.00; (c) if the Agreement is terminated between _____ and _____ inclusive, the sum of \$10,000.00. The liquidated damages shall be due and payable within twenty (20) days of the effective date of the termination, and any unpaid amount shall bear simple interest at a rate eight (8) percent per annum until paid.~~

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~~5.3.4. The parties have both been represented by legal counsel in the contract negotiations and have bargained for and agreed to the foregoing liquidated damages provision, giving consideration to the fact that the University (College) will incur administrative and recruiting costs in obtaining a replacement for Coach, in addition to potentially increased compensation costs if Coach terminates this Agreement for convenience, which damages are extremely difficult to determine with certainty. The parties further agree that the payment of such liquidated damages by Coach and the acceptance thereof by University (College) shall constitute adequate and reasonable compensation to University (College) for the damages and injury suffered by it because of such termination by Coach. The liquidated damages are not, and shall not be construed to be, a penalty. This section 5.3.4 shall not apply if Coach terminates this Agreement because of a material breach by the University (College).~~ 5.3.5. Except as provided elsewhere in this Agreement, if Coach terminates this Agreement for convenience, he shall forfeit to the extent permitted by law his right to receive all supplemental compensation and other payments.

5.4. Termination due to Disability or Death of Coach.

5.4.1. Notwithstanding any other provision of this Agreement, this Agreement shall terminate automatically if Coach becomes totally or permanently disabled as defined by the University's disability insurance carrier, becomes unable to perform the essential functions of the position of head coach, or dies.

5.4.2. If this Agreement is terminated because of Coach's death, Coach's salary and all other benefits shall terminate as of the last day worked, except that the Coach's personal representative or other designated beneficiary shall be paid all compensation due or unpaid and death benefits, if any, as may be contained in any fringe benefit plan now in force or hereafter adopted by the University and due to the Coach's estate or beneficiaries thereunder.

5.4.3. If this Agreement is terminated because the Coach becomes totally or permanently disabled as defined by the University's disability insurance carrier, or becomes unable to perform the essential functions of the position of head coach, all salary and other benefits shall terminate, except that the Coach shall be entitled to receive any compensation due or unpaid and any disability-related benefits to which he is entitled by virtue of employment with the University.

5.5. Interference by Coach. In the event of termination, suspension, or reassignment, Coach agrees that Coach will not interfere with the University's student-athletes or otherwise obstruct the University's ability to transact business or operate its intercollegiate athletics program.

5.6. No Liability. The University shall not be liable to Coach for the loss of any collateral business opportunities or any other benefits, perquisites or income from any sources that may ensue as a result of any termination of this Agreement by either party

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or due to death or disability or the suspension or reassignment of Coach, regardless of the circumstances.

5.7. Waiver of Rights. Because the Coach is receiving a multi-year contract and the opportunity to receive supplemental compensation and because such contracts and opportunities are not customarily afforded to University employees, if the University suspends or reassigns Coach, or terminates this Agreement for good or adequate cause or for convenience, Coach shall have all the rights provided for in this Agreement but hereby releases the University from compliance with the notice, appeal, and similar employment-related rights provide for in the State Board of Education and Board of Regents of the University of Idaho Rule Manual (IDAPA 08) and Governing Policies and Procedures Manual, and the University Faculty-Staff Handbook.

ARTICLE 6

6.1. Board Approval. This Agreement shall not be effective until and unless approved by the University's Board of Trustees and executed by both parties as set forth below. In addition, the payment of any compensation pursuant to this agreement shall be subject to the approval of the University's Board of Trustees, the President, and the Director; the sufficiency of legislative appropriations; the receipt of sufficient funds in the account from which such compensation is paid; and the University's Board of Trustees and University's rules regarding financial exigency.

6.2. University Property. All personal property (excluding vehicle(s) provided through the University vehicle program), material, and articles of information, including, without limitation, keys, credit cards, personnel records, recruiting records, team information, films, statistics or any other personal property, material, or data, furnished to Coach by the University or developed by Coach on behalf of the University or at the University's direction or for the University's use or otherwise in connection with Coach's employment hereunder are and shall remain the sole property of the University. Within twenty-four (24) hours of the expiration of the term of this Agreement or its earlier termination as provided herein, Coach shall immediately cause any such personal property, materials, and articles of information in Coach's possession or control to be delivered to the Director.

6.3. Assignment. Neither party may assign its rights or delegate its obligations under this Agreement without the prior written consent of the other party.

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6.4. Waiver. No waiver of any default in the performance of this Agreement shall be effective unless in writing and signed by the waiving party. The waiver of a particular breach in the performance of this Agreement shall not constitute a waiver of any other or subsequent breach. The resort to a particular remedy upon a breach shall not constitute a waiver of any other available remedies.

6.5. Severability. If any provision of this Agreement is determined to be invalid or unenforceable, the remainder of the Agreement shall not be affected and shall remain in effect.

6.6. Governing Law. This Agreement shall be subject to and construed in accordance with the laws of the state of Idaho as an agreement to be performed in Idaho. Any action based in whole or in part on this Agreement shall be brought in the courts of the state of Idaho.

6.7. Oral Promises. Oral promises of an increase in annual salary or of any supplemental or other compensation shall not be binding upon the University.

6.8. Force Majeure. Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefore, governmental restrictions, governmental regulations, governmental controls, enemy or hostile governmental action, civil commotion, fire or other casualty, and other causes beyond the reasonable control of the party obligated to perform (including financial circumstance beyond the University's control), shall excuse the performance by such party for a period equal to any such prevention, delay or stoppage.

6.9. Confidentiality. The Coach hereby consents and agrees that this document may be released and made available to the public after it is signed by the Coach. The Coach further agrees that all documents and reports he is required to produce under this Agreement may be released and made available to the public at the University's sole discretion.

6.10. Notices. Any notice under this Agreement shall be in writing and be delivered in person or by public or private courier service (including U.S. Postal Service Express Mail) or certified mail with return receipt requested or by facsimile. All notices shall be addressed to the parties at the following addresses or at such other addresses as the parties may from time to time direct in writing:

Director of Athletics
Campus Box 8173
Idaho State University
Pocatello, ID 83209-8173

with a copy to: President

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Campus Box 8310
Idaho State University
Pocatello, ID 83209-8410

the Coach:	J. Lawrence Lewis Campus Box 8173 Idaho State University Pocatello, ID 83209-8173	or	Last known address on file with University Human Resources
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Any notice shall be deemed to have been given on the earlier of: (a) actual delivery or refusal to accept delivery, (b) the date of mailing by certified mail, or (c) the day facsimile delivery is verified. Actual notice, however and from whomever received, shall always be effective.

6.11. Headings. The headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation hereof.

6.12. Binding Effect. This Agreement is for the benefit only of the parties hereto and shall inure to the benefit of and bind the parties and their respective heirs, legal representatives, successors and assigns.

6.13. Non-Use of Names and Trademarks. The Coach shall not, without the University's prior written consent in each case, use any name, trade name, trademark, or other designation of the University (including contraction, abbreviation or simulation), except in the course and scope of his official University duties.

6.14. No Third Party Beneficiaries. There are no intended or unintended third party beneficiaries to this Agreement.

6.15. Entire Agreement; Amendments. This Agreement constitutes the entire agreement of the parties and supersedes all prior agreements and understandings with respect to the same subject matter. No amendment or modification of this Agreement shall be effective unless in writing, signed by both parties, and approved by the University's Board of Trustees.

6.16. Opportunity to Consult with Attorney. The Coach acknowledges that he has had the opportunity to consult and review this Agreement with an attorney and has not relied upon the advice of any legal counsel acting on behalf of the University. Accordingly, in all cases, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any party.

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UNIVERSITY

COACH

RICHARD L. BOWEN Date_____

J. Lawrence Lewis Date_____

Approved by the Board of Trustees on this _____ day of _____,
20_____

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**INSTITUTION/AGENCY AGENDA
IDAHO STATE UNIVERSITY-continued**

Exhibit C

Supplemental Compensation - Coach Larry Lewis
History and Summary

3.2 Supplemental Compensation

- 3.2.1 This has happened only one time in the last 20 years. 2002—tie—Larry Lewis, Coach.
- 3.2.2 This has not happened during the last 20 years.
- 3.2.3 This has not happened during the last 20 years.
- 3.2.4 This has happened two times in the last 20 years; 2002 and 2003. Head Coach, Larry Lewis.
- 3.2.5 ISU is 3-21 vs. Division I-A opponents since 1978. Larry Lewis is the only coach to beat an I-A opponent in the last 20 years; 2000 vs. Utah State.
- 3.2.6 This feat has only been accomplished two times in ISU history; 1963, Babe Caccia, and 1981, Dave Kragthorpe.
- 3.2.7 (1) GPA – Goal has not been reached the past five years.
(2) Retention Rate – Goal has been met three times during Coach Lewis' first five years.
(3) Graduation Rates – Goal has been met one time during the last five years.
(4) New goal.
- 3.2.10 Coach has been receiving \$5,000 from radio rights fee holder in the past. There has been no increase in this in five years.
- 3.2.11 Coach has been receiving \$1,500 from television coaches show in the past. There has been no increase in this in five years.
- 3.2.12 The establishment of this annuity would replace the liquidated damages clause. If Coach Lewis does not fulfill the entire four years he will forfeit the annuity.

Deposits made into the annuity increase over the four years, thus increasing likelihood of coach to stay through the contract's life because he has more to lose.

REFERENCE - APPLICABLE STATUTE, RULE, OR POLICY

Idaho State Board of Education

GOVERNING POLICIES AND PROCEDURES

SECTION: II. HUMAN RESOURCES POLICIES AND PROCEDURES

Subsection: H. Policies Regarding Coaching Personnel and Athletic Directors April 2002

**H. Policies Regarding Coaching Personnel and Athletic Directors
(Institution Employees Only)**

1. Agreements Longer Than One Year

The chief executive officer of an institution is authorized to enter into a contract for the services of a head coach or athletic director with that institution for a term of more than one (1) year, but not more than five (5) years, subject to approval by the Board as to the terms, conditions, and compensation thereunder, and subject further to the condition that the contract of employment carries terms and conditions of future obligations of the coach or athletic director to the institution for the performance of such contracts. Each contract for the services shall follow the general form approved by the Board as a model contract. Such contract shall define the entire employment relationship between the Board and the coach or athletic director and may incorporate by reference applicable Board and institutional policies and rules, and applicable law.

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