

**BUSINESS AFFAIRS AND HUMAN RESOURCES
JUNE 14-16, 2006**

TAB	DESCRIPTION	ACTION
1	BOISE STATE UNIVERSITY New Position – VP Student Affairs	Motion to approve
2	IDAHO STATE UNIVERSITY Head Soccer Coach Employment Agreement	Motion to approve
3	IDAHO STATE UNIVERSITY Head Women’s Basketball Coach Employment Agreement	Motion to approve
4	IDAHO STATE UNIVERSITY Head Men’s Basketball Coach Employment Agreement	Motion to approve
5	IDAHO STATE UNIVERSITY Head Softball Coach Employment Agreement	Motion to approve
6	UNIVERSITY OF IDAHO New Positions – VP Finance & Administration & VP University Advancement	Motion to approve
7	UNIVERSITY OF IDAHO Head Men’s Basketball Coach Employment Agreement	Motion to approve
8	FY07 PRESIDENT & AGENCY HEAD SALARIES	Motion to approve

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INSTITUTION / AGENCY AGENDA
BOISE STATE UNIVERSITY

SUBJECT

Approval of the appointment for the Vice President of Student Affairs at a salary equal to or greater than 75% of the Chief Executive Officer's base salary.

APPLICABLE STATUTE, RULE, OR POLICY

Idaho State Board of Education Governing Policies & Procedures, Sections II. F. 2.b.1, and II.B.

DISCUSSION

Boise State University is hiring a new Vice President for Student Affairs, Dr. Michael Laliberte.

IMPACT

The Vice President's appointment is subject to Board approval. The initial appointment of this employee is requested at a salary that exceeds the median rate for such position as established by the College and University Professional Association for Human Resources (CUPA), or its equivalent.

STAFF COMMENTS AND RECOMMENDATIONS

The proposed salary is also in excess of 75% of the Chief Executive Officer's base salary for FY 2006.

BOARD ACTION

A motion to approve the appointment of Dr. Michael Laliberte to the position of Vice President for Student Affairs at an annual salary of \$146,000.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

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INSTITUTION / AGENCY AGENDA
BOISE STATE UNIVERSITY - continued

**EMPLOYMENT OF ADMINISTRATOR—SALARY LEVEL NEEDS STATE BOARD OF
EDUCATION APPROVAL**

Dr. Michael Laliberte, Vice President for Student Affairs	
FTE	1.0 FTE
Term of Appointment	12 month
Effective Date	July 1, 2006
Salary Range	\$146,000
Funding Source	Appropriated Funds
Area/Department of Assignment	Student Affairs
Duties and Responsibilities	Provide leadership and management of Student Affairs division.
Justification of Salary Level	Salary is comparable to other salary levels for similar positions in higher education institutions. This is a highly competitive market. CUPA median salary range is \$129,552 to \$132,180. CUPA peer average is \$139,019.

REFERENCE – APPLICABLE STATUTE, RULE OR POLICY

Idaho State Board of Education

GOVERNING POLICIES AND PROCEDURES

SECTION: II. HUMAN RESOURCES POLICIES AND PROCEDURES

Subsection: F. Policies Regarding Nonclassified Employees

April 2002

F. Policies Regarding Nonclassified Employees

2. Compensation

b. Salaries, Salary Increases and other Compensation related items

- (1) Salaries for new appointments to dean, associate/assistant dean, vice president, and president/vice president direct-report positions may not exceed the median rate for such positions established by the College and University Professional Association for Human Resources (CUPA), or its equivalent, without prior Board approval.

REFERENCE – APPLICABLE STATUTE, RULE OR POLICY - continued

Idaho State Board of Education

GOVERNING POLICIES AND PROCEDURES

SECTION: II. HUMAN RESOURCES POLICIES AND PROCEDURES

Subsection: B. Appointment Authority and Procedures

August 2002

B. Appointment Authority and Procedures

1. Nothing herein may be construed to be in limitation of the powers of the Board as defined by Sections 33-3006, 33-3104, 33-2806, and 33-4005, Idaho Code, or as otherwise defined in the Idaho Constitution or Code.
2. **Delegation of Authority**
The Board delegates all authority for personnel management not specifically retained to the executive director and the chief executive officers consistent with the personnel policies and procedures adopted by the Board. In fulfilling this responsibility, the executive director and chief executive officers, or their designees, may exercise their authority consistent with these policies and procedures. Provided, however, that the Board retains the authority for taking final action on any matter so identified anywhere in these policies 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:
 - a. **Position Authorizations**
(1) Any permanent new position, regardless of funding source, requires Board approval. Agenda Item Format: Requests for new position authorizations must include the following information:
 - (a) position title;
 - (b) type of position;
 - (c) FTE
 - (d) Term of appointment;
 - (e) Effective date;
 - (f) approximate salary range;
 - (g) funding source;
 - (h) area or department of assignment;
 - (i) a description of the duties and responsibilities of the position; and
 - (j) a complete justification for the position

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(2) Any permanent position being deleted. The affected position should be identified by type, title, salary, area or department of assignment, and funding source.

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.

c. The employment agreement of any head coach or athletic director (at the institutions only) longer than one year, and all amendments thereto.

d. The criteria established by the institutions for initial appointment to faculty rank and for promotion in rank, as well as any additional faculty ranks and criteria as may be established by an institution other than those provided for in these policies (see subsection G.) Any exceptions to the approved criteria also require Board approval.

e. The procedures established for periodic performance review of tenured faculty members. (see subsection G.)

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INSTITUTION / AGENCY AGENDA
IDAHO STATE UNIVERSITY

SUBJECT

A request by Idaho State University for approval of a multi-year employment agreement for head coaching personnel.

APPLICABLE STATUTE, RULE OR POLICY

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

DISCUSSION

Idaho State University is requesting approval for a fixed-term appointment of a three-year, twelve-month employment agreement for Allison Gibson, Head Women's Soccer Coach. The employment agreement contains the duties, responsibilities and conditions of the employment. A Model Contract Matrix that identifies departures from the model contract form and provides justification for these changes is included. The position is funded by state appropriated funds.

IMPACT

This contract will provide a stable coaching environment for the respective program as well as stability and consistency for the Athletic Department as a whole.

ATTACHMENTS

Attachment 1 –Contract-Redline	Page 3
Attachment 1a – Contract Clean	Page 21
Attachment 1b – Matrix	Page 33

STAFF AND COMMENTS AND RECOMMENDATIONS

Staff has reviewed this request 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 Women's Soccer Coach (1.0 FTE).

Moved by _____ Seconded by _____ Carried Yes_____ No_____

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INSTITUTION / AGENCY
IDAHO STATE UNIVERSITY - continued

HEAD COACH OR ATHLETIC DIRECTOR EMPLOYMENT AGREEMENTS

Allison Gibson	Attachment 1
Position Title	Head Women's Soccer Coach
FTE	1.0
Term	36 months
Term of Contract	January 22, 2006 – January 9, 2009
Annual Salary	\$45,000.00
Funding Source	State Funds
Area/Department of Assignment	Intercollegiate Athletics
Supplemental Compensation	See Attachment 1, Article 3.2.

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REDLINE VERSION

ATTACHMENT 1

(MODEL ATHLETICS CONTRACT)

EMPLOYMENT AGREEMENT

This Employment Agreement (Agreement) is entered into by and between _____ Idaho State University (University—~~(College)~~), and _____ Allison Gibson, Head Women's Soccer Coach (Coach).

ARTICLE 1

1.1. Employment. Subject to the terms and conditions of this Agreement, the University—(College)University shall employ Coach as the head coach of its intercollegiate —(Sport)—Women's Soccer 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—(College)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—(College)University's President (President).

1.3. Duties. Coach shall manage and supervise the Team and shall perform such other duties in the University—(College)University's athletic program as the Director may assign and as may be described elsewhere in this Agreement. The University—(College)University shall have the right, at any time, to reassign Coach to duties at the University—(College)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 that the opportunity to earn supplemental compensation as provided in sections 3.2.1 through 3.2.5—(Depending on supplemental pay provisions used)_____ shall cease.

ARTICLE 2

2.1. Term. This Agreement is for a fixed-term appointment of three _____ (—3) years, commencing on _____ January 22, 2006 and terminating, without further notice to Coach, on _____ January 1, 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—(College)University and an acceptance by Coach, both of which

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must be in writing and signed by the parties. Any renewal is subject to the prior approval of ~~University (College)University's~~ Board of ~~__(Regents or Trustees)Trustees__~~. 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 (College)University~~.

ARTICLE 3

3.1 Regular Compensation.

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

- a) An annual salary of ~~\$_____~~ \$45,000 per year, payable in biweekly installments in accordance with normal ~~University (College)University~~ procedures, and such salary increases as may be determined appropriate by the Director and President and approved by the ~~University (College)University's~~ Board of ~~_____(Regents or Trustees)Trustees;~~
- b) The opportunity to receive such employee benefits as the ~~University (College)University~~ provides generally to non-faculty exempt employees; and
- c) The opportunity to receive such employee benefits as the ~~University (College)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.
- d) Subject to availability, a courtesy car will be provided to Coach during employment as Head Women's Soccer Coach through the Courtesy Car Program as assigned by Director.

3.2 Supplemental Compensation

~~_____~~ 3.2.1. Each year the Team wins the regular season Big Sky Conference Championship the ~~University~~ shall pay to coach one week's pay of Coach's Annual Salary. ~~is the conference champion or co-champion and also becomes eligible for a (bowl game pursuant to NCAA Division I guidelines or post-season tournament or post-season playoffs)~~, and if Coach continues to be employed as ~~University (College)'s~~ head ~~____(Sport)~~ coach as of the ensuing July 1st, the ~~University (College)~~ shall pay to Coach supplemental compensation in an amount equal to ~~____(amount or computation)~~ of ~~Coach's Annual Salary~~ during the fiscal year in which the championship and ~~(bowl~~

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~~or other post-season) eligibility are achieved. The University (College) shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.~~

3.2.2 Each year the Team wins the Big Sky Conference Women's Soccer Tournament and the subsequent automatic NCAA Conference berth at the conclusion of the regular season, the University shall pay to Coach one week's pay of Coach's Annual Salary.

~~_____ 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 (College)'s head (Sport) coach as of the ensuing July 1st, the University (College) 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 (College) shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.~~

3.2.3 Each year Coach shall be eligible to receive supplemental compensation in an amount up to ___(amount or computation) based on for the academic and conduct achievements of achievement and behavior of the Team members. The following incentives will be used following NCAA APR scores to determine the applicable incentives:

<u>Team APR Score</u>	<u>Incentive Pay</u>
<u>940-944</u>	<u>\$ 1,000</u>
<u>945-949</u>	<u>\$ 1,500</u>
<u>950-954</u>	<u>\$ 2,000</u>
<u>955-959</u>	<u>\$ 2,500</u>
<u>960-964</u>	<u>\$ 3,000</u>
<u>965-969</u>	<u>\$ 3,500</u>
<u>970 or above</u>	<u>\$ 4,000</u>

Such incentives are contingent upon 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

~~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 (College) as academically at risk students; the conduct of Team members on the University (College) campus, at authorized University (College) activities, in the community, and elsewhere. Any such supplemental compensation paid to Coach shall be accompanied with a detailed justification for the supplemental compensation based on the factors listed above and such justification shall be separately reported to the~~

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~~Board of (Regents or Trustees) as a document available to the public under the Idaho Public Records Act.~~

~~3.2.4 Each year Coach shall be eligible to receive supplemental compensation in an amount up to ___(amount or computation)___ based on the overall development of the intercollegiate (men's/women's) (Sport) program; ticket sales; fundraising; outreach by Coach to various constituency groups, including University (College) 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.~~

~~3.2.5 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 endorsements which are broadcast on radio or television that conflict with those broadcast on the University (College)'s designated media outlets.~~

~~3.2.64 (SUMMER CAMPC___OPERATED BY UNIVERSITY (COLLEGE)UNIVERSITY) Coach agrees that the University (College)University has the exclusive right to operate girls' youth (Sport)Soccer___ camps on its campus using University (College)University facilities. The University (College)University shall allow Coach the opportunity to earn supplemental compensation by assisting with the directing or administrating University (College)University's camps in Coach's capacity as a University (College)University employee. Coach hereby agrees to assist indirect the marketing, supervision, and general administration of the University~~

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~~(College)University's football-Women's Soccer~~ 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 (College)University's~~ summer ~~football-Women's Soccer~~ camps, the ~~University (College)University~~ shall pay Coach ~~_(amount)_____the net revenues resulting from each summer campper year~~ as supplemental compensation during each year of ~~his~~ employment as head ~~(Sport)Women's Soccer-~~ coach at the ~~University (College)University~~. This amount shall be paid ~~__(terms of payment)_____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 Women's Soccer 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.~~

~~**(SUMMER CAMPCOPERATED 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;~~
- ~~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 _____.~~

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- ~~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.~~

3.2.57 Coach agrees that the ~~University (College)~~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 (College)~~University. ~~Coach recognizes that the University (College) is negotiating or has entered into an agreement with (Company Name) to supply the University (College) with athletic footwear, apparel and/or equipment.~~ Coach agrees that, upon the ~~University (College)~~University's reasonable request, Coach will consult with appropriate parties concerning an ~~(Company Name)~~company's product's design or performance, shall

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act as an instructor at a clinic sponsored in whole or in part by ~~—(Company Name) such company~~, or give a lecture at an event sponsored in whole or in part by ~~(Company Name) such company~~, or make other educationally-related appearances as may be reasonably requested by the ~~University (College)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 ~~(Sport)Women's Soccer—~~ coach. In order to avoid entering into an agreement with a competitor of ~~—(Company Name) such company—~~, Coach shall submit all outside consulting agreements to the ~~University (College)University~~ for review and approval prior to execution. Coach shall also report such outside income to the ~~University (College)University~~ in accordance with NCAA ~~(or NAIA)~~ rules. Coach further agrees that Coach will not endorse any athletic footwear, apparel, ~~and/or~~ equipment, ~~and~~ products, including ~~—(Company Name) 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.

3.3 General Conditions of Compensation. All compensation provided by the ~~University (College)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 (College)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 (College)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 (College)University~~, the ~~University (College)University~~'s governing board, the conference, and the NCAA ~~(or NAIA)~~; 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 (College)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 (College)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 (College)University~~'s Handbook; (c) ~~University (College)University~~'s Administrative Procedures Manual; (d) the policies and procedure of the Athletic Department; (e) NCAA ~~(or NAIA)~~ rules and regulations; and (f) the rules and regulations of the ~~(Sport)~~ eBig Sky Conference of which the ~~University (College)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 (College)University~~, would reflect adversely upon the ~~University (College)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 (College)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 ~~(or NAIA)~~ Rules. In accordance with NCAA ~~(or NAIA)~~ rules, Coach shall obtain prior written approval from the ~~University (College)University~~'s President for all athletically related income and benefits from sources outside the ~~University (College)University~~ and shall report the source and amount of all such income and benefits to the ~~University (College)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 (College)University~~ work day preceding June 30th. The report shall be in a format reasonably satisfactory to ~~University (College)University~~. In no event shall Coach accept or receive directly or indirectly any monies, benefits, or gratuities whatsoever from any person, association, corporation, ~~University (College)University~~ booster club, ~~University (College)University~~ alumni association, ~~University (College)University~~ foundation, or other benefactor, if the

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acceptance or receipt of the monies, benefits, or gratuities would violate applicable law or the policies, rules, and regulations of the University (College)University, the University (College)University's governing board, the conference, or the NCAA ~~(or NAIA)~~.

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 (College)University's Board of ~~(Trustees or Regents)~~ 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.

4.67 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 ~~be~~ withheld.

ARTICLE 5

5.1 Termination of Coach for Cause. The University (College)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 (College)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 (College)University;
- c) A deliberate or major violation by Coach of any applicable law or the policies, rules or regulations of the University

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~~(College)University~~, the ~~University (College)University~~'s governing board, the conference or the NCAA ~~(NAIA)~~, 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 without the ~~University (College)University~~'s consent;
- e) Any conduct of Coach that constitutes moral turpitude or that would, in the ~~University (College)University~~'s judgment, reflect adversely on the ~~University (College)University~~ or its athletic programs;
- f) The failure of Coach to represent the ~~University (College)University~~ and its athletic programs positively in public and private forums;
- g) The failure of Coach to fully and promptly cooperate with the NCAA ~~(NAIA)~~ or the ~~University (College)University~~ in any investigation of possible violations of any applicable law or the policies, rules or regulations of the ~~University (College)University~~, the ~~University (College)University~~'s governing board, the conference, or the NCAA ~~(NAIA)~~;
- h) The failure of Coach to report a known violation of any applicable law or the policies, rules or regulations of the ~~University (College)University~~, the ~~University (College)University~~'s governing board, the conference, or the NCAA ~~(NAIA)~~, 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 (College)University~~, the ~~University (College)University~~'s governing board, the conference, or the NCAA ~~(NAIA)~~, 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 (College)University~~ as follows: before the effective date of the suspension, reassignment, or termination, the Director or his/her 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

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responds or fails to respond, ~~University (College)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 (College)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 (College)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 ~~(NAIA)~~ 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 ~~(NAIA)~~ enforcement procedures. This section applies to violations occurring at the ~~University (College)University~~ or at previous institutions at which the Coach was employed.

5.2 Termination of Coach for Convenience of ~~University (College)University~~.

5.2.1 At any time after commencement of this Agreement, ~~University (College)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 (College)University~~ terminates this Agreement for its own convenience, ~~University (College)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 (College)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 she remained a ~~University (College)University~~ employee until the term of this Agreement ends or until Coach obtains reasonably 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.

~~5.2.3 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 Coach may lose certain benefits, supplemental compensation, or outside compensation relating to his employment with ~~University (College)~~, which damages are extremely difficult to determine with certainty. The parties further agree that the payment of such liquidated damages by ~~University (College)~~ and the acceptance thereof by Coach shall constitute adequate and reasonable compensation to Coach for the damages and injury suffered by Coach because of such termination by ~~University (College)~~. The liquidated damages are not, and shall not be construed to be, a penalty.~~

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5.3 Termination by Coach for Convenience.

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

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

5.3.3 If the Coach terminates this Agreement for convenience at any time, all obligations of the University (College) shall cease as of the effective date of the termination. If the Coach terminates this Agreement for his/her convenience she 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 June 30, 2007, the sum of \$306,000.00; (b) if the Agreement is terminated between July 1, 2007 and June 30, 2008 inclusive, the sum of \$204,000.00; (c) if the Agreement is terminated between July 1, 2008 and January 1, 2009 inclusive, the sum of \$102,000.00. 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 of eight (8) percent per annum until paid.

~~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, she shall forfeit to the extent permitted by law his/her right to receive all supplemental compensation and other payments.

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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 (College)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 (College)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 (College)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 she is entitled by virtue of employment with the ~~University (College)University~~.

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

5.76 No Liability. The ~~University (College)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.

5.87 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 (College)University~~ employees, if the ~~University (College)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 (College)University~~ from compliance with the notice, appeal, and similar employment-

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related rights provided 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 (College)University~~ Faculty-Staff Handbook.

ARTICLE 6

6.1 Board Approval. This Agreement shall not be effective until and unless approved of the ~~University (College)'s State~~ Board of ~~(Regents or Trustees) Education~~ 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 (College)University's State~~ Board of ~~(Regents or Trustees) Education~~, 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 ~~State~~ Board of ~~(Regents or Trustees) Education~~ and ~~University (College)University's~~ rules regarding financial exigency.

6.2 University (College)University Property. All personal property (excluding vehicle(s) provided through the ~~Courtesy Car p~~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 (College)University~~ or developed by Coach on behalf of the ~~University (College)University~~ or at the ~~University (College)University's~~ direction or for the ~~University (College)University's~~ use or otherwise in connection with Coach's employment hereunder are and shall remain the sole property of the ~~University (College)University~~. Within twenty-four (24) hours of the expiration of the term of this ~~a~~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

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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~~ 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 therefor, 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 inability), 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~~ 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:

the ~~University~~ University: _____ 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 83209-8310

the Coach: _____ Allison Gibson
Last known address on file with
University University's Human Resource Services

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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 (College)University's prior written consent in each case, use any name, trade name, trademark, or other designation of the University (College)University (including contraction, abbreviation or simulation), except in the course and scope of his/her official University (College)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 University (College)University's Board of ~~_(Regents or Trustees)_~~Trustees.

6.16 Opportunity to Consult with Attorney. The Coach acknowledges that she 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.

UNIVERSITY (COLLEGE)UNIVERSITY

COACH

Michael C. Gallagher, _____ Allison Gibson _____
Interim, President _____ Date _____ Date

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Approved by the Board of ~~_(Regents or Trustees)_~~Trustees o— on the ____ day of _____, 200020.

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EMPLOYMENT AGREEMENT

This Employment Agreement (Agreement) is entered into by and between Idaho State University (University), and Allison Gibson, Head Women's Soccer 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 Women's Soccer 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 that the opportunity to earn supplemental compensation as provided in sections 3.2.1 through 3.2.5 shall cease.

ARTICLE 2

2.1. Term. This Agreement is for a fixed-term appointment of three (3) years, commencing on January 22, 2006 and terminating, without further notice to Coach, on January 1, 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 University's Board of Trustees. 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 \$45,000 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; and
- 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.
- d) Subject to availability, a courtesy car will be provided to Coach during employment as Head Women's Soccer Coach through the Courtesy Car Program as assigned by Director.

3.2 Supplemental Compensation

3.2.1. Each year the Team wins the regular season Big Sky Conference Championship the University shall pay to coach one week's pay of Coach's Annual Salary.

3.2.2 Each year the Team wins the Big Sky Conference Women's Soccer Tournament and the subsequent automatic NCAA Conference berth at the conclusion of the regular season, the University shall pay to Coach one week's pay of Coach's Annual Salary.

3.2.3 Each year Coach shall be eligible to receive supplemental compensation for the academic and conduct achievements of the Team members. The following incentives will be used following NCAA APR scores to determine the applicable incentives:

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<u>Team APR Score</u>	<u>Incentive Pay</u>
940-944	\$ 1,000
945-949	\$ 1,500
950-954	\$ 2,000
955-959	\$ 2,500
960-964	\$ 3,000
965-969	\$ 3,500
970 or above	\$ 4,000

Such incentives are contingent upon 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

3.2.4 (SUMMER CAMP OPERATED BY UNIVERSITY) Coach agrees that the University has the exclusive right to operate girls' youth Soccer camps on its campus using University facilities. The University shall allow Coach the opportunity to earn supplemental compensation by directing or administrating 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 Women's Soccer 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 Women's Soccer camps, the University shall pay Coach the net revenues resulting from each summer camp as supplemental compensation during each year of her employment as head Women's Soccer 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 Women's Soccer 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.

3.2.5 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 her duties and obligations as head Women's Soccer coach. In

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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.

3.3 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

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

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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 procedure 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 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.

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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.

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) A deliberate or major violation 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 without the University's consent;
- 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

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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 her 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.

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

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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 her health insurance plan and group life insurance as if she remained a University employee until the term of this Agreement ends or until Coach obtains reasonably 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 her 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 her employment by entering into this Agreement and that its investment would be lost were she to resign or otherwise terminate her employment with the University before the end of the contract term.

5.3.2 The Coach, for her 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. If the Coach terminates this Agreement for her convenience she shall pay to the University 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 June 30, 2007, the sum of \$6,000.00; (b) if the Agreement is terminated between July 1, 2007 and June 30, 2008 inclusive, the sum of \$4,000.00; (c) if the Agreement is terminated between July 1, 2008 and January 1, 2009 inclusive, the sum of \$2,000.00. 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 of eight (8) percent per annum until paid.

5.3.4 Except as provided elsewhere in this Agreement, if Coach terminates this Agreement for convenience, she shall forfeit to the extent permitted by law her 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.

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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 she 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 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 provided for in the State Board of Education 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 of the State Board of Education 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 State Board of Education, 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 State Board of Education and University's rules regarding financial exigency.

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6.2 University Property. All personal property (excluding vehicle(s) provided through the Courtesy Car 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.

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 therefor, 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 inability), 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.

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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:

the University: 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 83209-8310

the Coach: Allison Gibson
 Last known address on file with
 University's Human Resource Services

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 her 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 University's Board of Trustees.

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6.16 Opportunity to Consult with Attorney. The Coach acknowledges that she 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.

UNIVERSITY

COACH

Michael C. Gallagher, Date
Interim President

Allison Gibson Date

Approved by the Board of Trustees on the ____ day of _____, 20____.

**ATTACHMENT 1-b
Matrix**

Allison Gibson, Idaho State University, Head Women's Soccer Coach 2006-2009

	Model Contract Section	Contract Section	Justification for Modification
3.1.1	Regular Compensation	3.1.1.(d) Regular Compensation; Language added	Additional language specifying courtesy car benefits to Coach through ISU's Courtesy Car Program
3.2	Supplemental Compensation	3.2.1 – 3.2.2 Supplemental Compensation; Language modified	Language specifies compensation for team performance.
3.2	Supplemental Compensation	3.2.3 Supplemental Compensation; Language added	Language specifies compensation for academic achievement based on NCAA APR scores.
3.2	Supplemental Compensation	3.2.4 Supplemental Compensation; Summer Camp	Language provides criteria and conditions applicable to coach's operation of a summer youth camp and deletes the ability of the coach to operate the camp independent of the university.
3.2	Supplemental Compensation	3.2.5 Supplemental Compensation; Language deleted	Language deleted referencing agreement with (Company) to supply the University with footwear, apparel and/or equipment.
5.2	Termination of Coach for Convenience of University	5.2.3 Termination of Coach for Convenience of University; Language deleted	Language deleted referencing representation by legal counsel in the contact negotiations, as it is referenced in Section 6.16.
5.3	Termination by Coach for Convenience	5.3.4 Termination of Coach for Convenience; Language deleted	Language deleted referencing representation by legal counsel in the contact negotiations, as it is referenced in Section 6.16.
6.16	Opportunity to Consult with Attorney	6.16 Opportunity to Consult with Attorney; Language added	Language specifies that coach has not relied upon the advice of any legal counsel acting on behalf of the University.

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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INSTITUTION / AGENCY AGENDA
IDAHO STATE UNIVERSITY

SUBJECT

A request by Idaho State University for approval of a multi-year employment agreement for head coaching personnel.

APPLICABLE STATUTE, RULE OR POLICY

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

DISCUSSION

Idaho State University is requesting approval for a fixed-term appointment of a three-year, twelve-month employment agreement for Jon Newlee, Head Women's Basketball Coach. The employment agreement contains the duties, responsibilities and conditions of the employment. A Model Contract Matrix that identifies departures from the model contract form and provides justification for these changes is included. The position is funded by state appropriated funds.

IMPACT

This contract will provide a stable coaching environment for the respective program as well as stability and consistency for the Athletic Department as a whole.

ATTACHMENTS

Attachment 1 –Contract-Redline	Page 3
Attachment 1a – Contract Clean	Page 21
Attachment 1b – Matrix	Page 35

STAFF AND COMMENTS AND RECOMMENDATIONS

Staff has reviewed this request 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 Women's Basketball Coach (1.0 FTE).

Moved by _____ Seconded by _____ Carried Yes_____ No_____

**BUSINESS AFFAIRS AND HUMAN RESOURCES
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**INSTITUTION / AGENCY AGENDA
IDAHO STATE UNIVERSITY - continued**

HEAD COACH OR ATHLETIC DIRECTOR EMPLOYMENT AGREEMENTS

Jon Newlee	Attachment 1
Position Title	Head Women's Basketball Coach
FTE	1.0
Term	36 months
Term of Contract	July 1, 2006 – May 1, 2009
Annual Salary	\$80,000.00
Funding Source	State Funds
Area/Department of Assignment	Intercollegiate Athletics
Supplemental Compensation	See Attachment 1, Article 3.2.

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REDLINE VERSION

ATTACHMENT 1

(MODEL ATHLETICS CONTRACT)

EMPLOYMENT AGREEMENT

This Employment Agreement (Agreement) is entered into by and between _____ Idaho State University (University ~~(College)~~), and _____ Jon Newlee, Head Women's Basketball Coach (Coach).

ARTICLE 1

1.1. Employment. Subject to the terms and conditions of this Agreement, the University (College)University shall employ Coach as the head coach of its intercollegiate ~~(Sport)~~ Women's Basketball 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 (College)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 (College)University's President (President).

1.3. Duties. Coach shall manage and supervise the Team and shall perform such other duties in the University (College)University's athletic program as the Director may assign and as may be described elsewhere in this Agreement. The University (College)University shall have the right, at any time, to reassign Coach to duties at the University (College)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 that the opportunity to earn supplemental compensation as provided in sections 3.2.1 through ~~3.2.8 (Depending on supplemental pay provisions used)~~ _____ shall cease.

ARTICLE 2

2.1. Term. This Agreement is for a fixed-term appointment of three _____ (~~3~~) years, commencing on _____ July 1, 2006 and terminating, without further notice to Coach, on _____ May 1, 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 (College)University and an acceptance by Coach, both of which

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must be in writing and signed by the parties. Any renewal is subject to the prior approval of ~~University (College)University's~~ Board of ~~__(Regents or Trustees)Trustees__~~. 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 (College)University~~.

ARTICLE 3

3.1 Regular Compensation.

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

- a) An annual salary of \$~~_____~~ \$80,000 per year, payable in biweekly installments in accordance with normal ~~University (College)University~~ procedures, and such salary increases as may be determined appropriate by the Director and President and approved by the ~~University (College)University's~~ Board of ~~__(Regents or Trustees)Trustees;~~
- b) The opportunity to receive such employee benefits as the ~~University (College)University~~ provides generally to non-faculty exempt employees; and
- c) The opportunity to receive such employee benefits as the ~~University (College)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.
- d) Subject to availability, a courtesy car will be provided to Coach during employment as Head Women's Basketball Coach through the Courtesy Car Program as assigned by Director.

3.2 Supplemental Compensation

_____ 3.2.1. Each year the Team wins the regular season Big Sky Conference Championship the University shall pay to coach one week's pay of Coach's

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~~Annual Salary is the conference champion or co-champion and also becomes eligible for a (bowl game pursuant to NCAA Division I guidelines or post-season tournament or post-season playoffs), and if Coach continues to be employed as University (College)'s head (Sport) coach as of the ensuing July 1st, the University (College) shall pay to Coach supplemental compensation in an amount equal to (amount or computation) of Coach's Annual Salary during the fiscal year in which the championship and (bowl or other post-season) eligibility are achieved. The University (College) shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.~~

3.2.2 Each year the Team wins the Big Sky Conference Women's Basketball Tournament and the subsequent automatic NCAA Conference berth at the conclusion of the regular season, the University shall pay to Coach 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 Women's Basketball Post-Season Tournament, the 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 (College)'s head (Sport) coach as of the ensuing July 1st, the University (College) 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 (College) shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation. University shall compensate Coach for advancing in the tournament bracket as follows:

Round 1	64 teams	1 st win	\$ 1,000
Round 2	32 teams	2 nd win	\$ 2,000
Round 3	16 teams	3 rd win	\$ 4,000
Round 4	8 teams	4 th win	\$ 6,000
Round 5	4 teams	5 th win	\$ 8,000
Round 6	2 teams	6 th win	\$10,000
Possible bonus computation total			\$31,000
for winning National Championship.			

3.2.3 In the event the Team, competes in the WNIT Women's Basketball Post-Season Tournament, the University shall compensate Coach for advancing in the tournament bracket as follows:

Round 1	32 teams	1 st win	\$ 1,000
Round 2	16 teams	2 nd win	\$ 2,000
Round 3	8 teams	3 rd win	\$ 3,000
Round 4	4 teams	4 th win	\$ 4,000
Round 5	2 teams	5 th win	\$ 5,000

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Possible bonus computation total \$15,000
for winning WNIT National Championship.

~~3.2.4 Each year 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 (College) as academically at-risk students; the conduct of Team members on the University (College) campus, at authorized University (College) activities, in the community, and elsewhere. Any such supplemental compensation paid to Coach shall be accompanied with a detailed justification for the supplemental compensation based on the factors listed above and such justification shall be separately reported to the Board of (Regents or Trustees) as a document available to the public under the Idaho Public Records Act.~~

~~3.2.4—Coach will be eligible to receive supplemental compensation (non-cumulative) for winning the following number of regular season basketball games:~~

<u>20 Wins</u>	<u>\$ 1,000</u>
<u>21 Wins</u>	<u>\$ 2,000</u>
<u>22 Wins</u>	<u>\$ 3,000</u>
<u>23 Wins</u>	<u>\$ 4,000</u>
<u>24 Wins</u>	<u>\$ 5,000</u>
<u>25 Wins</u>	<u>\$ 6,000</u>
<u>26 Wins</u>	<u>\$ 7,000</u>
<u>27 Wins</u>	<u>\$ 8,000</u>

~~3.2.5 Each year Coach shall be eligible to receive supplemental compensation for the academic and conduct achievements of the Team members. The following incentives will be used following NCAA APR scores to determine the applicable incentives:~~

<u>Team APR Score</u>	<u>Incentive Pay</u>
<u>940-944</u>	<u>\$ 1,000</u>
<u>945-949</u>	<u>\$ 1,500</u>
<u>950-954</u>	<u>\$ 2,000</u>
<u>955-959</u>	<u>\$ 2,500</u>
<u>960-964</u>	<u>\$ 3,000</u>
<u>965-969</u>	<u>\$ 3,500</u>
<u>970 or above</u>	<u>\$ 4,000</u>

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Such incentives are contingent upon 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

~~Each year Coach shall be eligible to receive supplemental compensation in an amount up to (amount or computation) based on the overall development of the intercollegiate (men's/women's) (Sport) program; ticket sales; fundraising; outreach by Coach to various constituency groups, including University (College) 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.~~

3.2.56 Coach shall receive \$5,000 annual compensation for participation in radio and television appearances. 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 endorsements which are broadcast on radio or television that conflict with those broadcast on the University (College)'s designated media outlets.

3.2.67 (SUMMER CAMPG___ OPERATED BY UNIVERSITY (COLLEGE)UNIVERSITY) Coach agrees that the University (College)University has the exclusive right to operate girls' youth (Sport)basketball camps on its campus using University (College)University facilities. The University (College)University shall allow Coach the opportunity to earn supplemental compensation by assisting with the directing or administrating University (College)University's camps in Coach's capacity as a

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~~University (College)University~~ employee. Coach hereby agrees to ~~assist indirect~~ the marketing, supervision, and general administration of the ~~University (College)University's~~ ~~football-Women's Basketball~~ 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 (College)University's~~ summer ~~football-Women's Basketball~~ camps, the ~~University (College)University~~ shall pay Coach ~~_(amount)_~~ ~~the net revenues resulting from each summer camp~~ per year as supplemental compensation during each year of his employment as head ~~(Sport)Women's Basketball~~ coach at the ~~University (College)University~~. This amount shall be paid ~~_(terms of payment)_~~ ~~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 ~~Women's Basketball 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.~~

~~(SUMMER CAMPCOPERATED 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;~~
- ~~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.~~

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- ~~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.~~

3.2.78 Coach agrees that the ~~University (College)~~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 (College)~~University. ~~Coach recognizes that the University (College) is negotiating or has entered into an agreement with (Company Name) to supply the University (College) with athletic~~

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~~footwear, apparel and/or equipment.~~—Coach agrees that, upon the ~~University (College)University~~'s reasonable request, Coach will consult with appropriate parties concerning ~~an (Company Name) company's~~ product's design or performance, shall act as an instructor at a clinic sponsored in whole or in part by ~~(Company Name) such company~~, or give a lecture at an event sponsored in whole or in part by ~~(Company Name) such company~~, or make other educationally-related appearances as may be reasonably requested by the ~~University (College)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 ~~(Sport)Women's Basketball~~—coach. In order to avoid entering into an agreement with a competitor of ~~(Company Name) such company~~—, Coach shall submit all outside consulting agreements to the ~~University (College)University~~ for review and approval ~~by the director~~ prior to execution. Coach shall also report such outside income to the ~~University (College)University~~ in accordance with NCAA ~~(or NAIA)~~ rules. Coach further agrees that Coach will not endorse any athletic footwear, apparel, ~~and/or~~ equipment, ~~and~~ products, including ~~(Company Name) 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. Coach shall receive \$1,500 in personal apparel from Nike.

3.3 General Conditions of Compensation. All compensation provided by the ~~University (College)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 (College)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;

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4.1.3. Observe and uphold all academic standards, requirements, and policies of the ~~University (College)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 (College)University~~, the ~~University (College)University~~'s governing board, the conference, and the NCAA ~~(or NAIA)~~; 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 (College)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 (College)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 (College)University~~'s Handbook; (c) ~~University (College)University~~'s Administrative Procedures Manual; (d) the policies and procedure of the Athletic Department; (e) NCAA (or NAIA) rules and regulations; and (f) the rules and regulations of the ~~(Sport) eBig Sky~~ Conference of which the ~~University (College)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 (College)University~~, would reflect adversely upon the ~~University (College)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 (College)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 (or NAIA) Rules. In accordance with NCAA ~~(or NAIA)~~ rules, Coach shall obtain prior written approval from the ~~University (College)University~~'s President for all athletically related income and benefits from sources outside the ~~University (College)University~~ and shall report the source and amount of all such income and benefits to the ~~University (College)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 (College)University~~ work day preceding June 30th. The report shall be in a format reasonably satisfactory to ~~University (College)University~~. In no event shall Coach accept or receive directly or indirectly any

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monies, benefits, or gratuities whatsoever from any person, association, corporation, ~~University (College)University~~ booster club, ~~University (College)University~~ alumni association, ~~University (College)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 (College)University~~, the ~~University (College)University's~~ governing board, the conference, or the NCAA ~~(or NAIA)~~.

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 (College)University's~~ Board of ~~(Trustees or Regents)~~ 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.

4.76 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 ~~be~~ withheld.

ARTICLE 5

5.1 Termination of Coach for Cause. The ~~University (College)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 (College)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 (College)University~~;

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- c) A deliberate or major violation by Coach of any applicable law or the policies, rules or regulations of the ~~University (College)University~~, the ~~University (College)University~~'s governing board, the conference or the NCAA ~~(NAIA)~~, 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 without the ~~University (College)University~~'s consent;

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

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

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

- h) The failure of Coach to report a known violation of any applicable law or the policies, rules or regulations of the ~~University (College)University~~, the ~~University (College)University~~'s governing board, the conference, or the NCAA ~~(NAIA)~~, 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 (College)University~~, the ~~University (College)University~~'s governing board, the conference, or the NCAA ~~(NAIA)~~, 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 (College)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

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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 (College)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 (College)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 (College)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 ~~(NAIA)~~ 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 ~~(NAIA)~~ enforcement procedures. This section applies to violations occurring at the ~~University (College)University~~ or at previous institutions at which the Coach was employed.

5.2 Termination of Coach for Convenience of ~~University (College)University~~.

5.2.1 At any time after commencement of this Agreement, ~~University (College)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 (College)University~~ terminates this Agreement for its own convenience, ~~University (College)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 (College)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 (College)University~~ employee until the term of this Agreement ends or until Coach obtains reasonably 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.

~~5.2.3 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 Coach may lose certain benefits, supplemental compensation, or outside compensation relating to his employment with ~~University (College)~~, which damages are extremely difficult to determine with certainty. The parties further agree that the payment of such liquidated damages by ~~University (College)~~ and the acceptance thereof by Coach shall constitute adequate and reasonable compensation to Coach for the damages and injury suffered~~

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~~by Coach because of such termination by University (College). The liquidated damages are not, and shall not be construed to be, a penalty.~~

5.3 Termination by Coach for Convenience.

5.3.1 The Coach recognizes that his promise to work for University (College)University for the entire term of this Agreement is of the essence of this Agreement. The Coach also recognizes that the University (College)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 (College)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 (College)University. Termination shall be effective ten (10) days after notice is given to the University (College)University.

5.3.3 If the Coach terminates this Agreement for convenience at any time, all obligations of the University ~~(College)~~ shall cease as of the effective date of the termination. 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 _____, June 30, 2007, the sum of \$306,000.00; (b) if the Agreement is terminated between _____ July 1, 2007 and _____ June 30, 2008 inclusive, the sum of \$204,000.00; (c) if the Agreement is terminated between July 1, 2008 _____ and May 1, 2009 _____ inclusive, the sum of \$102,000.00. 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 of eight (8) percent per annum until paid.

~~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).~~

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5.3.54 Except as provide 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 (College)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 (College)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 (College)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 (College)University~~.

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

5.76 No Liability. The ~~University (College)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.

5.87 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 (College)University~~ employees, if the ~~University (College)University~~ suspends or reassigns Coach, or terminates this Agreement for good or adequate cause or for convenience, Coach shall

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have all the rights provided for in this Agreement but hereby releases the University (College)University from compliance with the notice, appeal, and similar employment-related rights provided 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 (College)University Faculty-Staff Handbook.

ARTICLE 6

6.1 Board Approval. This Agreement shall not be effective until and unless approved of the University (College)'s State Board of (Regents or Trustees) Education 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 (College)University's State Board of (Regents or Trustees) Education, 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 State Board of (Regents or Trustees) Education and University (College)University's rules regarding financial exigency.

6.2 University (College)University Property. All personal property (excluding vehicle(s) provided through the _____ Courtesy Car pProgram), 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 (College)University or developed by Coach on behalf of the University (College)University or at the University (College)University's direction or for the University (College)University's use or otherwise in connection with Coach's employment hereunder are and shall remain the sole property of the University (College)University. Within twenty-four (24) hours of the expiration of the term of this aAgreement 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.

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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 \(College\)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 inability), 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 \(College\)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:

the [University \(College\)University](#): _____ 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 83209-8310](#)

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EMPLOYMENT AGREEMENT

This Employment Agreement (Agreement) is entered into by and between Idaho State University (University), and Jon Newlee, Head Women's Basketball 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 Women's Basketball 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 that the opportunity to earn supplemental compensation as provided in sections 3.2.1 through 3.2.8 shall cease.

ARTICLE 2

2.1. Term. This Agreement is for a fixed-term appointment of three (3) years, commencing on July 1, 2006 and terminating, without further notice to Coach, on May 1, 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 University's Board of Trustees. 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 \$80,000 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; and
- 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.
- d) Subject to availability, a courtesy car will be provided to Coach during employment as Head Women's Basketball Coach through the Courtesy Car Program as assigned by Director.

3.2 Supplemental Compensation

3.2.1. Each year the Team wins the regular season Big Sky Conference Championship the University shall pay to coach one week's pay of Coach's Annual Salary.

3.2.2 Each year the Team wins the Big Sky Conference Women's Basketball Tournament and the subsequent automatic NCAA Conference berth at the conclusion of the regular season, the University shall pay to Coach 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 Women's Basketball Post-Season Tournament, the University shall compensate Coach for advancing in the tournament bracket as follows:

Round 1	64 teams	1 st win	\$ 1,000
Round 2	32 teams	2 nd win	\$ 2,000

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Round 3	16 teams	3 rd win	\$ 4,000
Round 4	8 teams	4 th win	\$ 6,000
Round 5	4 teams	5 th win	\$ 8,000
Round 6	2 teams	6 th win	<u>\$10,000</u>
Possible bonus computation total			\$31,000

for winning National Championship.

3.2.3 In the event the Team, competes in the WNIT Women's Basketball Post-Season Tournament, the University shall compensate Coach for advancing in the tournament bracket as follows:

Round 1	32 teams	1 st win	\$ 1,000
Round 2	16 teams	2 nd win	\$ 2,000
Round 3	8 teams	3 rd win	\$ 3,000
Round 4	4 teams	4 th win	\$ 4,000
Round 5	2 teams	5 th win	<u>\$ 5,000</u>
Possible bonus computation total			\$15,000

for winning WNIT National Championship.

3.2.4 Coach will be eligible to receive supplemental compensation (non-cumulative) for winning the following number of regular season basketball games:

20 Wins	\$ 1,000
21 Wins	\$ 2,000
22 Wins	\$ 3,000
23 Wins	\$ 4,000
24 Wins	\$ 5,000
25 Wins	\$ 6,000
26 Wins	\$ 7,000
27 Wins	\$ 8,000

3.2.5 Each year Coach shall be eligible to receive supplemental compensation for the academic and conduct achievements of the Team members. The following incentives will be used following NCAA APR scores to determine the applicable incentives:

<u>Team APR Score</u>	<u>Incentive Pay</u>
940-944	\$ 1,000
945-949	\$ 1,500
950-954	\$ 2,000
955-959	\$ 2,500
960-964	\$ 3,000
965-969	\$ 3,500
970 or above	\$ 4,000

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Such incentives are contingent upon 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

3.2.6 Coach shall receive \$5,000 annual compensation for participation in radio and television appearances.

3.2.7 **(SUMMER CAMP OPERATED BY UNIVERSITY)** Coach agrees that the University has the exclusive right to operate girls' youth basketball camps on its campus using University facilities. The University shall allow Coach the opportunity to earn supplemental compensation by directing or administrating 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 Women's Basketball 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 Women's Basketball 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 Women's Basketball 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 Women's Basketball 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.

3.2.8 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 Women's Basketball 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 by the director 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

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contain a comparative or qualitative description of athletic footwear, apparel or equipment products. Coach shall receive \$1,500 in personal apparel from Nike.

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

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 procedure of the Athletic Department; (e) NCAA (or NAIA) rules and regulations; and (f) the rules and regulations of the Big Sky Conference of which the University is a member.

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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 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.

ARTICLE 5

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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) A deliberate or major violation 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 without the University's consent;
- 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

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- 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.

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 reasonably 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. If the Coach terminates this Agreement for his convenience he shall pay to the University, 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 June 30, 2007, the sum of \$6,000.00; (b) if the Agreement is terminated between July 1, 2007 and June 30, 2008 inclusive, the sum of \$4,000.00; (c) if the Agreement is terminated between July 1, 2008 and May 1, 2009 inclusive, the sum of \$2,000.00. 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 of eight (8) percent per annum until paid.

5.3.4 Except as provide 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.

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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 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 provided for in the State Board of Education 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 of the State Board of Education 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 State Board of Education, 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 State Board of Education and University's rules regarding financial exigency.

6.2 University Property. All personal property (excluding vehicle(s) provided through the Courtesy Car 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 inability), 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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the University: 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 83209-8310

the Coach: Jon Newlee
 Last known address on file with
 University's Human Resource Services

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 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

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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

Michael C. Gallagher, Date
Interim President

Jon Newlee Date

Approved by the Board of Trustees on the ____ day of _____, 20____.

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Jon Newlee, Idaho State University, Head Women's Basketball Coach 2006-2009

	Model Contract Section	Contract Section	Justification for Modification
3.1.1	Regular Compensation	3.1.1.(d) Regular Compensation; Language added	Additional language specifying courtesy car benefits to Coach through ISU's Courtesy Car Program
3.2	Supplemental Compensation	3.2.1 – 3.2.4 Supplemental Compensation; Language modified	Language specifies compensation for team performance.
3.2	Supplemental Compensation	3.2.5 Supplemental Compensation; Language added	Language specifies compensation for academic achievement based on NCAA APR scores.
3.2	Supplemental Compensation	3.2.6 Supplemental Compensation; Language modified	Language generalized for coach's participation in radio and television appearances.
3.2	Supplemental Compensation	3.2.7 Supplemental Compensation; Summer Camp	Language provides criteria and conditions applicable to coach's operation of a summer youth camp and deletes the ability of the coach to operate the camp independent of the university.
3.2	Supplemental Compensation	3.2.8 Supplemental Compensation; Language added/deleted	Language added for Coach to receive personal apparel from Nike. Language deleted referencing agreement with (Company) to supply the University with footwear, apparel and/or equipment.
5.2	Termination of Coach for Convenience of University	5.2.3 Termination of Coach for Convenience of University; Language deleted	Language deleted referencing representation by legal counsel in the contact negotiations, as it is referenced in Section 6.16.
5.3	Termination by Coach for Convenience	5.3.4 Termination of Coach for Convenience; Language deleted	Language deleted referencing representation by legal counsel in the contact negotiations, as it is referenced in Section 6.16.
6.16	Opportunity to Consult with Attorney	6.16 Opportunity to Consult with Attorney; Language added	Language specifies that coach has not relied upon the advice of any legal counsel acting on behalf of the University.

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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INSTITUTION / AGENCY AGENDA
IDAHO STATE UNIVERSITY

SUBJECT

A request by Idaho State University for approval of a multi-year employment agreement for head coaching personnel.

APPLICABLE STATUTE, RULE OR POLICY

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

DISCUSSION

Idaho State University is requesting approval for a fixed-term appointment of a three-year, twelve-month employment agreement for Joe O'Brien, Head Men's Basketball Coach. The employment agreement contains the duties, responsibilities and conditions of the employment. A Model Contract Matrix that identifies departures from the model contract form and provides justification for these changes is included. The position is funded by state appropriated funds.

IMPACT

This contract will provide a stable coaching environment for the respective program as well as stability and consistency for the Athletic Department as a whole.

ATTACHMENTS

Attachment 1 –Contract-Redline	Page 3
Attachment 1a – Contract Clean	Page 21
Attachment 1b – Matrix	Page 33

STAFF AND COMMENTS AND RECOMMENDATIONS

Staff has reviewed this request 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 Men's Basketball Coach (1.0 FTE).

Moved by _____ Seconded by _____ Carried Yes _____ No _____

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

HEAD COACH OR ATHLETIC DIRECTOR EMPLOYMENT AGREEMENTS

Joe O'Brien	Attachment 1
Position Title	Head Men's Basketball Coach
FTE	1.0
Term	36 months
Term of Contract	March 22, 2006 – May 1, 2009
Annual Salary	\$95,000.00
Funding Source	State Funds
Area/Department of Assignment	Intercollegiate Athletics
Supplemental Compensation	See Attachment 1, Article 3.2.

~~(MODEL ATHLETICS CONTRACT)~~

EMPLOYMENT AGREEMENT

This Employment Agreement (Agreement) is entered into by and between _____Idaho State University (University ~~(College)~~), and _____Joe O'Brien, Head Men's Basketball Coach (Coach).

ARTICLE 1

1.1. Employment. Subject to the terms and conditions of this Agreement, the ~~University (College)~~University shall employ Coach as the head coach of its intercollegiate ~~(Sport)~~Men's Basketball 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 (College)~~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 (College)~~University's President (President).

1.3. Duties. Coach shall manage and supervise the Team and shall perform such other duties in the ~~University (College)~~University's athletic program as the Director may assign and as may be described elsewhere in this Agreement. The ~~University (College)~~University shall have the right, at any time, to reassign Coach to duties at the ~~University (College)~~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 that the opportunity to earn supplemental compensation as provided in sections 3.2.1 through ~~3.2.7 (Depending on supplemental pay provisions used)~~ _____ shall cease.

ARTICLE 2

2.1. Term. This Agreement is for a fixed-term appointment of ~~three~~ three (~~—~~ 3) years, commencing on _____March 22, 2006 and terminating, without further notice to Coach, on _____May 1, 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 (College)~~University and an acceptance by Coach, both of which

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must be in writing and signed by the parties. Any renewal is subject to the prior approval of University (College)University's Board of __(Regents or Trustees)Trustees__. 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 (College)University.

ARTICLE 3

3.1 Regular Compensation.

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

- a) An annual salary of \$ _____ \$95,000 per year, payable in biweekly installments in accordance with normal University (College)University procedures, and such salary increases as may be determined appropriate by the Director and President and approved by the University (College)University's Board of _____(Regents or Trustees)Trustees;
- b) The opportunity to receive such employee benefits as the University (College)University provides generally to non-faculty exempt employees; and
- c) The opportunity to receive such employee benefits as the University (College)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.
- d) Subject to availability, a courtesy car will be provided to Coach during employment as Head Men's Basketball Coach through the Courtesy Car Program as assigned by Director.

3.2 Supplemental Compensation

_____ 3.2.1. Each year the Team wins the regular season Big Sky Conference Championship the University shall pay to coach one week's pay of Coach's

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~~Annual Salary is the conference champion or co-champion and also becomes eligible for a (bowl game pursuant to NCAA Division I guidelines or post-season tournament or post-season playoffs), and if Coach continues to be employed as University (College)'s head (Sport) coach as of the ensuing July 1st, the University (College) shall pay to Coach supplemental compensation in an amount equal to (amount or computation) of Coach's Annual Salary during the fiscal year in which the championship and (bowl or other post-season) eligibility are achieved. The University (College) shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.~~

3.2.2 Each year the Team wins the Big Sky Conference Men's Basketball Tournament and the subsequent automatic NCAA Conference berth at the conclusion of the regular season, the University shall pay to Coach 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 Men's Basketball Post-Season Tournament, the 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 (College)'s head (Sport) coach as of the ensuing July 1st, the University (College) 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 (College) shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation. University shall compensate Coach for advancing in the tournament bracket as follows:

Round 1	64 teams	1 st win	\$ 1,000
Round 2	32 teams	2 nd win	\$ 2,000
Round 3	16 teams	3 rd win	\$ 4,000
Round 4	8 teams	4 th win	\$ 6,000
Round 5	4 teams	5 th win	\$ 8,000
Round 6	2 teams	6 th win	\$10,000
Possible bonus computation total			\$31,000
<u>for winning National Championship.</u>			

3.2.3 In the event the Team, competes in the NIT Men's Basketball Post-Season Tournament, the University shall compensate Coach for advancing in the tournament bracket as follows:

Round 1	32 teams	1 st win	\$ 1,000
Round 2	16 teams	2 nd win	\$ 2,000
Round 3	8 teams	3 rd win	\$ 3,000
Round 4	4 teams	4 th win	\$ 4,000
Round 5	2 teams	5 th win	\$ 5,000

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Possible bonus computation total \$15,000
for winning NIT National Championship.

Coach will be eligible to receive supplemental compensation (non-cumulative) for winning the following number of regular season basketball games:

<u>20 Wins</u>	<u>\$ 1,000</u>
<u>21 Wins</u>	<u>\$ 2,000</u>
<u>22 Wins</u>	<u>\$ 3,000</u>
<u>23 Wins</u>	<u>\$ 4,000</u>
<u>24 Wins</u>	<u>\$ 5,000</u>
<u>25 Wins</u>	<u>\$ 6,000</u>
<u>26 Wins</u>	<u>\$ 7,000</u>
<u>27 Wins</u>	<u>\$ 8,000</u>

3.2.4 Each year Coach shall be eligible to receive supplemental compensation for in an amount up to ____ (amount or computation) based on the the academic and conduct achievements achievement and behavior of the Team members. The following incentives will be used following NCAA APR scores to determine the applicable incentives:

<u>Team APR Score</u>	<u>Incentive Pay</u>
<u>940-944</u>	<u>\$ 1,000</u>
<u>945-949</u>	<u>\$ 1,500</u>
<u>950-954</u>	<u>\$ 2,000</u>

~~_____ 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 (College) as academically at-risk students; the conduct of Team members on the University (College) campus, at authorized University (College) activities, in the community, and elsewhere. Any such supplemental compensation paid to Coach shall be accompanied with a detailed justification for the supplemental compensation based on the factors listed above and such justification shall be separately reported to the Board of (Regents or Trustees) as a document available to the public under the Idaho Public Records Act.~~

~~3.2.4~~

<u>955-959</u>	<u>\$ 2,500</u>
<u>960-964</u>	<u>\$ 3,000</u>
<u>965-969</u>	<u>\$ 3,500</u>
<u>970 or above</u>	<u>\$ 4,000</u>

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Such incentives are contingent upon 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

~~Each year Coach shall be eligible to receive supplemental compensation in an amount up to (amount or computation) based on the overall development of the intercollegiate (men's/women's) (Sport) program; ticket sales; fundraising; outreach by Coach to various constituency groups, including University (College) 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.~~

~~3.2.5 Coach shall receive \$10,000 annual compensation for participation in radio and television appearances.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 endorsements which are broadcast on radio or television that conflict with those broadcast on the University (College)'s designated media outlets.~~

~~3.2.6 **(SUMMER CAMPG OPERATED BY UNIVERSITY (COLLEGE)UNIVERSITY)** Coach agrees that the University (College)University has the exclusive right to operate boy' youth (Sport)basketball camps on its campus using University (College)University facilities. The University (College)University shall allow Coach the opportunity to earn supplemental compensation by assisting with the directing or administrating University (College)University's camps in Coach's capacity as a~~

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~~University (College)University~~ employee. Coach hereby agrees to ~~assist indirect~~ the marketing, supervision, and general administration of the ~~University (College)University's football-Men's Basketball~~ 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 (College)University's~~ summer ~~football-Men's Basketball~~ camps, the ~~University (College)University~~ shall pay Coach ~~_(amount)_~~ ~~the net revenues resulting from each summer camper year~~ as supplemental compensation during each year of his employment as head ~~(Sport)Men's Basketball~~ coach at the ~~University (College)University~~. This amount shall be paid ~~_(terms of payment)_~~ ~~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 ~~Men's Basketball 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.~~

~~**(SUMMER CAMPCOPERATED 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;~~
- ~~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.~~

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- ~~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.~~

3.2.7 Coach agrees that the ~~University (College)~~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 (College)~~University. ~~Coach recognizes that the University (College) is negotiating or has entered into an agreement with (Company Name) to supply the University (College) with athletic~~

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~~footwear, apparel and/or equipment.~~—Coach agrees that, upon the ~~University (College)University~~'s reasonable request, Coach will consult with appropriate parties concerning ~~an (Company Name) company's~~ product's design or performance, shall act as an instructor at a clinic sponsored in whole or in part by ~~(Company Name) such company~~, or give a lecture at an event sponsored in whole or in part by ~~(Company Name) such company~~, or make other educationally-related appearances as may be reasonably requested by the ~~University (College)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 ~~(Sport)Men's Basketball~~—_coach. In order to avoid entering into an agreement with a competitor of ~~(Company Name) such company~~—, Coach shall submit all outside consulting agreements to the ~~University (College)University~~ for review and approval prior to execution. Coach shall also report such outside income to the ~~University (College)University~~ in accordance with NCAA ~~(or NAIA)~~ rules. Coach further agrees that Coach will not endorse any athletic footwear, apparel, ~~and/or~~ equipment, ~~and~~ products, including ~~(Company Name) 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. Coach shall receive \$2,500 in personal apparel from Nike.

3.3 General Conditions of Compensation. All compensation provided by the ~~University (College)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 (College)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;

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4.1.3. Observe and uphold all academic standards, requirements, and policies of the ~~University (College)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 (College)University~~, the ~~University (College)University~~'s governing board, the conference, and the NCAA ~~(or NAIA)~~; 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 (College)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 (College)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 (College)University~~'s Handbook; (c) ~~University (College)University~~'s Administrative Procedures Manual; (d) the policies and procedure of the Athletic Department; (e) NCAA (or NAIA) rules and regulations; and (f) the rules and regulations of the ~~(Sport) eBig Sky~~ Conference of which the ~~University (College)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 (College)University~~, would reflect adversely upon the ~~University (College)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 (College)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 (or NAIA) Rules. In accordance with NCAA ~~(or NAIA)~~ rules, Coach shall obtain prior written approval from the ~~University (College)University~~'s President for all athletically related income and benefits from sources outside the ~~University (College)University~~ and shall report the source and amount of all such income and benefits to the ~~University (College)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 (College)University~~ work day preceding June 30th. The report shall be in a format reasonably satisfactory to ~~University (College)University~~. In no event shall Coach accept or receive directly or indirectly any

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monies, benefits, or gratuities whatsoever from any person, association, corporation, ~~University (College)University~~ booster club, ~~University (College)University~~ alumni association, ~~University (College)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 (College)University~~, the ~~University (College)University's~~ governing board, the conference, or the NCAA ~~(or NAIA)~~.

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 (College)University's~~ Board of ~~(Trustees or Regents)~~ 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.

4.76 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 ~~be~~ withheld.

ARTICLE 5

5.1 Termination of Coach for Cause. The ~~University (College)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 (College)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 (College)University~~;

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- c) A deliberate or major violation by Coach of any applicable law or the policies, rules or regulations of the ~~University (College)University~~, the ~~University (College)University~~'s governing board, the conference or the NCAA ~~(NAIA)~~, 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 without the ~~University (College)University~~'s consent;

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

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

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

- h) The failure of Coach to report a known violation of any applicable law or the policies, rules or regulations of the ~~University (College)University~~, the ~~University (College)University~~'s governing board, the conference, or the NCAA ~~(NAIA)~~, 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 (College)University~~, the ~~University (College)University~~'s governing board, the conference, or the NCAA ~~(NAIA)~~, 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 (College)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

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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 (College)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 (College)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 (College)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 ~~(NAIA)~~ 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 ~~(NAIA)~~ enforcement procedures. This section applies to violations occurring at the ~~University (College)University~~ or at previous institutions at which the Coach was employed.

5.2 Termination of Coach for Convenience of ~~University (College)University~~.

5.2.1 At any time after commencement of this Agreement, ~~University (College)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 (College)University~~ terminates this Agreement for its own convenience, ~~University (College)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 (College)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 (College)University~~ employee until the term of this Agreement ends or until Coach obtains reasonably 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.

~~5.2.3 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 Coach may lose certain benefits, supplemental compensation, or outside compensation relating to his employment with ~~University (College)~~, which damages are extremely difficult to determine with certainty. The parties further agree that the payment of such liquidated damages by ~~University (College)~~ and the acceptance thereof by Coach shall constitute adequate and reasonable compensation to Coach for the damages and injury suffered~~

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~~by Coach because of such termination by University (College). The liquidated damages are not, and shall not be construed to be, a penalty.~~

5.3 Termination by Coach for Convenience.

5.3.1 The Coach recognizes that his promise to work for University (College)University for the entire term of this Agreement is of the essence of this Agreement. The Coach also recognizes that the ~~University (College)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 (College)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 (College)University. Termination shall be effective ten (10) days after notice is given to the University (College)University.

5.3.3 If the Coach terminates this Agreement for convenience at any time, all obligations of the University (College)University shall cease as of the effective date of the termination. If the Coach terminates this Agreement for his convenience he shall pay to the University (College)University, 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 _____, June 30, 2007, the sum of \$306,000.00; (b) if the Agreement is terminated between _____ July 1, 2007 and _____ June 30, 2008 inclusive, the sum of \$204,000.00; (c) if the Agreement is terminated between _____ July 1, 2008 and _____ May 1, 2009 inclusive, the sum of \$102,000.00. ~~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 of eight (8) percent per annum until paid.~~

~~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).~~

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5.3.54 Except as provide 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 (College)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 (College)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 (College)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 (College)University~~.

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

5.76 No Liability. The ~~University (College)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.

5.87 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 (College)University~~ employees, if the ~~University (College)University~~ suspends or reassigns Coach, or

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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 (College)University from compliance with the notice, appeal, and similar employment-related rights provided 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 (College)University Faculty-Staff Handbook.

ARTICLE 6

6.1 Board Approval. This Agreement shall not be effective until and unless approved of the ~~University (College)'s State Board of (Regents or Trustees) Education~~ 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 (College)University's State Board of (Regents or Trustees) Education, 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 State Board of (Regents or Trustees) Education and University (College)University's rules regarding financial exigency.

6.2 University (College)University Property. All personal property (excluding vehicle(s) provided through the Courtesy Car pProgram), 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 (College)University or developed by Coach on behalf of the University (College)University or at the University (College)University's direction or for the University (College)University's use or otherwise in connection with Coach's employment hereunder are and shall remain the sole property of the University (College)University. Within twenty-four (24) hours of the expiration of the term of this aAgreement 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.

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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 (College)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 inability), 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 (College)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:

the University (College)University: _____ 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 83209-8310

the Coach: _____ Joe O'Brien
Last known address on file with

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University (College)University's Human Resource Services

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 (College)University's prior written consent in each case, use any name, trade name, trademark, or other designation of the University (College)University (including contraction, abbreviation or simulation), except in the course and scope of his official University (College)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 University (College)University's Board of —(Regents or Trustees) 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.

UNIVERSITY (COLLEGE)UNIVERSITY

COACH

Michael C. Gallagher, Date Joe O'Brien Date
Interim, President Date Date

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Approved by the Board of ~~Regents or Trustees~~ Trustees o on the ____ day of _____, 200020.

EMPLOYMENT AGREEMENT

This Employment Agreement (Agreement) is entered into by and between Idaho State University (University), and Joe O'Brien, Head Men's Basketball 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 Men's Basketball 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 that the opportunity to earn supplemental compensation as provided in sections 3.2.1 through 3.2.7 shall cease.

ARTICLE 2

2.1. Term. This Agreement is for a fixed-term appointment of three (3) years, commencing on March 22, 2006 and terminating, without further notice to Coach, on May 1, 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 University's Board of Trustees. 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 \$95,000 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; and
- 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.
- d) Subject to availability, a courtesy car will be provided to Coach during employment as Head Men's Basketball Coach through the Courtesy Car Program as assigned by Director.

3.2 Supplemental Compensation

3.2.1. Each year the Team wins the regular season Big Sky Conference Championship the University shall pay to coach one week's pay of Coach's Annual Salary.

3.2.2 Each year the Team wins the Big Sky Conference Men's Basketball Tournament and the subsequent automatic NCAA Conference berth at the conclusion of the regular season, the University shall pay to Coach 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 Men's Basketball Post-Season Tournament, the University shall compensate Coach for advancing in the tournament bracket as follows:

Round 1	64 teams	1 st win	\$ 1,000
Round 2	32 teams	2 nd win	\$ 2,000
Round 3	16 teams	3 rd win	\$ 4,000

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Round 4	8 teams	4 th win	\$ 6,000
Round 5	4 teams	5 th win	\$ 8,000
Round 6	2 teams	6 th win	<u>\$10,000</u>
Possible bonus computation total			\$31,000

for winning National Championship.

3.2.3 In the event the Team, competes in the NIT Men's Basketball Post-Season Tournament, the University shall compensate Coach for advancing in the tournament bracket as follows:

Round 1	32 teams	1 st win	\$ 1,000
Round 2	16 teams	2 nd win	\$ 2,000
Round 3	8 teams	3 rd win	\$ 3,000
Round 4	4 teams	4 th win	\$ 4,000
Round 5	2 teams	5 th win	<u>\$ 5,000</u>
Possible bonus computation total			\$15,000

for winning NIT National Championship.

Coach will be eligible to receive supplemental compensation (non-cumulative) for winning the following number of regular season basketball games:

20 Wins	\$ 1,000
21 Wins	\$ 2,000
22 Wins	\$ 3,000
23 Wins	\$ 4,000
24 Wins	\$ 5,000
25 Wins	\$ 6,000
26 Wins	\$ 7,000
27 Wins	\$ 8,000

3.2.4 Each year Coach shall be eligible to receive supplemental compensation for the academic and conduct achievements of the Team members. The following incentives will be used following NCAA APR scores to determine the applicable incentives:

<u>Team APR Score</u>	<u>Incentive Pay</u>
940-944	\$ 1,000
945-949	\$ 1,500
950-954	\$ 2,000
955-959	\$ 2,500
960-964	\$ 3,000
965-969	\$ 3,500
970 or above	\$ 4,000

Such incentives are contingent upon 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

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3.2.5 Coach shall receive \$10,000 annual compensation for participation in radio and television appearances.

3.2.6 **(SUMMER CAMP OPERATED BY UNIVERSITY)** Coach agrees that the University has the exclusive right to operate boy' youth basketball camps on its campus using University facilities. The University shall allow Coach the opportunity to earn supplemental compensation by directing or administrating 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 Men's Basketball 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 Men's Basketball 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 Men's Basketball 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 Men's Basketball 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.

3.2.7 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 Men's Basketball 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. Coach shall receive \$2,500 in personal apparel from Nike.

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

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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

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 procedure of the Athletic Department; (e) NCAA (or NAIA) 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

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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 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.

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.

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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 violation 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 without the University's consent;
- 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

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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.

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 reasonably 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

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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. If the Coach terminates this Agreement for his convenience he shall pay to the University 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 June 30, 2007, the sum of \$6,000.00; (b) if the Agreement is terminated between July 1, 2007 and June 30, 2008 inclusive, the sum of \$4,000.00; (c) if the Agreement is terminated between July 1, 2008 and May 1, 2009 inclusive, the sum of \$2,000.00. 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 of eight (8) percent per annum until paid.

5.3.4 Except as provide 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 provided for in the State Board of Education 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 of the State Board of Education 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 State Board of Education, 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 State Board of Education and University's rules regarding financial exigency.

6.2 University Property. All personal property (excluding vehicle(s) provided through the Courtesy Car 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 inability), 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:

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

with a copy to: President
 Campus Box 8310
 Idaho State University

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Pocatello, ID 83209-8310

the Coach: Joe O'Brien
Last known address on file with
University's Human Resource Services

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 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.

UNIVERSITY

COACH

Michael C. Gallagher, Date
Interim President

Joe O'Brien Date

Approved by the Board of Trustees on the ____ day of _____, 20____.

**ATTACHMENT 1-b
Matrix**

Joe O'Brien, Idaho State University, Head Men's Basketball Coach 2006-2009

	Model Contract Section	Contract Section	Justification for Modification
3.1.1	Regular Compensation	3.1.1.(d) Regular Compensation; Language added	Additional language specifying courtesy car benefits to Coach through ISU's Courtesy Car Program
3.2	Supplemental Compensation	3.2.1 – 3.2.3 Supplemental Compensation; Language modified	Language specifies compensation for team performance.
3.2	Supplemental Compensation	3.2.4 Supplemental Compensation; Language added	Language specifies compensation for academic achievement based on NCAA APR scores.
3.2	Supplemental Compensation	3.2.5 Supplemental Compensation; Language modified	Language generalized for coach's participation in radio and television appearances.
3.2	Supplemental Compensation	3.2.6 Supplemental Compensation; Summer Camp	Language provides criteria and conditions applicable to coach's operation of a summer youth camp and deletes the ability of the coach to operate the camp independent of the university.
3.2	Supplemental Compensation	3.2.7 Supplemental Compensation; Language added/deleted	Language added for Coach to receive personal apparel from Nike. Language deleted referencing agreement with (Company) to supply the University with footwear, apparel and/or equipment.
5.2	Termination of Coach for Convenience of University	5.2.3 Termination of Coach for Convenience of University; Language deleted	Language deleted referencing representation by legal counsel in the contact negotiations, as it is referenced in Section 6.16.
5.3	Termination of Coach for Convenience	5.3.4 Termination of Coach for Convenience; Language deleted	Language deleted referencing representation by legal counsel in the contact negotiations, as it is referenced in Section 6.16.
6.16	Opportunity to Consult with Attorney	6.16 Opportunity to Consult with Attorney; Language added	Language specifies that coach has not relied upon the advice of any legal counsel acting on behalf of the University.

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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INSTITUTION / AGENCY AGENDA
IDAHO STATE UNIVERSITY

SUBJECT

A request by Idaho State University for approval of a multi-year employment agreement for head coaching personnel.

APPLICABLE STATUTE, RULE OR POLICY

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

DISCUSSION

Idaho State University is requesting approval for a fixed-term appointment of a two-year, twelve-month employment agreement for Larry Stocking, Head Softball Coach. The employment agreement contains the duties, responsibilities and conditions of the employment. A Model Contract Matrix that identifies departures from the model contract form and provides justification for these changes is included. The position is funded by state appropriated funds.

IMPACT

This contract will provide a stable coaching environment for the respective program as well as stability and consistency for the Athletic Department as a whole.

ATTACHMENTS

Attachment 1 –Contract-Redline	Page 3
Attachment 1a – Contract Clean	Page 21
Attachment 1b – Matrix	Page 33

STAFF AND COMMENTS AND RECOMMENDATIONS

Staff has reviewed this request 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 Softball Coach (1.0 FTE).

Moved by _____ Seconded by _____ Carried Yes _____ No _____

**BUSINESS AFFAIRS AND HUMAN RESOURCES
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**INSTITUTION / AGENCY AGENDA
IDAHO STATE UNIVERSITY - continued**

HEAD COACH OR ATHLETIC DIRECTOR EMPLOYMENT AGREEMENTS

Larry Stocking	Attachment 1
Position Title	Head Softball Coach
FTE	1.0
Term	24 months
Term of Contract	July 1, 2006 – June 1, 2008
Annual Salary	\$47,060.00
Funding Source	State Funds
Area/Department of Assignment	Intercollegiate Athletics
Supplemental Compensation	See Attachment 1, Article 3.2

~~(MODEL ATHLETICS CONTRACT)~~

EMPLOYMENT AGREEMENT

This Employment Agreement (Agreement) is entered into by and between _____Idaho State University (University ~~(College)~~), and _____Larry Stocking, Head Softball Coach (Coach).

ARTICLE 1

1.1. Employment. Subject to the terms and conditions of this Agreement, the ~~University (College)~~University shall employ Coach as the head coach of its intercollegiate ~~(Sport)~~Softball 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 (College)~~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 (College)~~University's President (President).

1.3. Duties. Coach shall manage and supervise the Team and shall perform such other duties in the ~~University (College)~~University's athletic program as the Director may assign and as may be described elsewhere in this Agreement. The ~~University (College)~~University shall have the right, at any time, to reassign Coach to duties at the ~~University (College)~~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 that the opportunity to earn supplemental compensation as provided in sections 3.2.1 through ~~3.2.5 (Depending on supplemental pay provisions used)~~ _____ shall cease.

ARTICLE 2

2.1. Term. This Agreement is for a fixed-term appointment of two _____ (~~—~~ 2) years, commencing on _____July 1, 2006 and terminating, without further notice to Coach, on _____June 1, 2008 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 (College)~~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

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approval of ~~University (College)University's~~ Board of ~~_(Regents or Trustees)Trustees_~~. 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 (College)University~~.

ARTICLE 3

3.1 Regular Compensation.

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

- a) An annual salary of \$ ~~_____~~ \$47,060 per year, payable in biweekly installments in accordance with normal ~~University (College)University~~ procedures, and such salary increases as may be determined appropriate by the Director and President and approved by the ~~University (College)University's~~ Board of ~~_____(Regents or Trustees)Trustees;~~
- b) The opportunity to receive such employee benefits as the ~~University (College)University~~ provides generally to non-faculty exempt employees; and
- c) The opportunity to receive such employee benefits as the ~~University (College)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.
- d) Subject to availability, a courtesy car will be provided to Coach during employment as Head Softball Coach through the Courtesy Car Program as assigned by Director.

3.2 Supplemental Compensation

_____ 3.2.1. Each year the Team wins the regular season Big Sky Conference Championship the University shall pay to coach one week's pay of Coach's Annual Salary ~~is the conference champion or co-champion and also becomes eligible for a (bowl game pursuant to NCAA Division I guidelines or post-season tournament or~~

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~~post-season playoffs) , and if Coach continues to be employed as University (College)'s head ___(Sport) coach as of the ensuing July 1st, the University (College) shall pay to Coach supplemental compensation in an amount equal to ___(amount or computation) of Coach's Annual Salary during the fiscal year in which the championship and (bowl or other post-season) eligibility are achieved. The University (College) shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.~~

_____ 3.2.2 Each year the Team wins the Big Sky Conference Softball Tournament and the subsequent automatic NCAA Conference berth at the conclusion of the regular season, the University shall pay to Coach one week's pay of Coach's Annual Salary.

~~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 (College)'s head (Sport) coach as of the ensuing July 1st, the University (College) 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 (College) shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.~~

_____ 3.2.3 Each year Coach shall be eligible to receive supplemental compensation for the in an amount up to ___(amount or computation) based on the academic and conduct achievements achievement and behavior of the Team members. members. The following incentives will be used following NCAA APR scores to determine the applicable incentives:

<u>Team APR Score</u>	<u>Incentive Pay</u>
<u>940-944</u>	<u>\$ 1,000</u>
<u>945-949</u>	<u>\$ 1,500</u>
<u>950-954</u>	<u>\$ 2,000</u>
<u>955-959</u>	<u>\$ 2,500</u>
<u>960-964</u>	<u>\$ 3,000</u>
<u>965-969</u>	<u>\$ 3,500</u>
<u>970 or above</u>	<u>\$ 4,000</u>

Such incentives are contingent upon 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

~~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 (College) as academically at-risk students; the conduct of Team members on the~~

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~~University (College) campus, at authorized University (College) activities, in the community, and elsewhere. Any such supplemental compensation paid to Coach shall be accompanied with a detailed justification for the supplemental compensation based on the factors listed above and such justification shall be separately reported to the Board of (Regents or Trustees) as a document available to the public under the Idaho Public Records Act.~~

~~3.2.4 Each year Coach shall be eligible to receive supplemental compensation in an amount up to ___(amount or computation)___ based on the overall development of the intercollegiate (men's/women's) (Sport) program; ticket sales; fundraising; outreach by Coach to various constituency groups, including University (College) 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.~~

~~3.2.5 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 endorsements which are broadcast on radio or television that conflict with those broadcast on the University (College)'s designated media outlets.~~

~~3.2.64 (SUMMER CAMPC___OPERATED BY UNIVERSITY (COLLEGE)UNIVERSITY) Coach agrees that the University (College)University has the exclusive right to operate youth (Sport)Softball___ camps on its campus using University (College)University facilities. The University (College)University shall allow~~

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Coach the opportunity to earn supplemental compensation by assisting with the directing or administrating University (College)University's camps in Coach's capacity as a University (College)University employee. Coach hereby agrees to assist indirect the marketing, supervision, and general administration of the University (College)University's football-Softball 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 (College)University's summer football-Softball camps, the University (College)University shall pay Coach ~~_(amount)_~~ the net revenues resulting from each summer camp per year as supplemental compensation during each year of his employment as head ~~_(Sport)Softball~~ coach at the University (College)University. This amount shall be paid ~~_(terms of payment)~~ 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 Softball 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.

~~(SUMMER CAMPCOPERATED 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;~~
- ~~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.~~

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- ~~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.~~

3.2.57 Coach agrees that the ~~University (College)~~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 (College)~~University. ~~Coach recognizes that the University (College) is negotiating or has entered into an agreement with (Company Name) to supply the University (College) with athletic~~

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~~footwear, apparel and/or equipment.~~ Coach agrees that, upon the ~~University (College)University~~'s reasonable request, Coach will consult with appropriate parties concerning ~~an (Company Name) company's~~ product's design or performance, shall act as an instructor at a clinic sponsored in whole or in part by ~~(Company Name) such company~~, or give a lecture at an event sponsored in whole or in part by ~~(Company Name) such company~~, or make other educationally-related appearances as may be reasonably requested by the ~~University (College)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 ~~(Sport)Softball~~ coach. In order to avoid entering into an agreement with a competitor of ~~(Company Name) such company~~, Coach shall submit all outside consulting agreements to the ~~University (College)University~~ for review and approval prior to execution. Coach shall also report such outside income to the ~~University (College)University~~ in accordance with NCAA ~~(or NAIA)~~ rules. Coach further agrees that Coach will not endorse any athletic footwear, apparel, ~~and/or~~ equipment, ~~and~~ products, including ~~(Company Name) 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.

3.3 General Conditions of Compensation. All compensation provided by the ~~University (College)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 (College)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;

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4.1.3. Observe and uphold all academic standards, requirements, and policies of the ~~University (College)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 (College)University~~, the ~~University (College)University~~'s governing board, the conference, and the NCAA ~~(or NAIA)~~; 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 (College)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 (College)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 (College)University~~'s Handbook; (c) ~~University (College)University~~'s Administrative Procedures Manual; (d) the policies and procedure of the Athletic Department; (e) NCAA ~~(or NAIA)~~ rules and regulations; and (f) the rules and regulations of the ~~(Sport)~~ eBig Sky C Conference of which the ~~University (College)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 (College)University~~, would reflect adversely upon the ~~University (College)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 (College)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 (or NAIA) Rules. In accordance with NCAA ~~(or NAIA)~~ rules, Coach shall obtain prior written approval from the ~~University (College)University~~'s President for all athletically related income and benefits from sources outside the ~~University (College)University~~ and shall report the source and amount of all such income and benefits to the ~~University (College)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 (College)University~~ work day preceding June 30th. The report shall be in a format reasonably satisfactory to ~~University~~

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~~(College)University~~. In no event shall Coach accept or receive directly or indirectly any monies, benefits, or gratuities whatsoever from any person, association, corporation, ~~University (College)University~~ booster club, ~~University (College)University~~ alumni association, ~~University (College)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 (College)University~~, the ~~University (College)University's~~ governing board, the conference, or the NCAA ~~(or NAIA)~~.

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 (College)University's~~ Board of ~~(Trustees or Regents)~~ 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.

4.67 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 ~~be~~ withheld.

ARTICLE 5

5.1 Termination of Coach for Cause. The ~~University (College)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 (College)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;

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- b) The failure of Coach to remedy any violation of any of the terms of this ~~a~~Agreement within 30 days after written notice from the ~~University (College)University~~;

- c) A deliberate or major violation by Coach of any applicable law or the policies, rules or regulations of the ~~University (College)University~~, the ~~University (College)University~~'s governing board, the conference or the NCAA ~~(NAIA)~~, 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 without the ~~University (College)University~~'s consent;

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

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

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

- h) The failure of Coach to report a known violation of any applicable law or the policies, rules or regulations of the ~~University (College)University~~, the ~~University (College)University~~'s governing board, the conference, or the NCAA ~~(NAIA)~~, 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 (College)University~~, the ~~University (College)University~~'s governing board, the conference, or the NCAA ~~(NAIA)~~, 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.

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5.1.2 Suspension, reassignment, or termination for good or adequate cause shall be effectuated by the ~~University (College)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 (College)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 (College)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 (College)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 ~~(NAIA)~~ 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 ~~(NAIA)~~ enforcement procedures. This section applies to violations occurring at the ~~University (College)University~~ or at previous institutions at which the Coach was employed.

5.2 Termination of Coach for Convenience of ~~University (College)University~~.

5.2.1 At any time after commencement of this Agreement, ~~University (College)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 (College)University~~ terminates this Agreement for its own convenience, ~~University (College)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 (College)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 (College)University~~ employee until the term of this Agreement ends or until Coach obtains reasonably 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.

~~5.2.3 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 Coach may lose certain benefits, supplemental compensation, or outside compensation relating to his employment with ~~University (College)~~, which damages are extremely difficult to~~

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~~determine with certainty. The parties further agree that the payment of such liquidated damages by University (College) and the acceptance thereof by Coach shall constitute adequate and reasonable compensation to Coach for the damages and injury suffered by Coach because of such termination by University (College). The liquidated damages are not, and shall not be construed to be, a penalty.~~

5.3 Termination by Coach for Convenience.

5.3.1 The Coach recognizes that his promise to work for University (College)University for the entire term of this Agreement is of the essence of this Agreement. The Coach also recognizes that the University (College)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 (College)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 (College)University. Termination shall be effective ten (10) days after notice is given to the University (College)University.

5.3.3 If the Coach terminates this Agreement for convenience at any time, all obligations of the University ~~(College)~~ shall cease as of the effective date of the termination. 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 June 30, 2007, the sum of \$304,000.00; (b) if the Agreement is terminated between July 1, 2007 and June 1n 2008 inclusive, the sum of \$202,000.00; ~~(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 of eight (8) percent per annum until paid.

~~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~~

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~~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).~~

5.3.45 Except as provide 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 (College)~~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 (College)~~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 (College)~~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 (College)~~University.

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

5.76 No Liability. The ~~University (College)~~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.

5.87 Waiver of Rights. Because the Coach is receiving a multi-year contract and the opportunity to receive supplemental compensation and because such contracts

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and opportunities are not customarily afforded to ~~University (College)University~~ employees, if the ~~University (College)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 (College)University~~ from compliance with the notice, appeal, and similar employment-related rights provided 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 (College)University~~ Faculty-Staff Handbook.

ARTICLE 6

6.1 Board Approval. This Agreement shall not be effective until and unless approved of the ~~University (College)'s State~~ Board of ~~(Regents or Trustees) Education~~ 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 (College)University's State~~ Board of ~~(Regents or Trustees) Education~~, 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 ~~State~~ Board of ~~(Regents or Trustees) Education~~ and ~~University (College)University's~~ rules regarding financial exigency.

6.2 University (College)University Property. All personal property (excluding vehicle(s) provided through the ~~_____ Courtesy Car p~~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 (College)University~~ or developed by Coach on behalf of the ~~University (College)University~~ or at the ~~University (College)University's~~ direction or for the ~~University (College)University's~~ use or otherwise in connection with Coach's employment hereunder are and shall remain the sole property of the ~~University (College)University~~. Within twenty-four (24) hours of the expiration of the term of this ~~a~~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.

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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 (College)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 inability), 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 (College)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:

the University (College)University: _____ Director of Athletics

Campus Box 8173
Idaho State University
Pocatello, ID 83209-8173

with a copy to: _____ President _____ Campus _____ Box
8310 _____

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Idaho State University
Pocatello, ID 83209-8310

the Coach: Larry Stocking
Last known address on file with
University (College)University's Human Resource Services

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 (College)University's prior written consent in each case, use any name, trade name, trademark, or other designation of the University (College)University (including contraction, abbreviation or simulation), except in the course and scope of his official University (College)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 University (College)University's Board of ~~(Regents or Trustees) 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.

UNIVERSITY (COLLEGE)UNIVERSITY

COACH

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Michael C. Gallagher, Date Larry Stocking Date
Interim_____, President _____ Date _____ Date

Approved by the Board of _(Regents or Trustees) Trustees o_ on the ____ day of _____, 200020.

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EMPLOYMENT AGREEMENT

This Employment Agreement (Agreement) is entered into by and between Idaho State University (University), and Larry Stocking, Head Softball 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 Softball 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 that the opportunity to earn supplemental compensation as provided in sections 3.2.1 through 3.2.5 shall cease.

ARTICLE 2

2.1. Term. This Agreement is for a fixed-term appointment of two (2) years, commencing on July 1, 2006 and terminating, without further notice to Coach, on June 1, 2008 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 University's Board of Trustees. 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 \$47,060 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; and
- 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.
- d) Subject to availability, a courtesy car will be provided to Coach during employment as Head Softball Coach through the Courtesy Car Program as assigned by Director.

3.2 Supplemental Compensation

3.2.1. Each year the Team wins the regular season Big Sky Conference Championship the University shall pay to coach one week's pay of Coach's Annual Salary.

3.2.2 Each year the Team wins the Big Sky Conference Softball Tournament and the subsequent automatic NCAA Conference berth at the conclusion of the regular season, the University shall pay to Coach one week's pay of Coach's Annual Salary.

3.2.3 Each year Coach shall be eligible to receive supplemental compensation for the academic and conduct achievements of the Team members. The following incentives will be used following NCAA APR scores to determine the applicable incentives:

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<u>Team APR Score</u>	<u>Incentive Pay</u>
940-944	\$ 1,000
945-949	\$ 1,500
950-954	\$ 2,000
955-959	\$ 2,500
960-964	\$ 3,000
965-969	\$ 3,500
970 or above	\$ 4,000

Such incentives are contingent upon 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

3.2.4 **(SUMMER CAMP OPERATED BY UNIVERSITY)** Coach agrees that the University has the exclusive right to operate youth Softball camps on its campus using University facilities. The University shall allow Coach the opportunity to earn supplemental compensation by directing or administrating 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 Softball 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 Softball 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 Softball 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 Softball 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.

3.2.5 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 Softball coach. In order to avoid entering into an agreement with a competitor of such company, Coach shall

BUSINESS AFFAIRS AND HUMAN RESOURCES
JUNE 14-16, 2006

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.

3.3 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

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

BUSINESS AFFAIRS AND HUMAN RESOURCES
JUNE 14-16, 2006

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 procedure 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 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.

BUSINESS AFFAIRS AND HUMAN RESOURCES
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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.

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) A deliberate or major violation 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 without the University's consent;
- 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

BUSINESS AFFAIRS AND HUMAN RESOURCES
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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.

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

BUSINESS AFFAIRS AND HUMAN RESOURCES
JUNE 14-16, 2006

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 reasonably 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. If the Coach terminates this Agreement for his convenience he shall pay to the University 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 June 30, 2007, the sum of \$4,000.00; (b) if the Agreement is terminated between July 1, 2007 and June 1n 2008 inclusive, the sum of \$2,000.00. 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 of eight (8) percent per annum until paid.

5.3.4 Except as provide 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

BUSINESS AFFAIRS AND HUMAN RESOURCES
JUNE 14-15, 2006

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 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 provided for in the State Board of Education 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 of the State Board of Education 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 State Board of Education, 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 State Board of Education and University's rules regarding financial exigency.

BUSINESS AFFAIRS AND HUMAN RESOURCES
JUNE 14-15, 2006

6.2 University Property. All personal property (excluding vehicle(s) provided through the Courtesy Car 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.

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 inability), 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.

BUSINESS AFFAIRS AND HUMAN RESOURCES
JUNE 14-15, 2006

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:

the University: 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 83209-8310

the Coach: Larry Stocking
 Last known address on file with
 University's Human Resource Services

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 University's Board of Trustees.

BUSINESS AFFAIRS AND HUMAN RESOURCES
JUNE 14-15, 2006

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.

UNIVERSITY

COACH

Michael C. Gallagher, Date
Interim President

Larry Stocking Date

Approved by the Board of Trustees on the ____ day of _____, 20____.

ATTACHMENT 1-b

Larry Stocking, Idaho State University, Head Softball Coach 2006-2008

	Model Contract Section	Contract Section	Justification for Modification
3.1	Regular Compensation	3.1.1.(d) Regular Compensation; Language added	Additional language specifying courtesy car benefits to Coach through ISU's Courtesy Car Program
3.2	Supplemental Compensation	3.2.1 – 3.2.2 Supplemental Compensation; Language modified	Language specifies compensation for team performance.
3.2	Supplemental Compensation	3.2.3 Supplemental Compensation; Language added	Language specifies compensation for academic achievement based on NCAA APR scores.
3.2	Supplemental Compensation	3.2.4 Supplemental Compensation; Summer Camp	Language provides criteria and conditions applicable to coach's operation of a summer youth camp and deletes the ability of the coach to operate the camp independent of the university.
3.2	Supplemental Compensation	3.2.5 Supplemental Compensation; Language deleted	Language deleted referencing agreement with (Company) to supply the University with footwear, apparel and/or equipment.
3.2.5	Supplemental Compensation	3.2.5 Supplemental Compensation; Language deleted	ISU currently maintains no media contract for this sport.
5.2	Termination of Coach for Convenience of University	5.2.3 Termination of Coach for Convenience of University; Language deleted	Language deleted referencing representation by legal counsel in the contact negotiations, as it is referenced in Section 6.16.
5.3	Termination by Coach for Convenience	5.3.4 Termination of Coach for Convenience; Language deleted	Language deleted referencing representation by legal counsel in the contact negotiations, as it is referenced in Section 6.16.
6.16	Opportunity to Consult with Attorney	6.16 Opportunity to Consult with Attorney; Language added	Language specifies that coach has not relied upon the advice of any legal counsel acting on behalf of the University.

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
JUNE 14-16, 2006

INSTITUTION / AGENCY AGENDA
UNIVERSITY OF IDAHO

SUBJECT

Approval of two positions with a salary equal to/greater than 75% of the Chief Executive Officer's base salary.

APPLICABLE STATUTE, RULE, OR POLICY

Idaho State Board of Education Governing Polices & Procedures Sections II.B.3, and II.F.2.b.

DISCUSSION

The University of Idaho requests approval to hire for two positions with a salary equal to/greater than 75% of the Chief Executive Officer's base salary (2.0 Total FTE): Acting Vice President for Finance and Administration, and Vice President for University Advancement; both supported by appropriated funds.

IMPACT

Once approved, the changes can be processed on the State Employee Information System.

STAFF COMMENTS AND RECOMMENDATIONS

Lloyd Mues has previously been the Assistant Vice President for Auxiliary Services, and will serve in an acting capacity until the return of the Vice President for Finance and Administration.

Christopher Murray is a new hire for the Vice President for University Advancement.

BOARD ACTION

A motion to approve the appointment of Lloyd Mues to the position of Acting Vice President for Finance and Administration, at an annual salary of \$155,625.60.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

AND

A motion to approve the appointment of Christopher Murray to the position of Vice President for University Advancement, at an annual salary of \$169,998.40.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

**BUSINESS AFFAIRS AND HUMAN RESOURCES
JUNE 14-16, 2006**

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

**NEW POSITIONS - SALARY EQUAL TO/GREATER THAN 75% OF CHIEF
EXECUTIVE OFFICER BASE SALARY**

Lloyd Mues	Acting Vice President for Finance and Administration
FTE	1.0 (2080 hours)
Term of Appointment	May 2, 2006 and until current Vice President returns from leave due to illness
Effective Date	May 2, 2006
Annual Salary	\$155,625.60
Funding Source	Appropriated funds
Area/Department of Assignment	Finance and Administration
Justification	Acting appointment
Christopher Murray	Vice President for University Advancement
FTE	1.0 (2080 hours)
Term of Appointment	12 months
Effective Date	July 10, 2006
Annual Salary	\$169,998.40
Funding Source	Appropriated funds
Area/Department of Assignment	University Advancement
Justification	New appointment

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 Authority and Procedures

August 2002

B. Appointment Authority and Procedures

1. Nothing herein may be construed to be in limitation of the powers of the Board as defined by Sections 33-3006, 33-3104, 33-2806, and 33-4005, Idaho Code, or as otherwise defined in the Idaho Constitution or Code.
2. **Delegation of Authority**
The Board delegates all authority for personnel management not specifically retained to the executive director and the chief executive officers consistent with the personnel policies and procedures adopted by the Board. In fulfilling this responsibility, the executive director and chief executive officers, or their designees, may exercise their authority consistent with these policies and procedures. Provided, however, that the Board retains the authority for taking final action on any matter so identified anywhere in these policies 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:
 - a. **Position Authorizations**
(1) Any permanent new position, regardless of funding source, requires Board approval. Agenda Item Format: Requests for new position authorizations must include the following information:
 - (a) position title;
 - (b) type of position;
 - (c) FTE
 - (d) Term of appointment;
 - (e) Effective date;
 - (f) approximate salary range;
 - (g) funding source;
 - (h) area or department of assignment;
 - (i) a description of the duties and responsibilities of the position; and
 - (j) a complete justification for the position

BUSINESS AFFAIRS AND HUMAN RESOURCES
JUNE 14-16, 2006

(2) Any permanent position being deleted. The affected position should be identified by type, title, salary, area or department of assignment, and funding source.

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.

c. The employment agreement of any head coach or athletic director (at the institutions only) longer than one year, and all amendments thereto.

d. The criteria established by the institutions for initial appointment to faculty rank and for promotion in rank, as well as any additional faculty ranks and criteria as may be established by an institution other than those provided for in these policies (see subsection G.) Any exceptions to the approved criteria also require Board approval.

e. The procedures established for periodic performance review of tenured faculty members. (see subsection G.)

REFERENCE – APPLICABLE STATUTE, RULE OR POLICY - continued

Idaho State Board of Education

GOVERNING POLICIES AND PROCEDURES

SECTION: II. HUMAN RESOURCES POLICIES AND PROCEDURES

Subsection: F. Policies Regarding Nonclassified Employees

April 2002

F. Policies Regarding Nonclassified Employees

2. Compensation

b. Salaries, Salary Increases and other Compensation related items

- (1) Salaries for new appointments to dean, associate/assistant dean, vice president, and president/vice president direct-report positions may not exceed the median rate for such positions established by the College and University Professional Association for Human Resources (CUPA), or its equivalent, without prior Board approval.

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BUSINESS AFFAIRS AND HUMAN RESOURCES
JUNE 14-16, 2006

INSTITUTION / AGENCY AGENDA
UNIVERSITY OF IDAHO

SUBJECT

A request by the University of Idaho for approval of a multi-year employment agreement for head coaching personnel.

APPLICABLE STATUTE, RULE, OR POLICY

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

DISCUSSION

The University of Idaho requests approval for:

- Head men's basketball coach contract. (1.0 FTE), supported by appropriated funds.

IMPACT

Once approved, the changes can be processed on the State Employee Information System.

ATTACHMENTS

Attachment 1-Contract Redline	Page 3
Attachment 1a-Contract Clean	Page 17
Attachment 1b-Contract Matrix	Page 31

STAFF COMMENTS AND RECOMMENDATIONS

Staff has reviewed this request for conformance with Board policy and recommends approval.

BOARD ACTION

A motion to approve a three-year employment contract for George Pfeifer, head men's basketball coach, beginning March 27, 2006, at a first-year salary of \$100,006.40, with subsequent year increases as noted in the contract.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

BUSINESS AFFAIRS AND HUMAN RESOURCES
JUNE 14-16, 2006

INSTITUTION / AGENCY AGENDA
UNIVERSITY OF IDAHO - continued

HEAD COACH OR ATHLETIC DIRECTOR EMPLOYMENT AGREEMENT

George Pfeifer	Head Men's Basketball Coach (Attachment 1)
FTE	1.0 (2080 hours/year)
Term of Appointment	36 months
Effective	March 27, 2006
Annual Salary	\$100,006.40 per year from March 27, 2006 through March 26, 2008 and \$110,011.20 per year from March 27, 2008 through March 26, 2009 This two-year provisional salary increase is contingent on achievement and behavior of team members; appropriate behavior by, and supervision of, all assistant coaches; compliance with financial stewardship policies; and approval by the President.
Funding Source	Appropriated Funds
Area/Department of Assignment	Athletics
Additional Compensation	Standard UI and Athletics Department fringe benefits; 1/13 of salary each year in which the Team achieves conference champion or co-champion or becomes eligible for the NCAA tournament; 1/13 of salary each year the Team is ranked in the top 25 in any published national final poll of intercollegiate men's basketball teams; \$5,000 each year the Coach is named Conference Coach of the Year; \$45,000 per year for media and public appearances; and \$5,000 for 14 victories; an additional \$5,000 for 17 victories; and an additional \$5,000 for 20 victories
Justification	New appointment

EMPLOYMENT AGREEMENT

This Employment Agreement (Agreement) is entered into by and between the University of Idaho (University), and George Pfeifer (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 men's basketball 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 that the opportunity to earn supplemental compensation as provided in sections 3.2.1 through 3.2.8 shall cease.

ARTICLE 2

2.1. Term. This Agreement is for three (3) years, commencing on March 27, 2006, and terminating, without further notice to Coach, on March 26, 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 University's Board of Regents. 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 as follows:
 - i. From March 27, 2006 through March 26, 2008: \$100,006.40 per year;
 - ii. From March 27, 2008 through March 26, 2009: \$110,011.20.

The above salary amounts are payable in biweekly installments in accordance with normal University procedures. The salary increase in paragraph ii. above is expressly contingent upon the following: (1) academic achievement and behavior of Team members, as described in Paragraph 3.2.4 of this Agreement; (2) appropriate behavior by, and supervision of, all assistant coaches, as determined by the Director; (3) compliance with the University's financial stewardship policies as set forth in University's Administrative Procedures Manual Chapter 25; and (4) approval by the President, in the President's sole discretion.

- b) The opportunity to receive such employee benefits as the University provides generally to non-faculty exempt employees; and
- 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.

3.2 Supplemental Compensation

3.2.1. Each year the Team is the conference champion or co-champion or becomes eligible for the NCAA tournament pursuant to NCAA Division I guidelines, and if Coach continues to be employed as University's head men's basketball coach as of

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the ensuing July 1st, the University shall pay to Coach supplemental compensation in an amount equal to one-thirteenth (1/13) of Coach's Annual Salary during the fiscal year in which the championship or NCAA tournament eligibility are achieved. The University shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.

3.2.2 Each year the Team is ranked in the top 25 in any published national final poll of intercollegiate men's basketball teams and if Coach continues to be employed as University's head men's basketball coach as of the ensuing July 1st, the University shall pay Coach supplemental compensation in an amount equal to one-thirteenth (1/13) 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.

3.2.3 Each year Coach is named Conference Coach of the Year, and if Coach continues to be employed as University's head men's basketball coach as of the ensuing July 1st, Coach shall receive supplemental compensation of \$5,000. 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 in an amount up equal to one-twenty-sixth (1/26) of Coach's Annual Salary 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: NCAA Academic Progress Rate (APR); 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 students; the conduct of Team members on the University campus, at authorized University activities, in the community, and elsewhere. Any such supplemental compensation paid to Coach shall be accompanied with a detailed justification for the supplemental compensation based on the factors listed above and such justification shall be separately reported to the Board of Regents as a document available to the public under the Idaho Public Records Act.

~~3.2.4 Each year Coach shall be eligible to receive supplemental compensation in an amount up to —(amount or computation)— based on the overall development of the intercollegiate (men's/women's) —(Sport)— program; ticket sales; fundraising; outreach by Coach to various constituency groups, including University (College) students, staff, faculty, alumni and boosters; and any other factors the~~

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JUNE 14-16, 2006

~~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.~~

3.2.5 The Coach shall receive the sum of \$45,000 from the University or the University'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). Each year, one-half of this sum shall be paid prior to the first regular season men's basketball game, and one-half shall be paid no later than two weeks after the last regular season men's basketball game or post season match, whichever occurs later. Coach's right to receive the second half of such payment shall vest on the date of the Team's last regular season or post-season competition, whichever occurs later, and contingent upon Coach's continued employment as of that date. Coach's right to receive any such media payment under this Paragraph is expressly contingent on Coach's compliance with University's financial stewardship policies as set forth in University's Administrative Procedures Manual Chapter 25. Agreements requiring the Coach to participate in Programs related to his duties as an employee of University are the property of the University. The University 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 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 endorsements which are broadcast on radio or television that conflict with those broadcast on the University's designated media outlets.

3.2.6 If Coach continues to be employed as University's head men's basketball coach as of the ensuing July 1st, Coach shall receive supplemental compensation of \$5,000 for 14 victories; an additional \$5,000 for 17 victories; and an additional \$5,000 for 20 victories. The victories will include contests in both non-conference and conference competition. The University shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.

3.2.~~7~~6 Coach agrees that the University has the exclusive right to operate youth basketball camps on its campus using University facilities. The University shall allow Coach the opportunity to earn supplemental compensation by assisting with the University's camps in Coach's capacity as a University employee. Coach hereby agrees to assist in the marketing, supervision, and general administration of the University's youth basketball 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 youth basketball camps, the University shall pay Coach the remaining

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income from the youth basketball camps, less \$500, after all claims, insurance, and expenses of such camps have been paid.

3.2.87 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 recognizes that the University is negotiating or has entered into an agreement with Adidas to supply the University with athletic footwear, apparel and/or equipment. Coach agrees that, upon the University's reasonable request, Coach will consult with appropriate parties concerning Adidas product's design or performance, shall act as an instructor at a clinic sponsored in whole or in part by Adidas, or give a lecture at an event sponsored in whole or in part by Adidas, 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 men's basketball coach. In order to avoid entering into an agreement with a competitor of Adidas, 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 and/or equipment products, including Adidas, and will not participate in any messages or promotional appearances which contain a comparative or qualitative description of athletic footwear, apparel or equipment products.

3.3 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;

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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

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 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 of the Department; (e) [NCAA](#) rules and regulations; and (f) the rules and regulations of the [men's basketball](#) 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

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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 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 Regents](#).

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 unreasonably be withheld.

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 violation 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;

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- d) Ten (10) working days' absence of Coach from duty without the University's consent;
- 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.

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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.

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, Coach's current salary as set forth in section 3.1.1(a)(i) or (ii), 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 reasonably 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.

5.2.3 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 Coach may lose certain benefits, supplemental compensation, or outside compensation relating to his employment with University, which damages are extremely difficult to determine with certainty. The parties further agree that the payment of such liquidated damages by University and the acceptance thereof by Coach shall constitute adequate and reasonable compensation to Coach for the damages and injury suffered by Coach because of such termination by University. The liquidated damages are not, and shall not be construed to be, a penalty.

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

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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. If the Coach terminates this Agreement for his convenience he shall pay to the University, 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 March 26, 2007, the sum of \$50,000.00; (b) if the Agreement is terminated between March 27, 2007 and March 26, 2008 inclusive, the sum of \$40,000.00; (c) if the Agreement is terminated between March 27, 2008 and March 25, 2009 inclusive, the sum of \$25,000.00. ~~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.

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 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 shall constitute adequate and reasonable compensation to University 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.

5.3.5 Except as provided elsewhere in this Agreement, if Coach terminates this Agreement for convenience, he shall forfeit his right to receive all supplemental compensation and other payments unpaid as of the date Coach gives notice of termination, unless Coach's right to receive those payments has vested pursuant to the terms of this Agreement.

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

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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 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 of the University's Board of Regents 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 Regents, 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 Board of Regents and University's rules regarding financial exigency.

6.2 University Property. All personal property (excluding vehicle(s) provided through the Vandal Wheels program), material, and articles of information, including,

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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.

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 inability), 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

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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:

the University: Director of Athletics
 University of Idaho
 P.O. Box 442302
 Moscow, Idaho 83844-2302

with a copy to: President
 University of Idaho
 P.O. Box 443151
 Moscow, ID 83844-3151

the Coach: George Pfeifer
 Last known address on file with
 University's Human Resource Services

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 University's Board of Regents.

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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. 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

Timothy P. White, President Date

George Pfeifer Date

Approved by the Board of Regents on the _____ day of _____, 2006.

EMPLOYMENT AGREEMENT

This Employment Agreement (Agreement) is entered into by and between the University of Idaho (University), and George Pfeifer (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 men's basketball 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 that the opportunity to earn supplemental compensation as provided in sections 3.2.1 through 3.2.8 shall cease.

ARTICLE 2

2.1. Term. This Agreement is for three (3) years, commencing on March 27, 2006, and terminating, without further notice to Coach, on March 26, 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 University's Board of Regents. 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 as follows:
 - i. From March 27, 2006 through March 26, 2008: \$100,006.40 per year;
 - ii. From March 27, 2008 through March 26, 2009: \$110,011.20.

The above salary amounts are payable in biweekly installments in accordance with normal University procedures. The salary increase in paragraph ii. above is expressly contingent upon the following: (1) academic achievement and behavior of Team members, as described in Paragraph 3.2.4 of this Agreement; (2) appropriate behavior by, and supervision of, all assistant coaches, as determined by the Director; (3) compliance with the University's financial stewardship policies as set forth in University's Administrative Procedures Manual Chapter 25; and (4) approval by the President, in the President's sole discretion.

- b) The opportunity to receive such employee benefits as the University provides generally to non-faculty exempt employees; and
- 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.

3.2 Supplemental Compensation

3.2.1. Each year the Team is the conference champion or co-champion or becomes eligible for the NCAA tournament pursuant to NCAA Division I guidelines, and if Coach continues to be employed as University's head men's basketball coach as of the ensuing July 1st, the University shall pay to Coach supplemental compensation in an amount equal to one-thirteenth (1/13) of Coach's Annual Salary during the fiscal year in which the championship or NCAA tournament eligibility are achieved. The University

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shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.

3.2.2 Each year the Team is ranked in the top 25 in any published national final poll of intercollegiate men's basketball teams and if Coach continues to be employed as University's head men's basketball coach as of the ensuing July 1st, the University shall pay Coach supplemental compensation in an amount equal to one-thirteenth (1/13) 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.

3.2.3 Each year Coach is named Conference Coach of the Year, and if Coach continues to be employed as University's head men's basketball coach as of the ensuing July 1st, Coach shall receive supplemental compensation of \$5,000. 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 in an amount up equal to one-twenty-sixth (1/26) of Coach's Annual Salary 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: NCAA Academic Progress Rate (APR); 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 students; the conduct of Team members on the University campus, at authorized University activities, in the community, and elsewhere. Any such supplemental compensation paid to Coach shall be accompanied with a detailed justification for the supplemental compensation based on the factors listed above and such justification shall be separately reported to the Board of Regents as a document available to the public under the Idaho Public Records Act.

3.2.5 The Coach shall receive the sum of \$45,000 from the University or the University'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). Each year, one-half of this sum shall be paid prior to the first regular season men's basketball game, and one-half shall be paid no later than two weeks after the last regular season men's basketball game or post season match, whichever occurs later. Coach's right to receive the second half of such payment shall vest on the date of the Team's last regular season or post-season competition, whichever occurs later, and contingent upon Coach's continued employment as of that date. Coach's right to receive any such media payment under this Paragraph is expressly contingent on Coach's compliance with University's financial stewardship policies as set forth in University's Administrative Procedures Manual Chapter 25.

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Agreements requiring the Coach to participate in Programs related to his duties as an employee of University are the property of the University. The University 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 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 endorsements which are broadcast on radio or television that conflict with those broadcast on the University's designated media outlets.

3.2.6 If Coach continues to be employed as University's head men's basketball coach as of the ensuing July 1st, Coach shall receive supplemental compensation of \$5,000 for 14 victories; an additional \$5,000 for 17 victories; and an additional \$5,000 for 20 victories. The victories will include contests in both non-conference and conference competition. The University shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.

3.2.7 Coach agrees that the University has the exclusive right to operate youth basketball camps on its campus using University facilities. The University shall allow Coach the opportunity to earn supplemental compensation by assisting with the University's camps in Coach's capacity as a University employee. Coach hereby agrees to assist in the marketing, supervision, and general administration of the University's youth basketball 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 youth basketball camps, the University shall pay Coach the remaining income from the youth basketball camps, less \$500, after all claims, insurance, and expenses of such camps have been paid.

3.2.7 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 recognizes that the University is negotiating or has entered into an agreement with Adidas to supply the University with athletic footwear, apparel and/or equipment. Coach agrees that, upon the University's reasonable request, Coach will consult with appropriate parties concerning Adidas product's design or performance, shall act as an instructor at a clinic sponsored in whole or in part by Adidas, or give a lecture at an event sponsored in whole or in part by Adidas, 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

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or hinder his duties and obligations as head men's basketball coach. In order to avoid entering into an agreement with a competitor of Adidas, 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 and/or equipment products, including Adidas, and will not participate in any messages or promotional appearances which contain a comparative or qualitative description of athletic footwear, apparel or equipment products.

3.3 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

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 applicable laws, policies, rules, and regulations include: (a) State Board of Education

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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 of the Department; (e) NCAA rules and regulations; and (f) the rules and regulations of the men's basketball 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 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 Regents.

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

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approval shall not unreasonably be withheld.

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 violation 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 without the University's consent;
- 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

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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.

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, Coach's current salary as set forth in section 3.1.1(a)(i) or (ii), 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

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Agreement ends or until Coach obtains reasonably 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.

5.2.3 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 Coach may lose certain benefits, supplemental compensation, or outside compensation relating to his employment with University, which damages are extremely difficult to determine with certainty. The parties further agree that the payment of such liquidated damages by University and the acceptance thereof by Coach shall constitute adequate and reasonable compensation to Coach for the damages and injury suffered by Coach because of such termination by University. The liquidated damages are not, and shall not be construed to be, a penalty.

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. If the Coach terminates this Agreement for his convenience he shall pay to the University, 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 March 26, 2007, the sum of \$50,000.00; (b) if the Agreement is terminated between March 27, 2007 and March 26, 2008 inclusive, the sum of \$40,000.00; (c) if the Agreement is terminated between March 27, 2008 and March 25, 2009 inclusive, the sum of \$25,000.00. 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.

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 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

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acceptance thereof by University shall constitute adequate and reasonable compensation to University 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.

5.3.5 Except as provided elsewhere in this Agreement, if Coach terminates this Agreement for convenience, he shall forfeit his right to receive all supplemental compensation and other payments unpaid as of the date Coach gives notice of termination, unless Coach's right to receive those payments has vested pursuant to the terms of this Agreement.

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 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

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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 of the University's Board of Regents 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 Regents, 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 Board of Regents and University's rules regarding financial exigency.

6.2 University Property. All personal property (excluding vehicle(s) provided through the Vandal Wheels 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.

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

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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 inability), 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:

the University: Director of Athletics
 University of Idaho
 P.O. Box 442302
 Moscow, Idaho 83844-2302

with a copy to: President
 University of Idaho
 P.O. Box 443151
 Moscow, ID 83844-3151

the Coach: George Pfeifer
 Last known address on file with
 University's Human Resource Services

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

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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 University's Board of Regents.

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. 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

Timothy P. White, President Date

George Pfeifer Date

Approved by the Board of Regents on the _____ day of _____, 2006.

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GEORGE PFEIFER - MEN'S BASKETBALL HEAD COACH - MULTI-YEAR CONTRACT			
1	MODEL CONTRACT SECTION	UI CONTRACT SECTION	JUSTIFICATION FOR MODIFICATION
2	3.1 Compensation	3.1.1.a Regular Compensation	Language allows for an initial salary of \$100,006.40 and a salary increase after two years, contingent on achievement and behavior of team members; appropriate behavior by, and supervision of, all assistant coaches; compliance with financial stewardship policies and approval by the President.
3	3.2 Supplemental Compensation	3.2.3 Supplemental Compensation	Language allows for payment of supplemental compensation for Coach of the Year.
4	3.2 Supplemental Compensation	3.2.5 Supplemental Compensation	Language allows for payment of supplemental compensation for media payment.
5	3.2 Supplemental Compensation	3.2.6 Supplemental Compensation	Language added allows for payment of supplemental compensation based on the number of victories.
6	5.3 Termination by Coach for Convenience	5.3.3 Termination of Coach for Convenience	Language clarifies the monetary remuneration if the Coach terminates this agreement.

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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SUBJECT

Compensation for the Presidents and Agency Heads for FY 2007

APPLICABLE STATUTE, RULE, OR POLICY

Idaho State Board of Education Governing Policies & Procedures, Section I.E.2.
Senate Bill 1263 (2006).

BACKGROUND

The Legislature provided state employee salary increases equivalent to 3% for FY 07, to be implemented early. SB 1263 stipulates that all increases shall be based on performance. In conformance with the Division of Financial Management (DFM) guidance, these increases were effective January 29, 2006. The motion made at the February Board meeting stated that the Board may consider granting additional compensation for FY 07, following performance reviews in May 2006.

The salary for the chief executive officer [President] for each institution is determined and approved by the State Board of Education. The agency heads and superintendent of the School for the Deaf and Blind are evaluated by the Executive Director, who makes recommendations to the Board with respect to future contracts and compensation.

DISCUSSION

Included below are individual motions for each CEO (President, Executive Director and Agency Head), to be presented at the June 2006 Board meeting.

The Board is not approving salary increases for FY 07 for the directors of the Idaho State Library or the Idaho State Historical Society, because those individuals report to their respective boards.

IMPACT

Board action will allow the CEOs to receive compensation based on their performance reviews.

STAFF COMMENTS AND RECOMMENDATIONS

The Executive Director recommends compensation for institution Presidents and Agency Heads in the motions provided.

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PROPOSED BOARD ACTION

A motion to reappoint Dr. Robert Kustra as President of Boise State University effective July 1, 2006 through June 30, 2007 at a salary of \$_____.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

AND

A motion to reappoint Dr. Timothy White as President of University of Idaho effective July 1, 2006 through June 30, 2007 at a salary of \$_____.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

AND

A motion to reappoint Dr. Dene Thomas as President of Lewis-Clark State College effective July 1, 2006 through June 30, 2007 at a salary of \$_____.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

AND

A motion to reappoint William Robertson as President of Eastern Idaho Technical College effective July 1, 2006 through June 30, 2007 at a salary of \$_____.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

AND

A motion to approve a vehicle allowance in lieu of a vehicle for certain institutional Presidents at an annual amount of \$7,200.00.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

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AND

A motion to reappoint Dwight A. Johnson as Executive Director of the Office of the State Board of Education, effective July 1, 2006, at an annual salary of \$_____.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

AND

A motion to reappoint Michael Graham as Administrator of the Division of Vocational Rehabilitation, effective July 1, 2006, at an annual salary of \$_____.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

AND

A motion to reappoint Harvey Lyter as Superintendent of the School for the Deaf and Blind, effective July 1, 2006, at an annual salary of \$_____.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

AND

A motion to reappoint Peter Morrill as General Manager of Idaho Public Television effective July 1, 2006, at an annual salary of \$_____.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

AND

A motion to reappoint Michael Rush as Administrator of the Division of Professional-Technical Education, effective July 1, 2006, at an annual salary of \$_____.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

OR

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INCLUSIVE MOTION

A motion to approve salaries and vehicle allowance, the latter where appropriate, for institutional presidents and agency heads, as specifically outlined within Tab 8, Pages 2 and 3 of the June 2006 BAHR-Human Resources agenda.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

REFERENCE – APPLICABLE STATUTE, RULE, OR POLICY

Idaho State Board of Education
Governing Policies and Procedures

Section: I Governing Policies and Procedures
Subsection E: Executive Officers

April, 2002

E. Executive Officers

2. Presidents/Agency Heads/Superintendent (also referred to as chief executive officers)

(c) The agency heads and superintendent are evaluated by the Executive Director, who makes recommendations to the Board with respect to future contracts and compensation. The Presidents are evaluated by the Board. The performance evaluation is based upon the duties outlined in the policy and mutually agreed upon goals. Final decisions with respect to future contracts are made by the Board.

c. Terms and Conditions

The Board and each chief executive officer shall sign an annual letter of agreement that documents the period of appointment, salary, and any additional terms. The Board shall evaluate the performance of each chief executive officer pursuant to the Board's evaluation policy.

d. Compensation and Benefits

The chief executive officer's annual salary shall be set and approved by the Board. The chief executive officers shall not receive personal salary or benefits or supplements from institutional foundations or other affiliated organizations except as allowed for institutional presidents pursuant to topic 3, subtopic e, below and as such is specifically approved by the Board in each instance. Additionally, the chief executive officer may not receive personal salary or benefits or supplements from other outside sources without prior Board approval.

**BUSINESS AFFAIRS AND HUMAN RESOURCES
JUNE 14-16, 2006**

REFERENCE – APPLICABLE STATUTE, RULE OR POLICY - continued

|||| LEGISLATURE OF THE STATE OF IDAHO ||||
Fifty-eighth Legislature Second Regular Session - 2006

IN THE SENATE
SENATE BILL NO. 1263

BY FINANCE COMMITTEE
AN ACT

RELATING TO APPROPRIATIONS; STATING FINDINGS OF THE LEGISLATURE;
APPROPRIATING ADDITIONAL MONEYS FOR FISCAL YEAR 2006 TO STATE AGENCIES AND
STATE INSTITUTIONS FOR A SALARY INCREASE FOR EMPLOYEES; AND DECLARING AN
EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. LEGISLATIVE FINDINGS. The Legislature finds that funding consistent and adequate employee pay increases for the past several years has been difficult given the limited resources available. As a result, the state is falling further behind competitive labor market averages each year. The current economic conditions for the state now allow for a compensation package to be considered and it is the intent of the Legislature through this act that state employees be given the first and highest priority. The Legislature and the Governor hereby recommend funding an ongoing 3% increase in personnel costs to be used for salary increases for our valued state employees. The Division of Financial Management, Division of Human Resources, and State Controller's Office shall collaborate on an appropriate date of action to execute the intent of this act. Notwithstanding the time requirements in Section 67-5309C(b)(ii), Idaho Code, all salary increases shall be based on performance. Notwithstanding any provisions to the contrary in Section 67-5309C(b), Idaho Code, when allocating salary increases, state department directors and higher education institution executives should also take into consideration market competitive rates.

SECTION 2. In addition to any other appropriation provided by law, there is hereby appropriated to the following state agencies and state institutions the following amounts to be expended for the designated programs for personnel costs only from the listed funds for the period July 1, 2005, through June 30, 2006:

	TOTAL
(1) STATE BOARD OF EDUCATION AGRICULTURAL RESEARCH AND EXTENSION SERVICE: FROM:	
General Fund	\$ 268,100
(2) STATE BOARD OF EDUCATION COLLEGES AND UNIVERSITIES: FROM:	
General Fund	\$ 2,822,400
(3) STATE BOARD OF EDUCATION COMMUNITY COLLEGES COMMUNITY COLLEGE SUPPORT: FROM:	

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General Fund \$ 153,700

(4) STATE BOARD OF EDUCATION

TOTAL

IDAHO SCHOOL FOR THE DEAF AND THE BLIND

I. CAMPUS OPERATIONS:

FROM:

General Fund \$ 47,100

II. OUTREACH SERVICES:

FROM:

General Fund \$ 18,800

TOTAL \$ 65,900

(5) STATE BOARD OF EDUCATION

OFFICE OF THE STATE BOARD OF EDUCATION:

FROM:

General Fund \$ 13,100

Federal Grant Fund 3,100

TOTAL \$ 16,200

(6) STATE BOARD OF EDUCATION

HEALTH EDUCATION PROGRAMS

I. WOJ VETERINARY EDUCATION:

FROM:

General Fund \$ 5,200

II. WWAMI MEDICAL EDUCATION:

FROM:

General Fund \$ 7,200

III. IDEP DENTAL EDUCATION:

FROM:

General Fund \$ 3,000

Unrestricted Fund 600

SUBTOTAL \$ 3,600

IV. FAMILY MEDICINE RESIDENCIES:

FROM:

General Fund \$ 4,600

TOTAL \$ 20,600

(7) STATE BOARD OF EDUCATION

IDAHO STATE HISTORICAL SOCIETY

I. HISTORIC PRESERVATION AND EDUCATION:

FROM:

General Fund \$ 13,400

Miscellaneous Revenue Fund 1,400

Federal Grant Fund 8,300

SUBTOTAL \$ 23,100

II. HISTORIC SITE MAINTENANCE AND INTERPRETATION:

FROM:

General Fund \$ 1,700

Miscellaneous Revenue Fund 1,700

SUBTOTAL \$ 3,400

TOTAL \$ 26,500

(8) STATE BOARD OF EDUCATION

STATE LIBRARY BOARD:

BUSINESS AFFAIRS AND HUMAN RESOURCES
JUNE 14-16, 2006

FROM:
General Fund \$ 18,000
Federal Grant Fund 1,800
TOTAL \$ 19,800

(9) STATE BOARD OF EDUCATION
DIVISION OF PROFESSIONAL-TECHNICAL EDUCATION
I. STATE LEADERSHIP AND TECHNICAL ASSISTANCE:
TOTAL

FROM:
General Fund \$ 15,400
Federal Grant Fund 2,000
SUBTOTAL \$ 17,400

II. GENERAL PROGRAMS:

FROM:
General Fund \$ 2,100
Federal Grant Fund 1,000
SUBTOTAL \$ 3,100

III. POSTSECONDARY PROGRAMS:

FROM:
General Fund \$316,400

IV. CAREER INFORMATION SYSTEM:

FROM:
General Fund \$ 1,700
Miscellaneous Revenue Fund 1,600
Federal Grant Fund 700
SUBTOTAL \$ 4,000
TOTAL \$ 340,900

(10) STATE BOARD OF EDUCATION
IDAHO EDUCATIONAL PUBLIC BROADCASTING SYSTEM:

FROM:
General Fund \$ 7,400
Miscellaneous Revenue Fund 7,200
TOTAL \$ 14,600

(11) STATE BOARD OF EDUCATION
SPECIAL PROGRAMS

I. FOREST UTILIZATION RESEARCH:

FROM:
General Fund \$ 5,200

II. GEOLOGICAL SURVEY:

FROM:
General Fund \$ 8,100

III. MUSEUM OF NATURAL HISTORY:

FROM:
General Fund \$ 5,100

IV. SMALL BUSINESS DEVELOPMENT CENTERS:

FROM:
General Fund \$ 3,100

V. IDAHO COUNCIL FOR ECONOMIC EDUCATION:

FROM:
General Fund \$ 600

VI. TECHHELP:
FROM:

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General Fund	\$ 1,800
TOTAL	\$ 23,900

(12) SUPERINTENDENT OF PUBLIC INSTRUCTION
STATE DEPARTMENT OF EDUCATION:

FROM:

General Fund	\$ 29,800
Indirect Cost Recovery Fund	5,300
Driver's Education Fund	1,500
Public Instruction Fund	5,700
Miscellaneous Revenue Fund	1,500
TOTAL	

Federal Grant Fund	36,400
TOTAL	\$ 80,200

(13) STATE BOARD OF EDUCATION
VOCATIONAL REHABILITATION

I. COMMUNITY SUPPORTED EMPLOYMENT:

FROM:

General Fund	\$ 1,200
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II. VOCATIONAL REHABILITATION:

FROM:

Federal Grant Fund	\$ 73,100
TOTAL	\$ 74,300

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