

**BUSINESS AFFAIRS AND HUMAN RESOURCES
AUGUST 9-10, 2007**

TAB	DESCRIPTION	ACTION
UNIVERSITY OF IDAHO		
1	Employment Agreement - Co-Head Coach, Track and Cross Country Teams	Motion to approve
UNIVERSITY OF IDAHO		
2	Multi-Year Contract Addendum - Director of Athletics	Motion to approve

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BUSINESS AFFAIRS AND HUMAN RESOURCES
AUGUST 9-10, 2007

INSTITUTION/AGENCY AGENDA
UNIVERSITY OF IDAHO

SUBJECT

The University of Idaho requests approval of a multi-year employment agreement for co-head coach of its track and cross country teams

REFERENCE

10/17/2005

Original multi-year agreement approved by Board

APPLICABLE STATUTE, RULE, OR POLICY

Idaho State Board of Education Governing Policies and Procedures, Sections II.B.3.c. and II.H.

DISCUSSION

The University of Idaho intends to enter into a new employment agreement with its current co-head coach of its track and cross country teams. This proposed agreement is essentially an extension of the previous agreement, with some changes primarily with respect to supplemental compensation. The primary terms of the proposed agreement are set forth below, and the entire agreement and matrix comparison to the Board model agreement are attached.

IMPACT

The term of the employment agreement is five years, commencing on August 13, 2007, and terminating on August 12, 2012. The annual base salary is \$47,049.60. There is an annual media payment of \$8,000 and the following incentive/supplemental compensation provisions:

Conference champions = \$1,000 per team

Top 20 in NCAA championships = \$1,000 per team

Individual National Champions = \$500 per individual champion

Academic achievement and behavior of team = \$250 - \$450 per team, depending on national rank within sport of cumulative APR

Conference Coach of the Year = \$1,000 per team

Income from summer youth camps after all expenses paid

ATTACHMENTS

Attachment 1 – Employment Contract (redline version)

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Attachment 2 – Contract Comparison Matrix

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STAFF COMMENTS AND RECOMMENDATIONS

Staff has reviewed the contract and matrix and recommends approval.

BUSINESS AFFAIRS AND HUMAN RESOURCES
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INSTITUTION/AGENCY AGENDA
UNIVERSITY OF IDAHO – continued

BOARD ACTION

A motion to approve the request by University of Idaho to offer a multi-year contract for Wayne Phipps, in the form presented to the Board.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

BUSINESS AFFAIRS AND HUMAN RESOURCES
AUGUST 9-10, 2007

INSTITUTION/AGENCY AGENDA
UNIVERSITY OF IDAHO – continued

Multi-Year Employment Agreement

Wayne Phipps

Position Title	Head Coach –Track and Cross Country
FTE	1.0
Term	60 months
Term of Contract	August 13, 2007-August 12, 1012
Proposed Annual Salary	\$47,049.60
Funding Source	Appropriated Funds
Area/Department of Assignment	Athletics
Additional Compensation	Standard UI and Athletics Department fringe benefits; supplemental compensation as follows: conference champions = \$1,000 per team; top 20 in NCAA championships = \$1,000 per team; individual national champions = \$500 per individual champion; academic achievement and behavior of team = \$250 - \$450 per team; conference coach of the year = \$1,000 per team; \$8,000 for media and public appearances; income from camps after all expenses paid.
Justification	Extension/modification of existing Contract

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EMPLOYMENT AGREEMENT

This Employment Agreement (Agreement) is entered into by and between the University of Idaho (University), and Wayne Phipps (Coach).

ARTICLE 1

1.1. Employment. Subject to the terms and conditions of this Agreement, the University shall employ Coach as the [co-head coach of its intercollegiate track and field and cross country](#) ~~(Sport)~~ teams (Teams). 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 Teams 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 Teams, 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 [five \(5 \)](#) years, commencing on [August 13, 2007](#), and terminating, without further notice to Coach, on [August 12, 2012](#), 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.

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 \$47,049.60 per year, payable in biweekly installments in accordance with normal University procedures. Coach will be eligible to receive University-wide changes in employee compensation approved by the Director and President;
- 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 one of the Teams is the conference champion or co-champion and if Coach continues to be employed as University's co-head coach of its intercollegiate track and field and cross country teams as of the ensuing July 1st, the University shall pay to Coach supplemental compensation of \$1,000 during the fiscal year in which the championship is achieved. If more than one Team is the conference champion or co-champion, the amount of supplemental compensation will be \$1,000 for each conference champion or co-champion. The University shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.

3.2.2. Each year one of the teams finishes in the top 20 in the NCAA championships and if Coach continues to be employed as University's co-head coach of its intercollegiate track and field and cross country teams as of the ensuing July 1st, the University shall pay to Coach supplemental compensation of \$1,000. If more than one Team places in the Top 20 at the NCAA championships, the Coach will earn supplemental compensation of \$1,000 for each Top 20 finish. The University shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.

3.2.3. For each individual National Champion in intercollegiate track and field and cross country and if Coach continues to be employed as University's co-head coach of its intercollegiate track and field and cross country teams as of the ensuing July 1st, the University shall pay to Coach supplemental compensation of \$500 for each individual champion.

~~3.2.3 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.~~

3.2.4 Each year Coach shall be eligible to receive supplemental compensation based on the academic achievement of Team members if the either Team's cumulative academic progress rate (APR) ranks nationally within the applicable sport above the 50th percentile as follows:

National rank within sport
50th - 60th % = \$250 per team
60th - 70th % = \$300 per team
70th – 80th % = \$400 per team
80th % or above = \$450 per team

Any such supplemental compensation paid to Coach shall be accompanied with a 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 Each year Coach is named Conference Coach of the Year or Conference Co-Coach of the year, and if Coach continues to be employed as University's co-head track and field and cross country coach as of the ensuing July 1st, Coach shall receive supplemental compensation of \$1,000. If the Coach is named Conference Coach of the Year or Conference Co-Coach of the year for both the men's and women's track and field and cross country teams, Coach will receive \$1,000 for each award. The University shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.

3.2.6 The Coach shall receive the sum of \$8,000 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 indoor track meet, and one-half shall be paid no later than two weeks after the last outdoor track and field meet. 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, provided Coach has fully participated in media programs and public appearances through that date. Coach's right to receive any such media

payment under this Paragraph is expressly contingent upon the following: (1) academic achievement and behavior of Team members; (2) appropriate behavior by, and supervision of, all assistant coaches, as determined by the Director; and (3) 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 that are broadcast on radio or television that conflict with those broadcast on the University's designated media outlets.

3.2.7 Coach agrees that the University has the exclusive right to operate track and field and cross country 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 track and field 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 track and field and cross country camps, the University shall pay Coach the remaining income from the camps, after all claims, insurance, and expenses of such camps have been paid.

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 recognizes that the University 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 co-head track and field and cross country 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 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 of the Department; (e) NCAA rules and regulations; and (f) the rules and regulations of the volleyball 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 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 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 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 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.

5.2.3 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 June 1, 2009, the sum of \$15,000; (b) if the Agreement is terminated between June 2, 2009 and June 1, 2010 inclusive, the sum of \$10,000; (c) if the Agreement is terminated between June 2, 2010 and June 1, 2011 inclusive, the sum of \$5,000; (d) if the Agreement is terminated between June 2, 2011, and June 1, 2012 inclusive, the sum of \$5,000. 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 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.

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, 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 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: Wayne Phipps
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.

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

Tim White, President Date

Wayne Phipps, Coach Date

Approved by the Board of Regents on the ____ day of August, 2007.

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**WAYNE PHIPPS – TRACK AND FIELD AND CROSS COUNTRY COACH
MULTI-YEAR CONTRACT**

Model Contract Section	UI Contract Section	Modification/Justification for Modification
3.1.1 Regular Compensation	3.1.1 Regular Compensation	Language allows for a salary of \$47,049.60 per year. Coach will be eligible for University-wide changes in employee compensation as approved by Director and President.
3.2. Supplemental Compensation	3.2.2 Supplemental Compensation	Language allows for payment of supplemental compensation of \$1,000 per team if team finishes in top 20 in NCAA championships.
3.2 Supplemental Compensation	3.2.3 Supplemental Compensation	Language allows for supplemental compensation of \$500 per individual team member for individual national champions.
3.2 Supplemental Compensation	3.2.4 Supplemental Compensation	Language allows for supplemental compensation for academic achievement based on percentile ranking of team's cumulative NCAA academic progress rate (ranges from \$250 per team to \$450 per team).
3.2 Supplemental Compensation	3.2.5 Supplemental Compensation	Language allows for supplemental compensation of \$1,000 if coach is named conference coach of the year.
3.2 Supplemental Compensation	3.2.6 Supplemental Compensation	Language divides media payment into two separate payments with different vesting time periods. Media payment is contingent on appropriate supervision of assistant coaches and compliance with financial stewardship policies.
5.3 Termination by Coach for Convenience	5.3.3 Termination by Coach for Convenience	Language clarifies the monetary remuneration if coach terminates agreement.

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BUSINESS AFFAIRS AND HUMAN RESOURCES
AUGUST 9-10, 2007

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

January 2005

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 (including any reactivated position that requires a new “set-up” action), 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

- (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

BUSINESS AFFAIRS AND HUMAN RESOURCES
AUGUST 9-10, 2007

policies (see subsection G.) Any exceptions to the approved criteria also require Board approval.

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

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

January 2005

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.

2. Agreements For One Year Or Less

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 one (1) year or less without Board approval. Each contract 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.

3. Academic Incentives

Each contract for a head coach shall include incentives, separate from any other incentives, based upon the academic performance of the student athletes whom the coach supervises. The chief executive officer of the institution shall determine such incentives. Each institution shall report to the Board annually concerning each coach's performance relative to the academic incentives of the coach's contract.

4. Part-time Coaches Excepted

The chief executive officer of an institution is authorized to hire part-time head coaches as provided in the policies of the institution. Applicable Board policies shall be followed.

BUSINESS AFFAIRS AND HUMAN RESOURCES
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5. Assistant Coaches

The chief executive officer of the institution is authorized to hire assistant coaches as provided in the policies of the institution. Applicable Board policies shall be followed.

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AUGUST 9-10, 2007

INSTITUTION/AGENCY AGENDA
UNIVERSITY OF IDAHO

SUBJECT

University of Idaho requests approval of a multi-year contract addendum for Robert Spear, Director of Athletics

REFERENCE

8/12/2004

Original multi-year contract approved by Board

APPLICABLE STATUTE, RULE, OR POLICY

Idaho State Board of Education Governing Policies & Procedures, Section II.B.3.c. and II.H.

DISCUSSION

University of Idaho intends to supplement the Employment Contract for Robert Spear (see Attachment 1). The base employment contract will remain unchanged. This action represents a five year contract that in essence extends from the existing termination date of August 2008 to August 2012.

The term of the proposed addendum is five years, which will expire on August 12, 2012. The annual salary is \$165,048 with supplemental compensation (media payment) of \$15,000 per year.

IMPACT

This addendum for the Athletic Director increases the annual salary and supplemental compensation as well as extends the existing term. Funding for the position comes from appropriated funds.

ATTACHMENTS

Attachment 1 – Robert Spear Employment Agreement
approved by Board on August 12, 2004

Page 3

Attachment 2 – Proposed Addendum to Employment Agreement

Page 15

STAFF COMMENTS AND RECOMMENDATIONS

Staff has reviewed the addendum and recommends approval.

BOARD ACTION

A motion to approve the request by University of Idaho to offer a multi-year contract addendum for Robert Spear, Athletics Director, in the form presented to the Board.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

BUSINESS AFFAIRS AND HUMAN RESOURCES
AUGUST 9-10, 2007

INSTITUTION / AGENCY AGENDA
UNIVERSITY OF IDAHO – continued

Multi-Year Contract Addendum

Rob Spear

Position Title	Director of Athletics
FTE	1.0
Term	60 months
Term of Contract	August 13, 2007-August 12, 2012
Proposed Annual Salary	\$165,048.00
Funding Source	Appropriated Funds
Area/Department of Assignment	Athletics
Additional Compensation	Standard UI and Athletics Department fringe benefits; \$15,000 per year for media and public appearance,
Justification	Addendum to existing contract

EMPLOYMENT AGREEMENT

This Employment Agreement (Agreement) is entered into by and between the Regents of the University of Idaho (University), and Robert Spear (Director).

ARTICLE 1

1.1. Employment. Subject to the terms and conditions of this Agreement, the University shall employ Director as the director of its intercollegiate athletics program (Program). Director's title shall be "Director of Athletics." Director represents and warrants that Director is fully qualified to serve, and is available for employment, in this capacity.

1.2. Reporting Relationship. Director shall report and be responsible directly to the University's President or the President's designee (collectively "President"). Director shall abide by the reasonable instructions of the President and shall confer with the President on all major administrative matters.

1.3. Duties. Director shall manage and supervise the Program and shall perform such other duties in relation to the Program or the University as the President may assign and as may be described elsewhere in this Agreement. The University shall have the right, at any time upon 14 days' written notice, to reassign Director to duties at the University other than as Director of the Program, provided that Director's compensation and benefits shall not be affected by any such reassignment, except that the opportunity to earn supplemental compensation as provided in section 3.2 shall cease.

ARTICLE 2

2.1. Term. This Agreement is for a fixed-term appointment of four (4) years, commencing on August 16, 2004 and terminating, without further notice to Director, on August 15, 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 Director, 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 Director a claim to tenure in employment, nor shall Director's service pursuant to this agreement count in any way toward tenure at the University.

ARTICLE 3

3.1. Regular Compensation.

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

- a) An annual salary of \$135,000 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 Regents;
- 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. Director hereby agrees to abide by the terms and conditions, as now existing or hereafter amended, of such employee benefits.

Director understands and agrees that University is in the process of reviewing and clarifying policies and procedures regarding leave without pay, or temporary furlough, when warranted by financial conditions. If leave without pay or temporary furlough were imposed, Director's actual salary would be lower than the annual salary set forth in Paragraph 3.1.1 (a) above. In no event would mandatory leave without pay or temporary furlough exceed fifteen (15) days per year.

3.2. Supplemental Compensation. The Director shall receive the sum of \$5,000.00 from the University or the University's designated media outlet(s) or a combination thereof each University fiscal year during the term of this Agreement in compensation for participation in media programs and public appearances (collectively "Appearances"). Director's right to receive such a payment shall vest on January 1st of each fiscal year of this Agreement and is expressly contingent on Director's compliance with University's financial stewardship policies as set forth in University's Administrative Procedures Manual Chapter 25. This sum shall be paid in one lump sum after January 1st of each year. Agreements requiring the Director to participate in Appearances 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 Director. Director agrees to cooperate with the University in order for the Appearances to be successful and agrees to provide his services to and perform on the Appearances

and to cooperate in their production, broadcasting, and telecasting. It is understood that Director shall not appear without the prior written approval of the President on any competing radio or television program (including but not limited to a 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 President, Director 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.

3.3. Director 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 Director, during official practices and games and during times when Director or Program participants are being filmed by motion picture or video camera or posing for photographs in their capacity as representatives of University. Director 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. Director agrees that, upon the University's reasonable request, Director will consult with appropriate parties concerning an 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, Director shall retain the right to decline such appearances as Director reasonably determines to conflict with or hinder his duties and obligations as Director. In order to avoid entering into an agreement with a competitor of Adidas, Director shall submit all outside consulting agreements to the President for review and approval prior to execution. Director shall also report such outside income to the University in accordance with NCAA rules and University and Board of Regents policy. Director further agrees that Director 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.

3.4. Professional Development Opportunity. During the period of February 1 through August 1 of each year of this Agreement, University agrees to fund at least one mutually agreeable continuing professional development opportunity for Director in the area of university advancement and fund raising.

3.5. General Conditions of Compensation. All compensation provided by the University to Director is subject to deductions and withholdings as required by law or the terms and conditions of any fringe benefit in which Director participates. However, if any fringe benefit is based in whole or in part upon the compensation provided by the University to Director, 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. Director's Specific Duties and Responsibilities. In consideration of the compensation specified in this Agreement, Director, in addition to the obligations set forth elsewhere in this Agreement, shall:

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

4.1.2. Develop and implement programs and procedures with respect to the management and operation of the Department and the management, performance, evaluation, recruitment, and training of Department personnel;

4.1.3. Observe and uphold all academic standards, requirements, and policies of the University and work with Department personnel to encourage Program participants to perform to their highest academic potential and to graduate in a timely manner;

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 Director's assistant and associate directors, any other employees for whom Director is administratively responsible, and the participants in the Program know, recognize, and comply with all such laws, policies, rules and regulations; and immediately report to the President and to the Department's compliance personnel if Director 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. Director 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 Faculty-Staff 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 conferences of which the University is a member.

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

4.3. NCAA Rules. In accordance with NCAA rules, Director shall obtain prior written approval from the 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 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 Director 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. Director shall have the responsibility and the sole authority to recommend to the President the hiring and termination of all Department personnel, but, except as delegated by the President, the decision to hire or terminate shall be made by the President and shall, when necessary or appropriate, be subject to the approval of University's Board of Regents.

4.5. Scheduling. Director shall be responsible for the scheduling of athletic games and events but shall consult with the President as the President requests.

4.6. Other Opportunities. Director shall not, under any circumstances, interview for, negotiate for, or accept employment as a director of athletics at any other institution of higher education requiring performance of duties prior to the expiration of this Agreement, without the prior approval of the President. Such approval shall not unreasonably be withheld.

ARTICLE 5

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

5.1.1. In addition to the definitions contained in the applicable policies, rules and regulations of the University, the University's governing board, the conference, or the NCAA, University and Director 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 Director's duties under this agreement or the refusal or unwillingness of Director to perform such duties in good faith and to the best of Director's abilities;

- b) The failure of Director 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, as determined by the University, by Director of any applicable law or the policies, rules or regulations of the University, the University's governing board, the conference or the NCAA;
- d) Ten (10) working days' absence of Director from duty without the University's consent;
- e) Any conduct of Director 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 Director to represent the University and its athletic programs positively in public and private forums;
- g) The failure of Director 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 Director 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 any Department employee, any other employees for whom Director is administratively responsible, or a Participant in the Program; 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 any employees for whom Director is administratively responsible, or a Participant in the Program if Director 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 President shall provide Director 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. Director shall then have an opportunity to respond. After Director responds or fails to respond, University shall notify Director 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 Director, 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, Director 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.

5.2. Termination of Director 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 Director.

5.2.2. In the event that University terminates this Agreement for its own convenience, University shall be obligated to pay Director, 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 Director obtains reasonably comparable employment, whichever occurs first. In addition, Director 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 Director obtains reasonably comparable employment, whichever occurs first. Director 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 Director 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 Director shall constitute adequate and reasonable compensation to Director for the damages and injury suffered by Director because of such termination by University. The liquidated damages are not, and shall not be construed to be, a penalty.

5.3. Termination by Director for Convenience.

5.3.1. The Director recognizes that his promise to work for University for the entire term of this Agreement is of the essence of this Agreement. The Director 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 Director, 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 Director 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 Director terminates this Agreement for his convenience and accepts a position as athletic director at another institution within six (6) months of termination of this Agreement, 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 August 15, 2005, the sum of \$5,000.00; (b) if the Agreement is terminated between August 16, 2005 and August 15, 2006 inclusive, the sum of \$2,500.00; (c) if the Agreement is terminated between August 16, 2006 and August 15, 2007 inclusive, the sum of \$2,000.00; (d) if the Agreement is terminated between August 16, 2007 and August 15, 2008 inclusive, the sum of \$1,500.00. 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 Director, in addition to potentially increased compensation costs if Director 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 Director 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 Director. The liquidated damages are not, and shall not be construed to be, a penalty. This section 5.3.4 shall not apply if Director terminates this Agreement because of a material breach by the University.

5.3.5. Except as provided elsewhere in this Agreement, if Director 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 Director.

5.4.1. Notwithstanding any other provision of this Agreement, this Agreement shall terminate automatically if Director 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 Director, or dies.

5.4.2. If this Agreement is terminated because of Director's death, Director's salary and all other benefits shall terminate as of the last day worked, except that the Director'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 Director's estate or beneficiaries thereunder.

5.4.3. If this Agreement is terminated because the Director 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 Director, all salary and other benefits shall terminate, except that the Director 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 Director. In the event of termination, suspension, or reassignment, Director agrees that Director 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 Director 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 Director, regardless of the circumstances.

5.7. Waiver of Rights. Because the Director 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 Director, or terminates this Agreement for good or adequate cause or for convenience, Director 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 and the President; 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, 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 Director by the University or developed by Director on behalf of the University or at the University's direction or for the University's use or otherwise in connection with Director'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, Director shall immediately cause any such personal property, materials, and articles of information in Director's possession or control to be delivered to the University.

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 Director hereby consents and agrees that this document may be released and made available to the public after it is signed by the Director. The Director 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: Office of the President
University of Idaho
P.O. Box 443151
Moscow, ID 83844-3151
Phone: (208) 885-6365
Fax: (208) 885-6558

with a copy to: Office of University Counsel
University of Idaho
P.O. Box 443158
Moscow, ID 83844-3158
Phone: (208) 885-6125
Fax: (208) 885-8931

the Director: Robert Spear
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 Director 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.

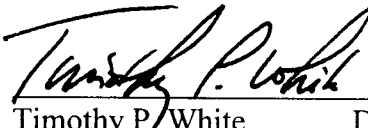
6.14. No Third Party Beneficiaries. There are no intended or unintended third party beneficiaries to this Agreement.

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.

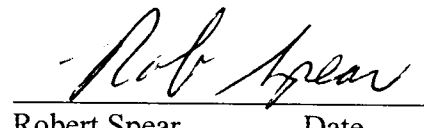
6.16. Opportunity to Consult with Attorney. The Director acknowledges that he has had the opportunity to consult and review this Agreement with an attorney. Accordingly, in all cases, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against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

UNIVERSITY



Timothy P. White Date
President

DIRECTOR



Robert Spear Date
Director, Department of Athletics

Approved by the Board of Regents on the 12th day of August, 2004.

ADDENDUM TO EMPLOYMENT CONTRACT

This Addendum supplements the Employment Agreement entered into between the Regents of the University of Idaho (University), and Robert Spear (Director), which was approved by the Regents on August 12, 2004. The following terms are considered a part of the Employment Agreement and are incorporated therein by reference, with all other provisions of the Employment Agreement not addressed herein remaining unchanged. The additional terms are as follows:

- 2.1. Term. This Agreement is for a fixed-term appointment of five (5) years, commencing on August 13, 2007 and terminating, without further notice to Director, on August 12, 2012, unless sooner terminated in accordance with other provisions of this Agreement.
- 3.1.1(a). Regular Compensation. An annual salary of \$165,048 per year, payable in biweekly installments in accordance with normal University procedures, and such salary increases as may be determined appropriate by the President.
- 3.2 Supplemental Compensation. The Director shall receive the sum of \$15,000.00 from the University or the University's designated media outlet(s) or a combination thereof each University fiscal year during the term of this Agreement in compensation for participation in media programs and public appearances.

UNIVERSITY

DIRECTOR

 Timothy P. White Date
 President

 Robert Spear Date
 Director, Department of Athletics

Approved by the Board of Regents on the ____ day of August, 2007.

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BUSINESS AFFAIRS AND HUMAN RESOURCES
AUGUST 9-10, 2007

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

January 2005

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 (including any reactivated position that requires a new “set-up” action), 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

- (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.

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

BUSINESS AFFAIRS AND HUMAN RESOURCES
AUGUST 9-10, 2007

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 January 2005

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.

2. Agreements For One Year Or Less

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 one (1) year or less without Board approval. Each contract 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.

3. Academic Incentives

Each contract for a head coach shall include incentives, separate from any other incentives, based upon the academic performance of the student athletes whom the coach supervises. The chief executive officer of the institution shall determine such incentives. Each institution shall report to the Board annually concerning each coach's performance relative to the academic incentives of the coach's contract.

4. Part-time Coaches Excepted

The chief executive officer of an institution is authorized to hire part-time head coaches as provided in the policies of the institution. Applicable Board policies shall be followed.

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5. Assistant Coaches

The chief executive officer of the institution is authorized to hire assistant coaches as provided in the policies of the institution. Applicable Board policies shall be followed.