

**BUSINESS AFFAIRS AND HUMAN RESOURCES
DECEMBER 8, 2011**

BOISE STATE UNIVERSITY

SUBJECT

Boise State University seeks approval of a five year Employment Contract for a new Athletic Director.

APPLICABLE STATUTE, RULE, OR POLICY

Idaho State Board of Education Governing Policies & Procedures, Section 2.H

BACKGROUND/DISCUSSION

Boise State University is requesting approval of a multi-year contract for a new Athletic Director. Mark Coyle has been offered the position of Athletic Director at Boise State University. Mr. Coyle comes to Boise State from the successful collegiate program at the University of Kentucky.

The pertinent terms of the contract are as follows:

Term: The contract is for a fixed-term appointment of 5 years, commencing on January 1, 2012 and terminating on December 31, 2016.

Compensation: Mr. Coyle will be paid a base salary of \$325,000 per year. In addition, the University will make a one-time payment of \$75,000 to Mr. Coyle on February 3, 2012.

Additional Pay for Performance

Overall Department Athletic Performance: Mr. Coyle may qualify for supplemental pay if the Athletic Department ranks as follows by the NACDA Director's Cup National Sports Award:

<u>Department Rank</u>	<u>Incentive Pay</u>
Top 25	\$15,000
Top 40	\$10,000
Top 60	\$5,000

Academic Incentive Pay: Mr. Coyle may qualify for supplemental pay if the departmental average NCAA Academic Progress Rate for that year meets the following scores:

<u>Department APR Score</u>	<u>Incentive pay</u>
970-979	\$10,000
980-989	\$15,000
990-999	\$20,000
1000	\$25,000

Additional Pay for Football Bowl Game Appearance:

Bowl Championship Series (BCS) game	\$30,000
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Non BCS bowl game

\$20,000

Additional Incentive Compensation: After the first year of Mr. Coyle's employment, the President and Mr. Coyle will mutually agree to additional performance criteria and accompanying incentive compensation for the remaining four years of this contract; provided, however, that the total potential additional incentive compensation shall not exceed \$50,000 in any one year (not including the incentive payments explicitly mentioned above).

Buy-Out Provision: If Mr. Coyle terminates early, he will be required to pay liquidated damages. If he leaves prior to the end of the first three years the amount is \$700,000 and before the end of the fourth the amount is \$350,000. The liquidated damages are not applicable if there is a change in the presidency at Boise State.

IMPACT

This contract will provide continuity for the program with its five year duration.

Total potential compensation for the first year is \$470,000 (base salary plus one-time payment and potential incentives).

ATTACHMENTS

Attachment 1 – Proposed Contract

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STAFF COMMENTS AND RECOMMENDATIONS

Since this is an athletic director contract and not a coach contract, it was not built directly from the model contract. While many of the provisions are from the model coach contract, it has been customized to fit the athletic director role.

The sources of funds for the base salary of \$325,000 are as follows: \$110,000 in state appropriated funds and \$215,000 from athletic program revenues.

In addition to the base salary and incentive compensation outlined above, the athletic director is entitled to a one-time longevity/stay incentive of \$125,000 if he stays employed at BSU for the entire term of the contract. The contract also provides the athletic director with a full size automobile and two country club memberships.

The contract authorizes the president to negotiate additional incentive compensation opportunities in the out years. Staff notes that in coach contracts the Board has expressed a preference that the determination of whether a coach receives supplemental compensation be at the discretion of the president subject to Board approval.

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BOARD ACTION

I move to approve the request by Boise State University to enter into a new multi-year Employment Agreement with Mark Coyle, Athletic Director, for a term commencing January 1, 2012 and terminating December 31, 2016, in substantial conformance to the agreement submitted to the Board as Attachment 1.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

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EMPLOYMENT AGREEMENT

This Employment Agreement (this “Agreement”) is entered into by and between Boise State University (the “University”), and Mark Coyle (“Athletic Director”) on the 1st day of December 2011.

ARTICLE 1

1.1 Employment. Subject to the terms and conditions of this Agreement, the University shall employ Mark Coyle as the Athletic Director of its intercollegiate athletics program (the “Program”). Athletic Director represents and warrants that he is fully qualified to serve, and is available for employment in this capacity.

1.2 Reporting Relationship. Athletic Director shall report and be responsible directly to the University’s President. Athletic Director shall abide by the instructions of the President and shall confer with the President on all administrative and technical matters.

1.3 Duties. Athletic Director shall manage and supervise the Program and shall perform such other duties in the University’s athletic program as the President may assign and as may be described elsewhere in this Agreement. The University shall have the right, upon written approval by Athletic Director, to reassign Athletic Director to duties at the University other than as Athletic Director, provided that Athletic Director’s compensation and benefits shall not be affected by such reassignment, except that the opportunity to earn supplemental compensation and incentives as provided in section 3.1.3 shall cease.

ARTICLE 2

2.1 Term. This Agreement is for a fixed-term appointment of five (5) years, commencing on January 1, 2012 and terminating, without further notice to either party, on December 31, 2016 unless terminated sooner 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 Athletic 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 Trustees. This Agreement in no way grants to the Athletic Director a claim to tenure in employment, nor shall Athletic Director’s service pursuant to this agreement count in any way toward tenure at the University.

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ARTICLE 3

3.1 Compensation.

3.1.1 In consideration of Athletic Director's services and satisfactory performance of this Agreement, the University shall provide to Athletic Director compensation as set forth herein. Accompanying such compensation shall be:

- a) Athletic Director shall receive such employee benefits as the University provides generally to non-faculty professional staff employees; and
- b) Athletic Director shall receive such employee benefits as the University's Department of Athletics (the "Department") provides generally to its employees of a comparable level. Athletic Director hereby agrees to abide by the terms and conditions, as now existing or hereafter amended, of such employee benefits.

3.1.2 Salary: The University shall pay Athletic Director a Base Salary of \$325,000 per year of this Agreement. Such salary is initially broken down as follows: (a) \$110,000 State appropriated funds, plus (b) \$215,000 from athletic department non-state funds from program revenues, Foundation/BAA contributed funds and media contract funds. Additionally, the Base Salary may increase annually (not to exceed 10% annually) at the sole discretion of the President after determination by the President that the annual goals the President sets for the Athletic Director are successfully achieved. Such increases may change the allocation of the salary. Provided, however, that any such increases may also be subject to the approval of the State Board of Education.

3.1.3. In addition to the Base Salary, the University shall pay Athletic Director Incentive Compensation as set forth below. Such payments shall be made in one lump sum in January following the year in which the incentive criteria was met and Athletic Director must remain continuously employed through the payment date to receive such payments.

- (a) For Overall Department Athletic Performance: For the National Association of Directors of Collegiate Athletics (NACDA) Director's Cup National Sports Award final year end rankings:

<u>Department Rank</u>	<u>Incentive Pay</u>
Top 25	\$15,000
Top 40	\$10,000
Top 60	\$5,000

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- (b) For Academic Performance: As long as the annual departmental average National Collegiate Athletic Association (“NCAA”) Academic Progress Rate (“APR”) scores meet the following levels, the following applicable incentive payments will be paid by the University:

<u>Department APR Score</u>	<u>Incentive pay</u>
970-979	\$10,000
980-989	\$15,000
990-999	\$20,000
1000	\$25,000

- (c) For Football Bowl Game Appearances: If the University men’s football team plays in an NCAA approved post-season bowl game, the following incentive payments will be made by the University:

Bowl Championship Series (BCS) game	\$30,000
Non BCS bowl game	\$20,000

- (d) Additional Incentive Compensation: After the first year of this Agreement, the President and the Athletic Director shall, in good faith, agree to additional performance criteria, with metrics reasonably related to the Department’s activities and operations, that shall be the basis for Additional Incentive Compensation opportunities for each of the remaining four years of this Agreement. The total potential Additional Incentive Compensation pursuant to this paragraph (d) shall not exceed \$50,000 in any one year, not inclusive of the Incentive Compensation in section 3.1.3(a), (b) and (c) above.

3.1.4 The University annually shall provide or make arrangements through the athletic department trade-out program one (1) full-size automobile for business and personal use by Athletic Director or members of his immediate family. Athletic Director shall supply gasoline for personal use. All other costs of operating the vehicles shall be paid by the University.

3.1.5 The University shall provide Athletic Director with two country club memberships at all times during the term of this contract.

3.1.6 In addition to the Base Salary, the University shall make a one-time payment to Athletic Director in the amount of \$75,000 on February 3, 2012.

3.2 Media. Agreements requiring the Athletic Director to participate in media 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 products and all parties desiring public appearances by the Athletic Director. Athletic Director 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 Athletic Director nor any

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assistant department employees shall appear without 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, Athletic Director shall not appear in any commercial endorsements.

3.2.1 Athletic 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 Athletic Director, during official practices and games and during times when Athletic Director or any part of the Program is being filmed by motion picture or video camera or posing for photographs in their capacity as representatives of University.

3.3 Longevity/Stay Incentive. In addition to the Base Salary, the University will pay to Athletic Director a one-time longevity/stay incentive in the sum of \$125,000 if Athletic Director stays continuously employed by the University until December 31, 2016 without being in material breach. Such payment will be made on January 20, 2017.

3.4 All payments provided for in this Agreement shall be paid through the University's normal bi-weekly payroll with the applicable withholdings as required by law and applicable deductions as directed by Athletic Director.

ARTICLE 4

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

4.1.1 Devote Athletic Director's full time and best efforts to the performance of Athletic Director's duties under this Agreement and effectively manage the Athletic Department while performing the duties and responsibilities customarily associated with the position of an athletic director at a Division 1-A university.;

4.1.2 Develop and implement programs and procedures with respect to the evaluations of all Program sport participants to 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 University and encourage all 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 the Department's employees know, recognize, and comply with all such laws, policies, rules and regulations; and immediately report

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to the President and to the Department's Director of NCAA Compliance if Athletic 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. Athletic Director shall cooperate fully with the University and the 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 Policy Manual; (c) the policies of the Department; (d) NCAA rules and regulations; and (e) the rules and regulations of the conference of which the University is a member;

4.1.5. Supervise and manage the athletic department to insure, to the maximum extent possible, that all staff follow applicable University policies, State Board of Education policies, NCAA, and applicable conference rules and regulations at all times;

4.1.6 Manage departmental fiscal areas consistent with State Board of Education policies and the policies of the University; and,

4.1.7 Take reasonable steps to maintain student athlete graduations within six (6) years at a rate equal to or better than the general University student body.

4.2 Outside Activities. Athletic Director shall not undertake any business, professional or personal activities, or pursuits that would prevent Athletic Director from devoting Athletic Director's full time and best efforts to the performance of Athletic 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 its athletic program. Subject to the terms and conditions of this Agreement, Athletic Director may, with the prior written approval of the President, enter into separate arrangements for outside activities and endorsements which are consistent with Athletic Director's obligations under this Agreement. Athletic 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, Athletic Director 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 Athletic 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.

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4.4 Hiring Authority. Athletic Director shall have the responsibility and sole authority to recommend to the President the hiring and termination of Program personnel, but the decision to hire or terminate shall be made by the President and shall, when necessary or appropriate be subject to the approval of President and the University's Board of Trustees.

4.5 Scheduling. Athletic Director shall make decisions with respect to the scheduling of competitions for sports in the Program.

4.6 Other Athletic Director Opportunities. Athletic Director shall not, under any circumstances, interview for, negotiate for, or accept employment as an Athletic Director 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 and shall not be considered a waiver of the Athletic Director's obligations hereunder, including but not limited to the notice, payment and other obligations of sections 5.3.2 and 5.3.3.

ARTICLE 5

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

5.1.1 In addition to the definitions contained in applicable policies, rules and regulations, University and Athletic 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 Athletic Director's duties under this agreement or the refusal or unwillingness of Athletic Director to perform such duties in good faith and to the best of Athletic Director's abilities;
- b) The failure of Athletic 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 by Athletic Director of any applicable law or the policies, rules or regulations of the University, the University's governing board, its conferences or the NCAA, including but not limited to any such violation by Athletic Director which may have occurred during the employment of Athletic Director at another NCAA or NAIA member institution;

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- d) Ten (10) working days' absence of Athletic Director from duty without the University's consent;
- e) Any conduct of Athletic Director that constitutes moral turpitude or that would, in reasonable judgment, reflect adversely on the University or its athletic programs;
- f) The failure of Athletic Director to represent the University and its athletic programs positively in public and private forums;
- g) The failure of Athletic 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 Athletic 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 one of the Athletic Director's employees for whom Athletic Director is administratively responsible, or a member of any team 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, its conferences, or the NCAA, by one of the Athletic Director's employees for whom Athletic Director is administratively responsible, or a member of any team in the Program if Athletic Director knew or reasonably 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 or his designee (to be designated in writing) shall provide Athletic Director with written notice, which notice shall be accomplished in the manner provided for in this Agreement and shall include the reason(s) for the contemplated action. Athletic Director shall then have a reasonable opportunity to respond. After Athletic Director responds or fails to respond, University shall notify, in writing, Athletic 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 Athletic 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

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benefits, prerequisites, or income resulting from outside activities or from any other sources. However, any amounts due or earned (whether monetary or other benefits) by Athletic Director as of the time of termination for good and adequate cause shall still be paid to Athletic Director by the University.

5.1.4 If found in violation of NCAA regulations, Athletic 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. This section applies to violations occurring at the University or at previous institutions at which the Athletic Director was employed.

5.2 Termination of Athletic 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 Athletic Director.

5.2.2 In the event that University terminates this Agreement for its own convenience, University shall be obligated to pay Athletic Director, as liquidated damages and not a penalty, only the remaining, unpaid Base Salary (plus any increases) set forth in section 3.1.2 and the payment provided for in section 3.3, excluding all deductions required by law, on the regular paydays of University until the term of this Agreement ends. or until Athletic Director obtains reasonably comparable employment, whichever occurs first. Provided, however, in the event Athletic Director obtains other employment of any kind or nature after such termination, then the amount of compensation the University pays will be adjusted and reduced by the amount of compensation paid Athletic Director as a result of such other employment, such adjusted compensation to be calculated for each University pay-period by reducing the gross salary set forth in section 3.1.2 (before deductions required by law) by the gross compensation paid to Athletic Director under the other employment, then subtracting from this adjusted gross compensation deduction according to law. In addition, Athletic 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 Athletic Director obtains employment or any other employment providing Athletic Director with a reasonably comparable health plan and group life insurance, whichever occurs first. Athletic Director shall be entitled to no other compensation or fringe benefits, except as otherwise provided herein or required by law. Athletic Director specifically agrees to inform University within ten business days of obtaining other employment, and to advise University of all relevant terms of such employment, including without limitation the nature and location of employment, salary, other compensation, health insurance benefits, life insurance benefits, and other fringe benefits. Failure to so inform and advise University shall constitute a material breach of this Agreement and University's obligation to pay compensation under this provision shall end. Athletic Director agrees not to accept employment for compensation at less than the fair value of Athletic Director's services, as determined by all circumstances existing at the time of employment. Athletic Director further agrees to repay to University all compensation paid to him by University after the date he obtains other employment, to which he is not entitled under this provision.

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5.2.3 The parties have both been represented by legal counsel, or had the opportunity to do so, in the contract negotiations and have bargained for and agreed to the foregoing liquidated damages provision, giving consideration to the fact that the Athletic 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 Athletic Director shall constitute adequate and reasonable compensation to Athletic Director for the damages and injury suffered by Athletic 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 Athletic Director for Convenience.

5.3.1 The Athletic Director recognizes that his promise to work for University for the entire term of this Agreement is of the essence of this Agreement. The Athletic 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 Athletic 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. If the Athletic Director terminates this Agreement for convenience at any time, all obligations of the University shall cease as of the effective date of the termination. However, any amounts due or earned (whether monetary or other benefits) by Athletic Director as of the date of termination shall still be paid to Athletic Director by the University.

5.3.3 If the Athletic Director 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 December 31, 2014, the sum of Seven-Hundred-Thousand Dollars (\$700,000); (b) if the Agreement is terminated between January 1, 2015 and December 31, 2015 inclusive, the sum of Three-Hundred-Fifty Thousand Dollars (\$350,000); and (c) there shall be no liquidated damages if the Agreement is terminated anytime after December 31, 2015. 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 percent (8%) per annum until paid. Provided, however, that if the University President currently serving at the time of the execution of this Agreement, Dr. Robert Kustra, ceases employment as the University President for any reason whatsoever during the term of this Agreement, then the liquidated damages provisions of this section 5.3.3 shall be no longer applicable and there shall be no liquidated damages for a termination by Athletic Director for convenience.

5.3.4 The parties have both been represented by legal counsel in the contract negotiations, or had the opportunity to do so, and have bargained for and agreed to the foregoing

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liquidated damages provision, giving consideration to the fact that the University will incur administrative and recruiting costs in obtaining a replacement for Athletic Director, in addition to potentially increased compensation costs if Athletic 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 Athletic 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 Athletic Director. The liquidated damages are not, and shall not be construed to be, a penalty. This section 5.3.4 shall not apply if Athletic Director terminates this Agreement because of a material breach by the University.

5.3.5 If Athletic Director terminates this Agreement for convenience, he shall forfeit to the extent permitted by law his right to receive all compensation and other payments not earned by him as of the time of termination.

5.4 Termination due to Disability or Death of Athletic Director.

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

5.4.2 If this Agreement is terminated because of Athletic Director's death, Athletic Director's salary and all other benefits shall terminate as of the last day worked, except that the Athletic Director's personal representative or other designated beneficiary shall be paid all compensation earned and due 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 Athletic Director's estate or beneficiaries thereunder.

5.4.3 If this Agreement is terminated because the Athletic 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 Athletic Director, all salary and other benefits shall terminate, except that the Athletic Director shall be entitled to receive any compensation due (including any payments due under the supplemental pay of section 4 of the attached addendum) or unpaid and any disability-related benefits to which he is entitled by virtue of employment with the University.

5.5 Interference by Athletic Director. In the event of termination, suspension, or reassignment, Athletic Director agrees that Athletic 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. Other than what Athletic Director is or shall be entitled to under this Agreement, the University shall not be liable to Athletic Director for the loss of any collateral business opportunities or any other benefits, perquisites or income from any sources that may

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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 Athletic Director, regardless of the circumstances.

5.7 Waiver of Rights. Because the Athletic Director is receiving a multi-year contract and the opportunity to receive incentive compensation and because such contracts and opportunities are not customarily afforded to University employees, if the University suspends or reassigns Athletic Director, or terminates this Agreement for good or adequate cause or for convenience, Athletic 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 by the State Board of Education and its Governing Policies and Procedures Manual, and the University Policy Manual.

ARTICLE 6

6.1 Board Approval. This Agreement shall not be effective until and unless approved by the University's Board of Trustees and executed by both parties as set forth below. In addition, the payment of any compensation pursuant to this agreement shall be subject to the approval of the University's Board of Trustees; 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 Trustees and the University's rules and policies regarding financial exigency.

6.2 University Property. All personal property (excluding vehicle(s) provided through the trade-out 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 Athletic Director by the University or developed by Athletic Director on behalf of the University or at the University's direction or for the University's use or otherwise in connection with Athletic 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, Athletic Director shall immediately cause any such personal property, materials, and articles of information in Athletic Director's possession or control to be delivered to the President.

6.3 Assignment. Neither party may assign its rights or delegate its obligations under this Agreement without 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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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 Athletic 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 Trustees.

6.16 Opportunity to Consult with Attorney. The Athletic Director acknowledges that he has had the opportunity to consult with 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

ATHLETIC DIRECTOR

Robert Kustra, President

Date

Mark Coyle

Date

Approved by the Board of Trustees on the ____ day of December, 2011.

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