

**BOARD OF SUPERVISORS FOR THE
UNIVERSITY OF LOUISIANA SYSTEM**

ATHLETIC COMMITTEE

October 28, 2021

Item H.9. **University of Louisiana at Monroe's** request for approval of a contract with Mr. Terry Bowden, Head Men's Football Coach, between the University of Louisiana at Monroe and the ULM Athletic Foundation, effective August 1, 2021.

EXECUTIVE SUMMARY

Under the proposed agreement, effective through December 31, 2024, the coach's annual base salary is \$360,000. The agreement also stipulates that the University will pay Coach an earned incentive payment of \$50,000 for becoming bowl eligible (6 wins) and receiving a bowl invitation. The incentive payment will be paid by the University from the University's athletics auxiliary funds on or before June 30 following the applicable event.

Coach may waive the payment of all or a portion of the incentive amount due and request that such amount be paid to one or more full-time members of his coaching or athletic support staff provided that each coach and staff understands and agrees that no payment may be made to any employee who is subject of a current disciplinary action or investigation.

In recognition of exemplary performance and additional work that is required for post-season competition and events and as an incentive for Coach to achieve the goals described below, and since such additional work generally results in an influx of private gifts to the Foundation, the Foundation agrees to pay to Coach the following supplemental payments:

- (a) \$55,000 for 7 regular season wins
- (b) \$60,000 for 8 regular season wins
- (c) \$70,000 for 9 regular season wins
- (d) \$80,000 for 10 or more regular season wins
- (e) \$50,000 for 1 win versus a Power 5 team
- (f) \$100,000 for 2 wins versus a Power 5 team
- (g) \$50,000 for Sunbelt Conference Championship Game appearance
- (h) \$75,000 for Sunbelt Conference Championship Game win
- (i) \$100,000 for New Year's Six Bowl appearance
- (j) \$10,000 for being named Sunbelt Coach of the Year

Any incentive provided above, if achieved, will only be awarded if the team is not subject to APR penalties which result in loss of scholarships at the time the incentives are reached, and/or beginning with the 2021 season, if the football team's Academic Progress Rate (APR) falls below a one-year average of 940.

The Foundation through its athletic funds may pay Coach a monthly stipend of \$2,500 during the period of this agreement for Coach's role as a fundraiser for ULM Athletics and ULM Football program.

The University shall provide the following benefits to Coach during the time of employment:

- Annual housing allowance of \$40,000 to be paid in equal monthly payments.
- Coach may receive a courtesy/leased vehicle if arrangement can be made through a local dealership. Should a courtesy vehicle arrangement not be available with a local dealership, Coach may receive a monthly allowance not to exceed \$300 toward the expense of a vehicle. The University will disperse the allowance to Coach using normal University payroll procedures.
- Monthly cell phone allowance of \$45 to be included on the Coach's bi-weekly payroll check.
- For each football season, Coach shall be entitled to a total of 12 tickets per home football game and 4 tickets to all other ULM home athletic competitions.
- During the time of Coach's employment in the Head Football Coach position, the Foundation agrees to provide Coach and one member of his family with access to use the Bayou Desiard Country Club through a membership paid for by Foundation.

If the University terminates the agreement without cause, the University, at its option, shall pay Coach the remaining months of base salary he would have earned during the current fiscal year, or a sum equivalent to six months of base salary, whichever is less; or reassign Coach to another suitable position at the University for the remainder of the current fiscal year in lieu of the payout.

If Coach terminates agreement without cause to become employed as a football coach, then liquidated damages will be equal to the remaining months of base salary due through the end of the current fiscal year, or a sum equivalent to six months of base salary, whichever is less.

The University and the ULM Athletic Foundation have combined this agreement into one joint employment agreement.

RECOMMENDATION

It is recommended that the following resolution be adopted:

NOW, THEREFORE, BE IT RESOLVED, that the Board of Supervisors for the University of Louisiana System hereby approves University of Louisiana at Monroe's request for approval of a contract with Mr. Terry Bowden, Head Men's Football Coach, between the University of Louisiana at Monroe and the ULM Athletic Foundation, effective August 1, 2021.



Office of the President

University Library 632 | 700 University Avenue | Monroe, LA 71209-3000
P 318.342.1010 | F 318.342.1019 | ulm.edu

H.9.

October 6, 2021

Dr. James B. Henderson President
University of Louisiana System
1201 Third Street, 7-300
Baton Rouge, LA 70802

Dear Dr. Henderson:

Pursuant to Board of Supervisors policy, I am requesting the consideration and approval of the contract for Mr. Terry Bowden, Head Football Coach, at the University of Louisiana Monroe.

Thank you for your consideration.

Sincerely,

Ronald L. Berry, D.B.A.
President

#TAKEFLIGHT

ULM is a member of the University of Louisiana System • AA/EOE

CONTRACT OF EMPLOYMENT
TERRY WILSON BOWDEN, HEAD FOOTBALL COACH

STATE OF LOUISIANA

PARISH OF OUACHITA

This Contract of Employment (herein "Contract") is made and entered into effective the 1st day of August, 2021, between the **University of Louisiana at Monroe** (hereinafter referred to as the "University") and through its President, and **Terry Wilson Bowden** (hereinafter referred to as "COACH"). This agreement is subject to the approval of the Board of Supervisors for the University of Louisiana System (hereinafter referred to as "Board"), the management board for the University of Louisiana at Monroe, and therefore the terms and conditions set forth in this agreement are not binding upon the parties until approval of the Board is obtained. The University of Louisiana at Monroe Athletic Foundation, Inc. (hereinafter referred to as the "Foundation") joins in this agreement consenting to the obligations incurred by the Foundation.

1.0 Employment

1.1 The University does hereby employ COACH as Head Football Coach and COACH does hereby accept employment and agrees to perform all of the services pertaining to football, which are required of COACH, as well as, other services as may be contemplated hereunder, all as prescribed by the University through its President and Director of Athletics. It is understood by COACH and the University, however, that the University retains the right to assign COACH to other positions with different duties during the term of this agreement; and that if the University makes such a decision to reassign COACH and COACH refuses to accept such reassignment, then University may terminate this Contract pursuant to the terms and conditions for causal termination by the University as set forth in section 12.2 of this Contract.

1.2 COACH shall be responsible, and shall report, directly to the University's Director of Athletics (the "Athletics Director" or the "AD") and shall confer with the AD or the AD's designee on all administrative and technical matters. COACH shall also be under the general supervision of the University's President.

1.3 COACH shall manage and supervise the football team and shall perform such other duties in the University's athletic program as the AD may reasonably assign.

1.4 COACH agrees to represent the University positively in public and private forums and shall not engage in conduct that reflects adversely on the University or its athletic programs.

1.5 COACH shall be expected to participate in an appropriate number of non-conference "guarantee" football games on an annual basis in order to generate necessary revenue. The number of contests will be determined by mutual consent of both the AD and COACH.

1.6 COACH shall inform the AD of all work-related and non-work related absences from campus (i.e., recruiting trips, fund-raising activities, annual leave requests, etc.)

1.7 COACH shall be expected to attend a minimum of eight (8) public events per year as scheduled by the AD.

2.0 Term

2.1 The term of this Contract shall be for a fixed period commencing on August 1, 2021, and terminating without further notice to COACH on December 31, 2024, unless terminated sooner in accordance with the terms of this Contract or extended by mutual written agreement of the parties, and approved by the Board.

2.2 This Contract is renewable solely upon an offer from the University and acceptance by COACH, both of which must be in writing, signed by the parties, and approved by the Board. This Contract in no way grants COACH a claim to tenure in employment, nor shall COACH's service pursuant to this Contract count in any way toward tenure at the University.

2.3 This Contract may be amended or extended at any time during the period of this contract by mutual signed agreement of both parties, and approved by the Board.

2.4 Beginning with the 2021 season, if the football team's Academic Progress Rate (APR) falls below a one year average of 940, all parties agree to replace the existing contract with a one-year agreement, which must be approved by the Board. In addition, COACH shall not be eligible for any incentives under this agreement, including but not limited to the incentive pay provided under sections 3.2 and 4.1, nor any contract extension provided for in section 2.5 of this agreement.

2.5 During the term of this agreement, for every winning season (Counting Bowl Game, Minimum 7 wins) one (1) year will be added to the existing contract term. The extension(s) granted herein may only occur twice for maximum of two (2) additional years to current term.

3.0 University Compensation

3.1 Base Salary. In consideration of COACH 'S services and satisfactory performance of this agreement, the University shall pay COACH a base annual salary of \$360,000 for the term of this agreement, payable on a bi-weekly basis.

3.2 Incentive Pay. In recognition of exemplary performance and additional work that is required for post-season competition and events and as an incentive for COACH to achieve the goals below, and since such additional work generally results in an influx of private gifts to the University, during the time of employment as head football coach, Coach will have the opportunity to receive an earned incentive payment of \$50,000 for becoming bowl eligible (6 wins) and receiving a bowl invitation. The incentive payment will be paid by the University from the University's athletics auxiliary funds on or before June 30th following the applicable event.

3.2.1 COACH may waive the payment of all or a portion of the incentive pay referenced in Section 3.2 and request that such incentive pay be paid to one or more full-time members of COACH's coaching or athletic support staff provided that no incentive payment may be made to any employee who is the subject of a current disciplinary action or investigation.

3.3 COACH may be eligible for cost of living or merit pay increases from the University in addition to the stated University base salary. The COACH is also subject to pay adjustments according to economic circumstances that affect all employees in the unclassified state service, provided that such pay adjustment can be sustained from the budget for intercollegiate athletics as determined by the University in its sole discretion.

3.4 The University does not guarantee amounts due from the University under this contract beyond the current fiscal year of performance. Should the contract be terminated for any reason amounts due shall be determined in accordance with Section 12.0 and/or 15.0 of this contract.

4.0 Foundation Supplements / Incentive Compensation

4.1 Performance Incentive Compensation

4.1.1 In recognition of exemplary performance and additional work that is required for post-season competition and events and as an incentive for COACH to achieve the goals described below, and since such additional work generally results in an influx of private gifts to the Foundation, the Foundation agrees to pay to COACH the following supplemental payments:

- (a) \$55,000 for 7 regular season wins
- (b) \$60,000 for 8 regular season wins
- (c) \$70,000 for 9 regular season wins
- (c) \$80,000 for 10 or more regular season wins
- (d) \$50,000 for 1 win versus a Power 5 team
- (e) \$100,000 for 2 wins versus a Power 5 team
- (f) \$50,000 for Sunbelt Conference Championship Game appearance
- (g) \$75,000 for Sunbelt Conference Championship Game win
- (h) \$100,000 for New Year's Six Bowl appearance
- (i) \$10,000 for being named Sunbelt Coach of the Year

4.1.2 Any supplemental payment earned pursuant to section 4.1.1 shall be payable within 60 days of earning from the Foundation, solely from the athletic funds held by the Foundation. Supplemental payment made to COACH from the Foundation shall not be considered earned income for the purpose of computation of retirement benefits. No withholdings will be made from these payments, and COACH shall be responsible for all applicable taxes. The Foundation will issue the appropriate informational return to COACH and the Internal Revenue Service and provide a copy to the University.

4.1.3 Any incentive provided in section 4.1.1, if achieved, will only be awarded if the team is not subject to APR penalties which result in loss of scholarships at the time the incentives are reached, and/or beginning with the 2021 season, if the football team's Academic Progress Rate (APR) falls below a one year average of 940.

4.2 Fundraiser Supplement

4.2.1 The Foundation through its athletic funds may pay COACH a monthly stipend of \$2,500 during the period of this agreement for COACH'S role as a fundraiser for ULM Athletics and ULM Football program.

4.2.2 COACH accepts his role with the Foundation as an independent contractor and agrees that the services provided pursuant to that role are in his capacity as an independent contractor, not an agent or employee of the University or the Foundation. Payments made to COACH from Foundation shall not be considered earned income for the purpose of computation of retirement benefits. No withholdings will be made from these payments, and COACH shall be responsible for all applicable taxes. The Foundation will issue the appropriate information return to COACH and to the Internal Revenue Service and provide a copy to the University.

4.2.3 COACH shall not unreasonably refuse to personally contact sponsors, potential sponsors, donors and/or potential donors to generate or increase revenues provided such requests do not interfere with COACH'S duties and responsibilities to the University and the athletic department.

4.3 Indemnification and Hold Harmless of University. By signing this Agreement, COACH agrees to hold harmless and indemnify University from any and all suits, claims, demands, damages, liability, costs and expenses, including attorney's fees, arising out of or in connection with all obligations incurred by the Foundation under this agreement, including but not limited to the terms and conditions set forth in this Section 4.0, as well as any and all acts or omissions of COACH in the performance of the independent contractor / fundraiser services for the Foundation.

5.0 Contracts for broadcast and/or telecast

5.1 COACH may host a radio/television show to promote the University's Football Team.

5.2 It is specifically agreed that in the filming or producing of such television shows, COACH acts for himself in his private capacity and not as an agent or employee of the University and that this agreement constitutes merely a license to use the property and facilities subject to the conditions hereafter stated.

(a) The COACH agrees to pay the University all out-of-pocket costs incurred by the University in the filming or production of the television show.

(b) Long distance phone calls, University supplies, printing, postage, University vehicles, etc., will be utilized on a complete University cost recovery basis.

(c) Complete records will be maintained regarding income and expenditures associated with said television show and available for verification by the University auditors.

(d) The COACH agrees to protect, indemnify and save harmless the University from and against any and all expenses, damages, claims, suits, actions, judgments and costs whatsoever, including reasonable attorney's fees, arising out of or in any way connected with any claim or action for property loss, personal injury or death resulting from said television show.

(e) The COACH is an independent contractor during said television activities and, as a University employee will undertake to observe all general rules and policies of the University. This paragraph is designated to assure that nothing be done which is inconsistent with the maintenance of an educational campus environment and the character of a State institution which makes its facilities open to persons without discrimination.

(f) The AD will be the administrative officer of the University who will be advised by the COACH of any problems or questions which may arise out of the television show.

5.3 The University shall have exclusive right to contract for program sponsors for commercial endorsements by COACH and to authorize the use of commercials both during the program and at all other times.

5.4 COACH shall not appear on any television, radio or internet program or advertisement not authorized by the University without the prior written approval of the University except routine news media interviews for which no compensation is received. COACH may appear on television, or radio or internet programs not in conflict with pre-game, post-game or coach's shows with prior written approval of the University, which approval shall not be unreasonably withheld by the University.

6.0 Camps and Clinics

6.1 COACH may operate a camp for the teaching of athletic pursuits on the University's property to the end of better utilization of the facilities and with suitable compensation paid to the University for the use of such facilities. The use of the University's facilities will be determined by the availability of those facilities as established by the University's policy.

6.2 It is specifically agreed that in the operation of such camps, COACH acts for himself in his private capacity and not as an agent or employee of the University and that this agreement constitutes merely a license to use the property and facilities subject to the University's camp policies/procedures and the conditions hereafter stated.

(a) Special set-ups or changes in original set-up of facilities will be taken care of by the COACH with no cost to the University.

(b) The COACH agrees to pay the University all out-of-pocket costs incurred by the University in making the facilities available for the camps.

(c) The COACH agrees to secure a policy of insurance in a company approved by University's Risk Management Office under which the Board of Supervisors of the University of Louisiana System, the University, its agents and servants, are named as the insured (or as an additional insured) which provides:

A. Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the Labor Code of the State of Louisiana and Employers Liability coverage if COACH hires any employees to work at such camps or clinics.

B. Comprehensive General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage.

C. The policy does not exclude coverage for child abuse, neglect and/or endangerment, including sexual molestation (for camps involving minor participants).

(d) Annual leave must be requested to cover the dates of the camp operation for all University personnel involved.

(e) Complete records will be maintained regarding income and expenditures associated with said camp and available for verification by the University's auditors.

(f) The COACH agrees to protect, indemnify and save harmless the University from and against any and all expenses, damages, claims, suits, actions, judgments and costs whatsoever, including reasonable attorney's fees, arising out of or in any way connected with any claim or action for property loss, personal injury or death during the operation of said camp activities.

(g) The COACH is an independent contractor during said camp activities and, as such, is licensed to use certain facilities of the University. The COACH, as a University employee, will undertake to observe and require campers and its staff to conform to the general rules applicable to the use of University facilities. This paragraph is designated to assure that nothing be done which is inconsistent with the maintenance of an educational campus environment and the character of a State institution which makes its facilities open to persons without discrimination.

(h) The AD will be the administrative officer of University who will be advised by COACH of any problems or questions which may arise out of the operation of summer camps.

7.0 Employee Benefits

7.1 COACH shall participate in the mandatory benefit plan and be eligible for optional employee plans as would any other University unclassified employee. Such benefit will be based upon COACH's base annual salary as provided by the University.

7.2 The University shall provide the following benefits to COACH during the time of COACH's employment in the Head Football Coach position:

- (a) Annual housing allowance of \$40,000 to be paid in equal bi-weekly payments;
- (b) COACH may receive a courtesy/leased vehicle if arrangement can be made through a local dealership. The benefit shall not be considered earned income for the purpose of computation of retirement benefits, and COACH shall be responsible for all applicable taxes. The University and Foundation has no obligation to furnish the vehicle to COACH. The arrangements for a vehicle will be made by the Athletic Director. Insurance on any courtesy/leased vehicle must be paid for by the dealership, COACH, or some other arrangement agreed to by the Athletic Director and the Foundation. Should a courtesy vehicle arrangement not be available with a local dealership COACH may receive a monthly allowance not to exceed \$300 toward the expense of a vehicle. The University will disperse the allowance to COACH using normal University payroll procedures.
- (c) Monthly cell phone allowance of \$45 to be included on the COACH's bi-weekly payroll check; and
- (d) For each football season, COACH shall be entitled to a total of 12 tickets per home football game, and 4 tickets to all other ULM home athletic competitions.

7.3 During the time of COACH'S employment in the Head Football Coach position, the Foundation agrees to provide COACH and one member of his family with access to use the Bayou Desiard Country Club through a membership paid for by Foundation. COACH and family member will be responsible for all charges associated with use of the club, outside of membership dues and capital improvements which will be covered by the Foundation.

7.4 The University does not guarantee amounts due from the University under this contract beyond the current fiscal year of performance. Should the contract be terminated for any reason amounts due shall be determined in accordance with Section 11.0 and/or 14.0 of this contract.

8.0 Outside Income-Subject to Compliance with Board Rules

8.1 COACH may receive income, revenue, and benefits from outside sources while employed by the University upon approval from the University's President and in accord with University and Board policies.

8.2 All outside compensation must also comply with the Louisiana Code of Governmental Ethics.

8.3 Any outside compensation activities shall be considered independent of COACH's university employment and the University shall have no responsibility for any claims arising therefrom.

8.4 Notwithstanding the above or anything else herein to the contrary, if COACH receives athletically related income or benefits totaling more than \$600 per year from any source or combination of sources other than from the University, COACH must report all such income or benefits to the University's President in writing at least annually, by July 1. Examples include, without limitation, income or benefits from (1) endorsement or consultation contracts with apparel companies, equipment manufacturers, or television or radio programs; (2) ownership, control, or management of a foundation, organization, or other entity; and (3) participation in athletic camps outside of those offered by the University (see NCAA Bylaw 11.2.2.).

9.0 Shoe, Apparel, and/or Equipment Endorsements

In the course of COACH's official duties, COACH shall, as determined by the University, use the shoes, apparel, and/or equipment of the companies with which the University has contracted for athletic supplies.

10.0 Compliance with NCAA, Conference, UNIVERSITY and BOARD Rules

10.1 COACH shall abide by the rules and regulations of the NCAA, Conference, and University and Board rules. COACH and the University acknowledge and agree that (1) COACH has an affirmative obligation to cooperate fully in the NCAA infractions process, including the investigation and adjudication of a case (see NCAA Bylaw 19.2.3 for examples of full cooperation), and (2) an individual who is found in violation of NCAA regulations shall be subject to disciplinary or corrective action as set forth in the provisions of the NCAA infractions process (see NCAA Bylaw 19), including suspension without pay or termination of employment.

10.2 COACH shall abide by the State of Louisiana Code of Government Ethics, University Policy and Regulations, and the policies and regulations of the University of Louisiana

System. In public appearances he shall at all times conduct himself in a manner that befits a University official and shall always attempt to create goodwill and a good image for the University.

10.3 Title IX and Sexual Misconduct Policy Reporting and Compliance: COACH shall promptly report to the University's Title IX Coordinator any Known Violation(s) of the University or the University of Louisiana System's Sexual Misconduct Policy (including, but not limited to sexual harassment, sexual assault, sexual exploitation, dating violence, domestic violence and stalking) that involve any student, faculty, or staff or that is in connection with a University sponsored activity or event. Any emergency situation shall be immediately reported to 911 and/or law enforcement. For purposes of this paragraph, a "Known Violation" shall mean a violation or an allegation of a violation of Title IX and/or the University's or the University of Louisiana System's Sexual Misconduct Policy that COACH is aware of or has reasonable cause to believe is taking place or may have taken place. The University may terminate this CONTRACT *for cause* pursuant to the for-cause-termination provisions of this CONTRACT for any determined violation by COACH for failure to report a Known Violation of: Title IX of the Education Amendments of 1972; the University's Sexual Misconduct Policy; or (3) the University of Louisiana System's Sexual Misconduct Policy.

10.4 COACH represents and warrants that COACH is not the subject of a current NCAA investigation, and/or to the best of COACH'S knowledge has never been the subject of an NCAA investigation. In the event that the University discovers that COACH breached the foregoing warranty, the University may terminate this Contract upon discovery with no further financial obligation or penalty to COACH.

11.0 Football Program Staff

11.1 COACH shall have the authority to select unclassified football personnel (within the established budget) upon authorization by the AD, the University's President, and approval by the Board.

11.2 COACH is expected to supervise football staff in compliance with NCAA, Conference, and the University's rules and regulations.

12.0 Termination

12.1 Either party may terminate this Contract *without just cause* prior to the expiration of its terms by giving thirty (30) days' written notice to the other party. Prior to termination of COACH, the University shall notify the President of the University of Louisiana System.

12.2 COACH may be terminated by the AD at any time *for cause*. Cause for this purpose shall mean any one or more of the following:

- (a) misconduct (such as but not limited to engaging in conduct which: (i) displays a serious disrespect or disregard for the mission of the University; (ii) brings COACH into substantial public disrepute, contempt, scandal, or ridicule sufficient to materially impair COACH's ability to perform the obligations contained herein without material adverse impact on the team or athletic program; (iii) constitutes moral turpitude or breaches the high moral and ethical standards applicable to Coach as a visible representative of the University; or (iv) constitutes failure by COACH to promptly report to a University administrator (including the AD and athletic department compliance officers) any conduct known, observed, suspected by and/or reported to COACH that constitutes or may constitute a violation of NCAA regulations, conference rules, and the University's policies and procedures (including, but not limited to, those addressing anti-discrimination, harassment and retaliation);
- (b) substantial and manifest incompetence;
- (c) violation or gross disregard of state or federal laws;
- (d) deliberate and serious violations of NCAA, conference, or University's rules, regulations, policies or procedures;
- (e) refusing to accept reassignment of responsibilities in accordance with the provisions of paragraph 1.1 herein above in situations in which the University determines that the best interest of the University and of its intercollegiate athletic program require that COACH no longer retain the position of Head Football Coach;
- (f) violating any provision of this Contract;

- (g) any determined violation of Title IX of the Education Amendments of 1972 or failure to report a "known violation" as required in Subsection 10.3 of this Contract; or
- (h) any cause adequate to sustain the termination of any other UNIVERSITY employee of COACH'S classification.

12.2.1 In lieu of termination for cause, and apart from any rights it may have under this Section 12.0, the University may impose disciplinary sanctions less severe than termination of COACH, up to and including suspension or leave without pay for any act or omission which would be grounds for termination for cause. Imposition of such sanctions shall be at the sole discretion of the University.

12.2.2 All compensation, including salary, benefits and other remuneration incidental to employment, cease upon termination. The termination date shall be the date on which notice of termination is given, or on such later date as may be set forth by the University in the notice of termination. The judgment as to whether the conduct of COACH constitutes cause under this provision shall not be exercised arbitrarily, capriciously or in a discriminatory manner by the University but such decision shall be in the University's sole discretion. No damages shall be due from the University if termination is *for cause*.

12.3 The University may at any time, and in its sole discretion, terminate the employment of COACH for any reason. In the event the University terminates this contract *without cause* prior to the expiration of its term, the University, at its option, shall pay COACH the remaining base salary that COACH would have earned from the University during the current fiscal year, or a sum equivalent to six months of base salary, whichever is less; OR reassign COACH to another suitable position at the University for the remainder of the current fiscal year in lieu of the payout described in this paragraph. If the payout option is chosen by the University, such funds shall be paid from the current fiscal year funding to COACH, and at University's discretion of a lump sum within sixty (60) days from the effective date of the termination or in monthly installments until such amount is paid in full at the sole discretion of the University.

12.4 In the event that the COACH terminates this Agreement to become employed as a football coach, then COACH shall be liable to the University for either the remaining base salary that COACH would have earned from the University during the current fiscal year, or a sum

equivalent to six months of base salary, whichever is less. The liquidated damages shall be due and payable in a lump sum within sixty (60) days from the effective date of the termination.

12.5 If COACH terminates this contract for any other reason than becoming employed as a football coach, including without limitation, retirement, health or personal reasons, disability, employment in another profession, then COACH shall have no responsibility, obligation, or liability to the University.

12.6 Financial Exigency / Fiscal Funding

12.6.1 COACH may be terminated at any time due to the financial circumstances in which the University and/or the University of Louisiana System has declaration of financial exigency. Such a termination can be based on consideration of budgetary restrictions, and priorities for maintenance of program and services. In the event of such termination, COACH will receive three (3) months notice of termination or three (3) months regular pay in lieu of such notice at the University's sole discretion. All compensation, including salary, benefits, and other remuneration incidental to employment, cease upon termination.

12.6.2 The continuation of this contract is contingent upon the appropriation of funds to fulfill the requirements of the contract by the legislature. If the legislature fails to appropriate sufficient monies to provide for the continuation of the contract, or if such appropriation is reduced by the veto of the Governor or by any means provided in the appropriations act to prevent the total appropriation for the year from exceeding revenues for that year, or for any other lawful purpose, and the effect of such reduction is to provide insufficient monies for the continuation of the contract, the contract shall terminate on the date of the beginning of the first fiscal year for which funds are not appropriated.

12.7 Upon termination of this Contract by either party for any reason, reassignment of COACH to some other position at the University, or suspension or leave without pay, any entitlement to a courtesy automobile or stipend, cell phone or stipend, housing or housing allowance, *etc.*, shall cease immediately upon the occurrence of any such event.

13.0 Fundraising

All fundraising activities of COACH must be pre-approved by the AD, or his/her designee, and coordinated through the University of Louisiana at Monroe Foundation to ensure that such activities are in compliance with the University's policies.

14.0 Severability

If any provision of the agreement shall be deemed invalid or unenforceable, either in whole or in part, this agreement shall be deemed amended to delete or modify, as necessary, the offending provision or to alter the bounds thereof in order to render it valid and enforceable.

15.0 Force Majeure

Neither party shall be considered in default performance of his or its obligations under this Agreement if such performance is prevented or delayed by Force Majeure. "Force Majeure" shall be understood to be any cause which is beyond the reasonable control of the party affected and which is forthwith, by notice from the party affected, brought to the attention of the other party, including but not limited to war, hostilities, revolution, civil commotion, strike, lockout, epidemic, pandemic, accident, fire, wind, flood, any requirements of law, or an act of God.

16.0 Entire Agreement


This Contract of Employment shall become the agreement between the parties supplanting all previous other oral or written agreements, letters of appointment, and/or memoranda of understanding regarding any of the matters or things provided for or hereinbefore discussed or mentioned.

[CONTINUED ON NEXT PAGE]

The parties hereto have executed this Contract of Employment on the day, month and year first above written.

UNIVERSITY OF LOUISIANA MONROE

HEAD FOOTBALL COACH

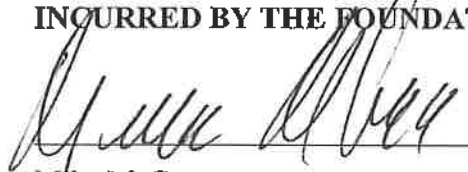


Ron Berry
President



Terry Wilson Bowden
Head Football Coach

ACKNOWLEDGED AND AGREED TO ON BEHALF OF THE UNIVERSITY OF
LOUISIANA AT MONROE ATHLETIC FOUNDATION, INC. AS TO OBLIGATIONS
INCURRED BY THE FOUNDATION:



Mike McGee
President

Approved by the Board of Supervisors for the University of Louisiana System at its
meeting on the _____ day of _____, 20____.

James Henderson
President
University of Louisiana System

**BOARD OF SUPERVISORS FOR THE
UNIVERSITY OF LOUISIANA SYSTEM**

ATHLETIC COMMITTEE

October 28, 2021

Item H.10. **University of New Orleans'** request for approval of a contract with Mr. Michael Blake Dean, Head Men's Baseball Coach, effective July 1, 2022.

EXECUTIVE SUMMARY

Under the proposed agreement, effective through June 30, 2026, Coach's base annual salary is \$80,000. The agreement stipulates that the Coach may be eligible for annual cost of living or merit pay increases in addition to the stated base salary. In addition, Coach will receive use of a courtesy vehicle as provided by the University or a University partner. Should the University not provide a courtesy vehicle, Coach will receive an annual vehicle allowance of \$7,200 dispensed monthly.

During the time of employment as head coach, Coach will have the opportunity to earn the following annual performance incentives. The annual earned performance incentives shall be subject to all mandatory withholdings and are not inclusive of employer matches for retirement and Medicare payments. If earned, the annual performance incentives shall be funded by the New Orleans Foundation solely from funds donated for the support of the athletic department and held by the Foundation and paid through University payroll. The annual performance incentives are as follows:

Academic Progress

- If Team achieves a one-year APR (Academic Progress Rate) score of 970 or greater in any academic year of this agreement and is not subject to penalties due to the four-year average score, a \$2,500 in performance incentive will be provided to Coach. Should the baseball team receive an APR post-season ineligibility penalty during any year of this agreement, this performance incentive provision will be void for the remaining term of the agreement.

Athletic Success

- If Team achieves an end of year RPI ranking in the top 100 nationally, Coach will earn a one-time performance incentive of \$5,000.
- If Team wins 50% or more games (minimum of 8 games played) versus any of the following universities in either the regular season or postseason: Tulane, ULL, ULM, La Tech, Southern Miss, South Alabama, UAB, Samford, Troy, Houston or Rice, Coach will receive a one-time performance incentive of \$5,000.

- If Team wins a game versus a top 100 end of year RPI team from the SEC, ACC or Big 12, Coach will receive a one-time performance incentive of \$2,500 per win.
- If Team competes in an NCAA Regional, Coach will earn a one-time performance incentive of \$5,000.
- If Team competes in an NCAA Super Regional, Coach will earn a one-time performance incentive of \$7,500. Earning this incentive will void the previous NCAA Regional incentive.
- If Team competes in an NCAA College World Series, Coach will earn a one-time performance incentive of \$20,000. Earning this incentive will void the previous NCAA Regional and NCAA Super Regional incentives.
- If Team wins the NCAA National Championship, Coach will earn a one-time performance incentive of \$50,000. Earning this incentive will void the previous NCAA Regional, NCAA Super Regional, and NCAA College World Series incentives.

Professional Recognition

- When the Coach is recognized as Conference Coach of the Year by the Conference itself, Coach will earn one-time performance incentive of \$2,500.

Multi-Media / Public Appearance

- When Coach fulfills his multi-media and public appearance obligations, Coach will earn the below one-time incentives:
 - July 2022 - June 2023 - \$12,000 multi-media and \$12,000 public appearance
 - July 2023 - June 2024 - \$13,500 multi-media and \$13,500 public appearance
 - July 2024 - June 2025 - \$16,000 multi-media and \$16,000 public appearance
 - July 2025 - June 2026 - \$20,000 multi-media and \$20,000 public appearance

In the event the University terminates the contract without cause, Coach shall be entitled to 50% of the base salary, supplements, and car allowance which he would have been earned during the remaining term of the contract. This amount will be offset by compensation received by Coach from another NCAA University or University Foundation. The University would be responsible for the amounts due through the current fiscal year (June 30). The Foundation would be responsible for the remaining amounts (the next July 1 through expiration). Coach will make every effort to mitigate these damages through the pursuit of employment. Should the Coach secure employment prior to the completion of the payments required under this agreement, University and the Foundation are only obligated to pay the difference between Coach's new salary and contracted annual salary at the University of New Orleans.

In the event Coach terminates this agreement without cause, UNO will be entitled to liquidated damages paid by Coach or new employer equal to 25% of the base salary of the contract term.

The University and the Foundation have combined this into one joint employment agreement with Coach.

RECOMMENDATION

It is recommended that the following resolution be adopted:

NOW, THEREFORE, BE IT RESOLVED, that the Board of Supervisors for the University of Louisiana System hereby approves University of New Orleans' request for approval of a contract with Mr. Michael Blake Dean, Head Men's Baseball Coach, effective July 1, 2022.

**CONTRACT OF EMPLOYMENT
HEAD COACH, BASEBALL**

STATE OF LOUISIANA

PARISH OF ORLEANS

This agreement is made and entered into on this ___ day of September 2021, between the University of New Orleans through its President, Dr. John Nicklow, the University of New Orleans Foundation (hereinafter referred to as the "Foundation") and Michael Blake Dean (hereinafter referred to as "COACH"). This agreement is subject to the approval of the Board of Supervisors of the University of Louisiana System, the management board for the University of New Orleans, and therefore the terms and conditions set forth in this agreement should not be considered a valid contract until approval is provided by the Board.

1.0 Employment

1.1 The University of New Orleans (the "University") does hereby employ COACH as Head Coach, Baseball and COACH does hereby accept employment and agrees to perform all of the services pertaining to University of New Orleans Athletics which are required of COACH, as well as, other services as may be contemplated hereunder, all as prescribed by the University through its President and Director of Athletics.

1.2 COACH shall be responsible, and shall report, directly to University's Director of Athletics (the "Director") 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 University's President.

1.3 COACH shall manage and supervise the team and shall perform such other duties in University's athletic program as the Director may assign.

1.4 COACH agrees to represent University positively in public and private forums and shall not engage in conduct that reflects adversely on University or its athletic programs.

2.0 Term

2.1 The term of this agreement is for a fixed period of four (4) years, commencing on the 1st day of July, 2022, and terminating without further notice to COACH on the 30th day of June, 2026, unless extended under the terms of this agreement.

2.2 This agreement is renewable solely upon an offer from University and acceptance by COACH, both of which must be in writing, signed by the parties, and approved by the Board. This agreement in no way grants COACH a claim to tenure in employment, nor shall COACH'S service pursuant to this agreement count in any way toward tenure at University.

2.3 This agreement may be amended or extended at any time during the period of this contract by mutual signed agreement of both parties and approved by the Board.

3.0 Compensation

3.1 In consideration of COACH'S services and satisfactory performance of this agreement, University shall pay COACH an annual salary of \$80,000, payable on a biweekly basis.

3.2 COACH shall have an assistant coach salary pool of \$100,00 for assistant coaches and support staff along with a \$5,000 annual increase to the assistant pool and two courtesy vehicles or car allowances for use by an assistants.

3.3 The COACH is subject to pay adjustments according to economic circumstances that affect all employees in the unclassified state service.

3.4 The University does not guarantee amounts due under this agreement beyond the current year of performance. Should the contract be terminated for any reason amounts due shall be determined in accordance with section 14 below.

4.0 Supplements/Performance Incentives

4.1 During the time of employment as head coach, COACH will have the opportunity to receive the following earned salary supplements. The annual supplements shall be subject to all mandatory withholdings and are inclusive of employer matches for retirement and Medicare payments. Annual salary supplements will be paid in one lump sum within sixty (60) days of the conclusion of each season during the term of the agreement. The potential annual supplements are as follows:

4.1.1 Vehicle: COACH will receive use of a courtesy vehicle as provided by the University or a University partner. Should the University not provide a courtesy vehicle, COACH will receive an annual vehicle allowance of \$7,200 dispensed monthly.

4.2 During the time of employment as head coach, COACH will have the opportunity to earn the following annual performance incentives. The annual earned performance incentives shall be subject to all mandatory withholdings and are not inclusive of employer matches for retirement and Medicare payments. If earned, the annual performance incentives shall be funded by the Foundation solely from funds donated for the support of the athletic department and held by the Foundation and paid through University payroll. The annual performance incentives are as follows:

4.2.1 Academic Progress

4.2.1.1 When baseball team achieves a one-year APR (Academic Progress Rate) score of 970 or greater in any academic year of this agreement and is not subject to penalties due to the four-year average score, a Two Thousand Five Hundred Dollar (\$2,500) in performance incentive will be provided to COACH. This is applicable to each year of the agreement. Should the baseball team receive an APR post-season ineligibility penalty during any year of this agreement, this performance incentive provision will be void for the remaining term of the agreement.

4.2.2 Athletic Success

4.2.2.1 When the baseball team achieves an end of year RPI ranking in the top 100 nationally, COACH will earn a one-time performance incentive of \$5,000. This is applicable to each year of the agreement.

4.2.2.2 When the baseball team wins 50% or more games (minimum of 8 games played) versus any of the following universities in either the regular season or postseason: Tulane, ULL, ULM, La Tech, Southern Miss, South Alabama, UAB, Samford, Troy, Houston or Rice, COACH will receive a one-time performance incentive of \$5,000. This is applicable to each year of the agreement.

4.2.2.3 When the baseball team wins a game versus a top 100 end of year RPI team from the SEC, ACC or Big 12, COACH will receive a one-time performance incentive of \$2,500 per win. This is applicable to each year of the agreement.

4.2.2.4 When the baseball team competes in an NCAA Regional, COACH will earn a one-time performance incentive of \$5,000. This is applicable to each year of the agreement.

4.2.2.5 When the baseball team competes in an NCAA Super Regional, COACH will earn a one-time performance incentive of \$7,500. Earning this incentive will void the previous NCAA Regional incentive. This is applicable to each year of the agreement.

4.2.2.6 When the baseball team competes in an NCAA College World Series, COACH will earn a one-time performance incentive of \$20,000. Earning this incentive will void the previous NCAA Regional and NCAA Super Regional incentives. This is applicable to each year of the agreement.

4.2.2.7 When the baseball team wins the NCAA National Championship, COACH will earn a one-time performance incentive of \$50,000. Earning this incentive will void the previous NCAA Regional, NCAA Super Regional and NCAA College World Series incentives. This is applicable to each year of the agreement.

4.2.3 Professional Recognition

4.2.3.1 When the COACH is recognized as Conference Coach of the Year by the Conference itself, COACH will earn one-time performance incentive of \$2,500. This is applicable to each year of the agreement.

4.2.4 Multi-Media / Public Appearance

4.2.4.1 When COACH fulfills his multi-media and public appearance obligations, COACH will earn the below one-time incentives.

- July 2022 - June 2023 - \$12,000 multi-media and \$12,000 public appearance
- July 2023 - June 2024 - \$13,500 multi-media and \$13,500 public appearance
- July 2024 - June 2025 - \$16,000 multi-media and \$16,000 public appearance
- July 2025 - June 2026 - \$20,000 multi-media and \$20,000 public appearance

5.0 Contracts for Broadcasts and/or Endorsements

5.1 The University retains all endorsement and multi-media rights, including television, radio, internet, print, etc., on behalf of COACH and the baseball team. COACH may not enter into any agreement for professional or personal endorsement of a product, business or charitable organization without approval of the Director of Athletics or the University President.

6.0 Camps and Clinics

6.1 COACH may operate a camp for the teaching of athletic pursuits on University property to the end of better utilization of the facilities and with suitable compensation paid to the University for the use of such facilities unless camps are operated with the primary purpose of generating revenue for the University baseball program. The use of University facilities will be determined by the availability of those facilities as established by University policy. COACH may operate and receive additional compensation for camps/clinics as outlined in the athletic department's policy regulating camps and clinics. Should COACH operate a University-sponsored camp for the primary benefit of the University baseball program, the following shall apply

6.1.1 All revenues from university camps/clinics will be deposited into COACH's University camp budget. After all expenses are met, COACH may be compensated up to the amount of surplus remaining in the account, or use the profits to pay assistant coaches, supplement his University baseball operating budget, or a combination of the three, at coach's discretion.

6.1.2 Camps operated through the University camp budget will not be subject to facility fees; however, all camps will be assessed a per camper administration fee by Department of Athletics through the UNO Foundation.

6.1.3 Conducting camps and clinics is considered a part of COACH's job description related to promoting the University and the athletics department; thus, neither COACH nor assistant coaches will not be required to take leave while conducting camps run through the University camp budget.

6.1.4 COACH's camp budget will be charged for a personal injury insurance policy approved by the University for camp/clinic participants.

6.2 If camps are operated as a private event, it is specifically agreed that in the operation of such camps, COACH acts for himself in his private capacity and not as an agent or employee of the University and that this agreement constitutes merely a license to use the property and facilities subject to the conditions hereafter stated.

6.2.1 Special set-ups or changes in original set-up of facilities will be taken care of by the COACH with no cost to the University.

6.2.2 The COACH agrees to pay the University all out-of-pocket costs incurred by the University in making the facilities available for the camps.

6.2.3 The COACH agrees to secure a policy of insurance in a company approved by the University's Risk Management Office under which the Board of Supervisors of the University of Louisiana System, the University, its agents and servants, are named as the insured (or as an additional insured) which provides:

6.2.4 Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the Labor Code of the State of Louisiana and Employers Liability coverage if COACH hires any employees to work at such camps or clinics. Comprehensive General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage.

6.2.5 Annual leave must be requested to cover the dates of the camp operation for all University personnel involved.

6.2.6 Complete records will be maintained regarding income and expenditures associated with said camp and available for verification by University auditors.

6.2.7 The COACH agrees to protect, indemnify and save harmless the University from and against any and all expenses, damages, claims, suits, actions, judgments and costs whatsoever, including reasonable attorney's fees, arising out of or in any way connected with any claim or action for property loss, personal injury or death during the operation of said camp activities.

6.2.8 The COACH is an independent contractor during said camp activities and, as such, is licensed to use certain facilities of the University. The COACH, as a University employee, will undertake to observe and require campers and its staff to conform to the general rules applicable to the use of University facilities. This paragraph is designated to assure that nothing be done which is inconsistent with the maintenance of an educational campus environment and the character of a State institution which makes its facilities open to persons without discrimination.

6.3 The Director of Athletics will be the administrative officer of the University who will be advised by the COACH of any problems or questions which may arise out of the operation of camps.

7.0 Employee Benefits

7.1 COACH shall participate in the mandatory benefit plan and be eligible for optional employee plans as would any other University unclassified employee. Such benefit will be based upon COACH's base annual salary as provided by University.

8.0 Outside Income-Subject to Compliance with Board Rules

8.1 The COACH shall be authorized to earn other revenue while employed by the University, but such activities are independent of his University employment and the University shall have no responsibility for any claims arising therefrom. COACH shall be entitled to retain revenue generated from his operation of camps and/or clinics in accordance with University policy relating to camps or clinics conducted by Athletic Department personnel. All outside income will be subject to approval in accordance with the Board of Supervisors for the University of Louisiana System policies.

8.2 Notwithstanding the above or anything else herein to the contrary, if COACH receives athletically related income or benefits totaling more than \$600 per year from any source or combination of sources other than Employer, COACH must report all such income or benefits to the President in writing at least annually. Examples include, without limitation, income or

benefits from (1) endorsement or consultation contracts with apparel companies, equipment manufacturers, or television or radio programs; (2) ownership, control, or management of a foundation, organization, or other entity; and (3) participation in athletic camps outside of those offered by Employer (see Bylaw 11.2.2.).

9.0 Apparel, Equipment Endorsements

9.1 The University shall retain all endorsements rights on behalf of COACH. COACH shall not endorse or serve as a spokesperson for a business, product, service, charitable organization without prior approval from the Director of Athletics. Should the COACH be authorized by the University, the University shall receive and then pay to COACH any funds for which he is responsible in obtaining for the University through endorsements of show, apparel or equipment manufacturers. The benefits shall not be considered earned income for the purpose of computation of retirement benefits and COACH shall be responsible for all applicable taxes.

10.0 Coaching Staff

10.1 COACH shall have the authority to select a coaching staff comprised of unclassified personnel upon authorization by the Director of Athletics and approval by the Board of Supervisors for the University of Louisiana System.

11.0 Compliance with NCAA, Conference and University Rules

11.1 COACH shall abide by the rules and regulations of the NCAA, Conference & University rules. If found in violation of NCAA regulations, COACH shall be subject to disciplinary or corrective action as set forth in the NCAA enforcement procedures (NCAA Constitution 11.2.1). COACH may be suspended for a period of time, without pay, or the employment of COACH may be terminated if COACH is found to be involved in deliberate and serious violations of NCAA, Conference and University regulations (NCAA Constitution 11.2.1).

11.2 COACH and Employer acknowledge and agree that COACH has an affirmative obligation to cooperate fully in the NCAA infractions process, including the investigation and adjudication of a case (see NCAA Bylaw 19.2.3 for examples of full cooperation), and (2) an individual who is found in violation of NCAA regulations shall be subject to disciplinary or corrective action as set forth in the provisions of the NCAA infractions process (see NCAA Bylaw 19), including suspension without pay or termination of employment.

12.0 Title IX Sexual Misconduct Policy Reporting and Compliance

12.1 COACH shall promptly report to the University's Title IX Coordinator or Deputy Title IX Coordinator any Known Violation(s) of the University or the University of Louisiana System's Sexual Misconduct Policy (including, but not limited to sexual harassment, sexual assault, sexual exploitation, domestic violence and stalking) that involve any student, faculty, or staff or that is in connection with a University sponsored activity or event. Any emergency situation shall be immediately reported to 911 and/or law enforcement. For purposes of this paragraph, a "Known Violation" shall mean a violation or an allegation of a violation of Title IX and/or the University's or the University of Louisiana System's Sexual Misconduct Policy that COACH is aware of or has reasonable cause to believe is taking place or may have taken place.

13.0 Morality

13.1 COACH agrees to represent the UNIVERSITY positively in public and private forums and shall not engage in conduct that reflects adversely on the UNIVERSITY or its athletics programs; AND

13.2 COACH shall also abide by the State of Louisiana Code of Government Ethics, University Policy and Regulations, and the policies and regulations of the University of Louisiana System. In public appearances, he/she shall at all times conduct himself/herself in a manner that befits a University official and shall always attempt to create goodwill and a good image for the UNIVERSITY.

14.0 Termination

14.1 Either party may terminate this agreement without just cause prior to the expiration of its terms by giving thirty (30) days written notice to the other party. Prior to termination of COACH, University will obtain approval from the University of Louisiana System President.

14.2 COACH may be terminated by the Director of Athletics at any time for misconduct, substantial and manifest incompetence, violation or gross disregard of state or federal laws, and deliberate and serious violations of NCAA, conference, or university rules, regulations, policies or procedures. In the event of such termination, COACH will receive thirty (30) calendar days notice of termination or thirty (30) calendar day's regular pay in lieu of such notice. All compensation, including salary, benefits and other remuneration incidental to employment, cease upon termination. The judgment as to whether the conduct of COACH constitutes cause under this provision shall not be exercised arbitrarily, capriciously or in a discriminatory manner by the University. No damages shall be due if termination is for just cause.

14.3 The University may terminate this Agreement for cause pursuant to the for-cause-termination provisions of this Agreement for any determined violation by COACH for failure to report a Known Violation of:

- (1) Title IX of the Education Amendments of 1972;
- (2) the University's Sexual Misconduct Policy; or
- (3) the University of Louisiana System's Sexual Misconduct Policy.

14.4 The University may at any time, and in its sole discretion, terminate the employment of COACH for any reason. In the event the University terminates the Contract, without cause, the COACH shall be entitled to liquidated damages equal to 50% of the base salary, supplements and car allowance which would have been earned through the end of the contract term. This amount will be offset by compensation received by COACH from another NCAA university or university Foundation.

Amounts due for the year which come due during the University's current fiscal year ending June 30 shall be paid by the University. The remaining amounts for liquidated damages due from the Foundation, which come due beyond the current University fiscal year, shall be funded solely from funds donated for the support of the athletic department and held by the Foundation. COACH will be paid in regular semi-monthly installments through the completion of the contract. COACH will make every effort to mitigate these damages through the pursuit of employment. Should the COACH secure employment prior to the completion of the payments required under this agreement, University and UNOF are only obligated to pay the difference between COACH's new salary and contracted annual salary at the University of New Orleans.

In the event COACH terminates this agreement without cause, UNO will be entitled to liquidated damages paid by COACH or new employer equal to 25% of the base salary of the contract term. The liquidated damages shall be due and payable in a lump sum within sixty (60) days of the date of termination and only applicable if COACH accepts another position within the baseball industry within 12 months of departure.

14.5 COACH may be terminated at any time due to the financial circumstances in which the University and/or the University of Louisiana System has made a declaration of financial exigency.

Such a termination can be based on consideration of budgetary restrictions, and priorities for maintenance of program and services. In the event of such termination, COACH will receive six (6) months' notice of termination or six (6) months regular salary in lieu of such notice. All compensation, including salary, benefits, supplemental compensation and other remuneration incidental to employment, cease upon termination of employment.

15.0 Fundraising

All fundraising activities by COACH must be pre-approved by the Director of Athletics, or his/her designee, to ensure that such activities are in compliance with University policies. Director of Athletics may require COACH to participate in department fundraising initiatives and/or maintain a fundraising goal specific to his sport.

16.0 Severability

If any provision of this agreement shall be deemed invalid or unenforceable, either in whole or in part, this Agreement shall be deemed amended to delete or modify, as necessary, the offending provision or to alter the bounds thereof in order to render it valid and enforceable.

17.0 Force Majeure

No party shall be considered in default performance of his or its obligations under this Agreement if such performance is prevented or delayed by Force Majeure. "Force Majeure" shall be understood to be any cause which is beyond the reasonable control of the party affected and which is forthwith, by notice from the party affected, brought to the attention of the other party, including but not limited to war, hostilities, revolution, civil commotion, strike, lockout, epidemic, accident, fire, wind or flood or any requirements of law, or an act of God.



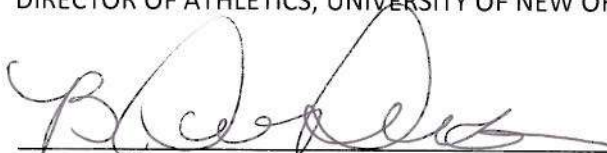
PRESIDENT, UNIVERSITY OF NEW ORLEANS



PRESIDENT, UNIVERSITY OF NEW ORLEANS FOUNDATION



DIRECTOR OF ATHLETICS, UNIVERSITY OF NEW ORLEANS



HEAD COACH, UNIVERSITY OF NEW ORLEANS

Approved by the Board of Supervisors for the University of Louisiana System at its meeting on the
_____ day of _____, 20____.

PRESIDENT - ULS

**BOARD OF SUPERVISORS FOR THE
UNIVERSITY OF LOUISIANA SYSTEM**

ATHLETIC COMMITTEE

October 28, 2021

Item H.11. **University of New Orleans'** request for approval of a contract with Mr. Timothy Duncan, Vice President of Athletics & Recreation (VPAR), effective November 1, 2021.

EXECUTIVE SUMMARY

Under the proposed five-year agreement effective through October 31, 2026, the VPAR's salary will start at \$186,000, and he will be eligible for increases of 2% each contract year. During the time of employment, the VPAR will have the opportunity to receive the following earned salary supplements/incentives. The supplements/incentives shall be subject to all mandatory withholdings and are inclusive of employer matches for retirement and Medicare payments. The supplements/incentives shall be funded by the University of New Orleans Foundation but only with funds available through Department of Athletics restricted accounts and paid through University payroll. The potential supplements/incentives are as follows:

- \$10,000 for each year in which all athletics teams are free from APR penalties according to the APR institutional report which is released by the NCAA in the academic year following the academic year measured for supplemental compensation.
- Vehicle allowance equal to \$600 per month throughout the term of the contract. If a courtesy vehicle is provided by the Department of Athletics, the vehicle allowance may be suspended for a period during which courtesy vehicle is provided to the VPAR.

Category I: Academic Enhancement

Department eligible to receive NCAA Academic Enhancement Funds	\$10,000
--	----------

Category II: Revenue Generation

\$100,000 overall increase in Athletic Related Revenue	\$5,000
\$250,000 overall increase in Athletic Related Revenue	\$12,500
\$500,000 overall increase in Athletic Related Revenue	\$25,000
\$1,000,000 overall increase in Athletic Related Revenue	\$50,000
\$2,000,000 overall increase in Athletic Related Revenue	\$75,000

Category III: Conference Affiliation

Move to a higher ranked conference (MBB net rankings)	\$25,000
---	----------

Category IV: Sport Enhancement

Add an NCAA sponsored sport (per sport)	\$25,000
---	----------

Category V: Athletic Performance

Regular Season Championship (Men's Basketball or Baseball)	\$10,000
Regular Season Championship (All other sports)	\$5,000
NIT Appearance (MBB or WBB)	\$2,500
NCAA Tournament Participation (MBB or MBA)	\$10,000
NCAA Tournament Team Participation (All other sports)	\$5,000
NCAA Tournament Win (Each round – All Sports)	\$5,000

Category VI: Commissioner's Cup

1 st Place in Conference Commissioner's Cup	\$20,000
--	----------

In the event the University terminates the contract without cause, the VPAR shall be entitled to liquidated damages equal to 50% of the base salary (excluding supplements) which would have been earned through the end of the contract term and any performance incentives earned as of the date of termination. Amounts due for the year which come due during the University's current fiscal year ending June 30 shall be paid by the University. The remaining amounts for liquidated damages due from the Foundation which come due beyond the current University fiscal year shall be funded solely from funds donated for the support of the athletic department and held by the Foundation. The VPAR will be paid in regular semi-monthly installments through the completion of the contract, and he will make every effort to mitigate these damages through the pursuit of employment. Should the VPAR secure employment prior to the completion of the payments required under this agreement, University and UNOF are only obligated to pay the difference between his new salary and contracted annual salary at the University of New Orleans.

In the event the VPAR terminates this agreement without cause, UNO will be entitled to liquidated damages paid by him or his new employer equal to 25% of the remaining payments through the end of the contract term.

The University and the University of New Orleans Foundation have combined this agreement into one joint employment agreement.

RECOMMENDATION

It is recommended that the following resolution be adopted:

NOW, THEREFORE, BE IT RESOLVED, that the Board of Supervisors for the University of Louisiana System hereby approves the University of New Orleans' request for approval of a contract with Mr. Timothy Duncan, Vice President of Athletics & Recreation, effective November 1, 2021.

**CONTRACT OF EMPLOYMENT
TIM DUNCAN, VICE PRESIDENT OF ATHLETICS & RECREATION**

STATE OF LOUISIANA

PARISH OF ORLEANS

This agreement is made and entered into on this 1st day of October 2021, between the University of New Orleans through its President, Dr. John Nicklow, the University of New Orleans Foundation (hereinafter referred to as the "Foundation") and Tim Duncan (hereinafter referred to as "Duncan"). This agreement is subject to the approval of the Board of Supervisors of the University of Louisiana System, the management board for the University of New Orleans, and therefore the terms and conditions set forth in this agreement should not be considered a valid contract until approval is provided by the Board.

1.0 Employment

1.1 The University of New Orleans (the "University") does hereby employ DUNCAN as Vice President of Athletics & Recreation and DUNCAN does hereby accept employment and agrees to perform all of the services pertaining to University of New Orleans Athletics which are required of DUNCAN, as well as, other services as may be contemplated hereunder, all as prescribed by the University through its President.

1.2 DUNCAN shall be responsible, and shall report, directly to University's President Dr. John Nicklow, (the "President") and shall confer with the President, his successor, or designee on all administrative and technical matters.

1.3 DUNCAN shall manage and supervise the department of athletics and shall perform such other duties in University's athletic program as the President may assign.

1.4 DUNCAN agrees to represent University positively in public and private forums and shall not engage in conduct that reflects adversely on University or its athletic programs.

2.0 Term

2.1 The term of this agreement is for a fixed period of five (5) years, commencing on the 1st day of November, 2021, and terminating without further notice to DUNCAN on the 30th day of October, 2026, unless extended under the terms of this agreement.

2.2 This agreement is renewable solely upon an offer from University and acceptance by DUNCAN, both of which must be in writing, signed by the parties, and approved by the Board. This agreement in no way grants DUNCAN a claim to tenure in employment, nor shall DUNCAN'S service pursuant to this agreement count in any way toward tenure at University.

2.3 This agreement may be amended or extended at any time during the period of this contract by mutual signed agreement of both parties and approved by the Board.

3.0 Compensation

3.1 In consideration of DUNCAN'S services and satisfactory performance of this agreement, University shall pay DUNCAN an annual salary of \$186,000, payable on a biweekly basis.

3.2 DUNCAN shall be eligible for yearly 2% increases as listed: 2022-23 (\$189,720), 2023-24 (\$193,514), 2024-25 (\$197,384) and 2025-2026 (\$201,332). DUNCAN is subject to pay adjustments according to economic circumstances that affect all employees in the unclassified state service.

3.3 Should the contract be terminated for any reason amounts due shall be determined in accordance with section 14 below.

4.0 Supplements/Performance Incentives

4.1 During the time of employment as Vice President of Athletics & Recreation, DUNCAN will have the opportunity to receive the following earned salary supplements/incentives. The annual supplements/incentives shall be subject to all mandatory withholdings and are inclusive of employer matches for retirement and Medicare payments. Annual salary supplements/incentives shall be paid in by the University of New Orleans Foundation buy only with funds available through the Department of Athletics' restricted accounts and paid through University payroll. The potential annual supplements are as follows:

4.1.1 DUNCAN will receive supplemental compensation equal to Ten Thousand dollars (\$10,000) for each year in which all athletics teams are free from APR penalties according to the APR institutional report which is released by the NCAA in the academic year following the academic year measured for supplemental compensation. Likewise, and in addition, each Associate Athletic Director, Senior Associate Athletic Director, and/or Deputy Athletics Director will receive supplemental compensation disbursement within sixty (60) days following the issuance of the NCAA report. Each supplemental compensation disbursement shall be subject to the standard federal and state withholdings and shall be funded by the University of New Orleans Foundation by way of the University's Payroll Office but only with funds available through the Department of Athletics' restricted accounts.

4.1.2 Duncan will receive a vehicle allowance equal to (\$600) per month throughout the term of the contract. If a courtesy vehicle is provided to Duncan by the Department of Athletics, the vehicle allowance may be suspended for a period during which courtesy vehicle is provided to Duncan.

4.2 During the time of employment as Vice President of Athletics & Recreation, DUNCAN will have the opportunity to earn the following annual performance incentives. The annual earned performance incentives shall be subject to all mandatory withholdings and are not inclusive of employer matches for retirement and Medicare payments. If earned, the annual performance incentives shall be funded by the Foundation solely from funds donated for the support of the athletic department and held by the Foundation and paid through University payroll. The annual performance incentives are as follows:

4.2.1 Category I: Academic Enhancement

Department eligible to receive NCAA Academic Enhancement Funds	\$10,000
--	----------

Category II: Revenue Generation	
\$100,000 overall increase in Athletic Related Revenue	\$5,000
\$250,000 overall increase in Athletic Related Revenue	\$12,500
\$500,000 overall increase in Athletic Related Revenue	\$25,000
\$1,000,000 overall increase in Athletic Related Revenue	\$50,000
\$2,000,000 overall increase in Athletic Related Revenue	\$75,000
Category III: Conference Affiliation	
Move to a higher ranked conference (MBB net rankings)	\$25,000
Category IV: Sport Enhancement	
Add an NCAA sponsored sport (per sport)	\$25,000
Category V: Athletic Performance	
Regular Season Championship (Men's Basketball or Baseball)	\$10,000
Regular Season Championship (All other sports)	\$5,000
NIT Appearance (MBB or WBB)	\$2,500
NCAA Tournament Participation (MBB or MBA)	\$10,000
NCAA Tournament Team Participation (All other sports)	\$5,000
NCAA Tournament Win (Each round – All Sports)	\$5,000
Category VI: Commissioner's Cup	
1 st Place in Conference Commissioner's Cup	\$20,000

5.0 Contracts for Broadcasts and/or Endorsements

5.1 The University retains all endorsement and multi-media rights, including television, radio, internet, print, etc., on behalf of DUNCAN and the Department of Athletics. DUNCAN may not enter into any agreement for professional or personal endorsement of a product, business or charitable organization without approval of the PRESIDENT.

6.0 Employee Benefits

6.1 DUNCAN shall participate in the mandatory benefit plan and be eligible for optional employee plans as would any other University unclassified employee. Such benefit will be based upon DUNCAN's base annual salary as provided by University.

7.0 Outside Income-Subject to Compliance with Board Rules

7.1 DUNCAN shall be authorized to earn other revenue while employed by the University, but such activities are independent of his University employment and the University shall have no responsibility for any claims arising therefrom. All outside income will be subject to approval in accordance with the Board of Supervisors for the University of Louisiana System policies.

7.2 Notwithstanding the above or anything else herein to the contrary, if DUNCAN receives athletically related income or benefits totaling more than \$600 per year from any source or combination of sources other than Employer, DUNCAN must report all such income or benefits to the President in writing at least annually. Examples include, without limitation, income or benefits from (1) endorsement or consultation contracts with apparel companies, equipment

to the President in writing at least annually. Examples include, without limitation, income or benefits from (1) endorsement or consultation contracts with apparel companies, equipment manufacturers, or television or radio programs; (2) ownership, control, or management of a foundation, organization, or other entity; and (3) participation in athletic camps outside of those offered by Employer (see Bylaw 11.2.2.).

8.0 Compliance with NCAA, Conference and University Rules

8.1 DUNCAN shall abide by the rules and regulations of the NCAA, Conference & University rules. If found in violation of NCAA regulations, DUNCAN shall be subject to disciplinary or corrective action as set forth in the NCAA enforcement procedures (NCAA Constitution 11.2.1). DUNCAN may be suspended for a period of time, without pay, or the employment of DUNCAN may be terminated if DUNCAN is found to be involved in deliberate and serious violations of NCAA, Conference and University regulations (NCAA Constitution 11.2.1).

8.2 DUNCAN and Employer acknowledge and agree that DUNCAN has an affirmative obligation to cooperate fully in the NCAA infractions process, including the investigation and adjudication of a case (see NCAA Bylaw 19.2.3 for examples of full cooperation), and (2) an individual who is found in violation of NCAA regulations shall be subject to disciplinary or corrective action as set forth in the provisions of the NCAA infractions process (see NCAA Bylaw 19), including suspension without pay or termination of employment.

9.0 Title IX Sexual Misconduct Policy Reporting and Compliance

9.1 DUNCAN shall promptly report to the University's Title IX Coordinator or Deputy Title IX Coordinator any Known Violation(s) of the University or the University of Louisiana System's Sexual Misconduct Policy (including, but not limited to sexual harassment, sexual assault, sexual exploitation, domestic violence and stalking) that involve any student, faculty, or staff or that is in connection with a University sponsored activity or event. Any emergency situation shall be immediately reported to 911 and/or law enforcement. For purposes of this paragraph, a "Known Violation" shall mean a violation or an allegation of a violation of Title IX and/or the University's or the University of Louisiana System's Sexual Misconduct Policy that DUNCAN is aware of or has reasonable cause to believe is taking place or may have taken place.

10.0 Morality

10.1 DUNCAN agrees to represent the UNIVERSITY positively in public and private forums and shall not engage in conduct that reflects adversely on the UNIVERSITY or its athletics programs; AND

10.2 DUNCAN shall also abide by the State of Louisiana Code of Government Ethics, University Policy and Regulations, and the policies and regulations of the University of Louisiana System. In public appearances, he/she shall at all times conduct himself/herself in a manner that befits a University official and shall always attempt to create goodwill and a good image for the UNIVERSITY.

11.0 Termination

14.1 Either party may terminate this agreement without just cause prior to the expiration of its terms by giving thirty (30) days written notice to the other party. Prior to termination of DUNCAN, University will obtain approval from the University of Louisiana System President.

14.2 DUNCAN may be terminated with cause by the PRESIDENT at any time for misconduct, substantial and manifest incompetence, violation or gross disregard of state or federal laws, and deliberate and serious violations of NCAA, conference, or university rules, regulations, policies or procedures. In the event of such termination, DUNCAN will receive ninety (90) calendar days notice of termination or ninety (90) calendar day's regular pay in lieu of such notice. All compensation, including salary, benefits and other remuneration incidental to employment, cease upon termination. The judgment as to whether the conduct of DUNCAN constitutes cause under this provision shall not be exercised arbitrarily, capriciously or in a discriminatory manner by the University. No damages shall be due if termination is for just cause.

14.3 The University may terminate this Agreement for cause pursuant to the for-cause-termination provisions of this Agreement for any determined violation by DUNCAN for failure to report a Known Violation of:

- (1) Title IX of the Education Amendments of 1972;
- (2) the University's Sexual Misconduct Policy; or
- (3) the University of Louisiana System's Sexual Misconduct Policy.

14.4 The University may at any time, and in its sole discretion, terminate the employment of DUNCAN for any reason. In the event the University terminates the Contract, without cause, the DUNCAN shall be entitled to liquidated damages equal to 50% of the base salary (excluding supplements) which would have been earned through the end of the contract term and any performance incentives earned as of the date of termination.

Amounts due for the year which come due during the University's current fiscal year ending June 30 shall be paid by the University. The remaining amounts for liquidated damages due from the Foundation, which come due beyond the current University fiscal year, shall be funded solely from funds donated for the support of the athletic department and held by the Foundation. DUNCAN will be paid in regular semi-monthly installments through the completion of the contract. DUNCAN will make every effort to mitigate these damages through the pursuit of employment. Should the DUNCAN secure employment prior to the completion of the payments required under this agreement, University and UNOF are only obligated to pay the difference between DUNCAN's new salary and contracted annual salary at the University of New Orleans.

In the event DUNCAN terminates this agreement without cause, UNO will be entitled to liquidated damages paid by DUNCAN or new employer equal to twenty-five percent (25%) of the remaining payments through the end of the term. The liquidated damages shall be due and payable in a lump sum within ninety (90) days of the date of termination.

14.5 DUNCAN may be terminated at any time due to the financial circumstances in which the University and/or the University of Louisiana System has made a declaration of financial exigency.

Such a termination can be based on consideration of budgetary restrictions, and priorities for maintenance of program and services. In the event of such termination, DUNCAN will receive

six (6) months' notice of termination or six (6) months regular salary in lieu of such notice. All compensation, including salary, benefits, supplemental compensation and other remuneration incidental to employment, cease upon termination of employment.

15.0 Fundraising

All fundraising activities by DUNCAN must be coordinated with the PRESIDENT or his/her designee, to ensure that such activities are in compliance with University policies.

16.0 Severability

If any provision of this agreement shall be deemed invalid or unenforceable, either in whole or in part, this Agreement shall be deemed amended to delete or modify, as necessary, the offending provision or to alter the bounds thereof in order to render it valid and enforceable.

17.0 Force Majeure

No party shall be considered in default performance of his or its obligations under this Agreement if such performance is prevented or delayed by Force Majeure. "Force Majeure" shall be understood to be any cause which is beyond the reasonable control of the party affected and which is forthwith, by notice from the party affected, brought to the attention of the other party, including but not limited to war, hostilities, revolution, civil commotion, strike, lockout, epidemic, accident, fire, wind or flood or any requirements of law, or an act of God.



PRESIDENT, UNIVERSITY OF NEW ORLEANS



PRESIDENT, UNIVERSITY OF NEW ORLEANS FOUNDATION



VICE PRESIDENT OF ATHLETICS & RECREATION, UNIVERSITY OF NEW ORLEANS

Approved by the Board of Supervisors for the University of Louisiana System at its meeting on the _____
day of _____, 20____.

PRESIDENT – UNIVERSITY OF LOUISIANA SYSTEM