

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

ATHLETIC COMMITTEE

January 11, 2013

Item G.2. **University of Louisiana at Monroe's** request for approval of a contractual agreement with Head Men's Football Coach, Mr. Todd Berry, effective January 1, 2013.

EXECUTIVE SUMMARY

Under the proposed agreement, effective through December 31, 2016, Coach's annual salary is \$200,000. In addition, Coach shall receive a \$25,000 salary adjustment for finishing with a winning record inclusive of the post season, which will take effect July 1 following the previous football season. The agreement also stipulates that the University of Louisiana at Monroe Athletic Foundation (ULMAF) will pay Coach \$50,000 in the first year of the contract (2013) and \$100,000 in the subsequent years of the contract (2014-2016) for Coach's role in the Warhawk Sports Network and as a fundraiser for ULM football.

The University is also requesting that the Coach receive a housing allowance of \$40,000 per year which includes applicable benefits, to be paid in equal monthly amounts. In addition, Coach will be provided an annual \$1,000 housing update allowance to be paid by the ULMAF.

The ULMAF may pay annual performance incentives based on certain specified achievements, as follows:

Earned salary supplement for team performance:

- \$25,000 if team wins Sun Belt Conference regular season championship and plays in post season bowl game;
- \$10,000 if team plays in post season bowl game;
- \$5,000 if team wins a post season bowl game;
- \$2,500 if team's annual APR rate is equal to or exceeds 980.

Football Season Ticket Compensation:

- \$5,000 if the University sells 5,000 season tickets;
- \$7,500 if the University sells 7,500 season tickets;
- \$10,000 if the University sells 10,000 or more season tickets.

These incentives will only be awarded if the team's two-year average APR score is equal to or exceeds 940.

The ULMAF shall deposit \$7,000 to an interest-bearing annuity on Coach's behalf on or before June 30 of each year of the contract term, which will be increased by \$3,000 for each year Coach serves as Head Football Coach.

In the event that the Coach is terminated without cause by the University, Coach will be paid for the remaining months of base compensation through the expiration of this agreement. Amounts due for the current fiscal year of termination (from the date of termination through the subsequent June 30) shall be paid by ULM. The remaining amounts due, which come due beyond the current University fiscal year, shall be funded by the ULMAF.

In the event that the Coach terminates this Agreement without cause to become employed as a football coach, then Coach shall be liable to the ULMAF for the remaining months of base compensation through the expiration of this agreement. If Coach terminates agreement for any other reason than becoming employed as a football coach, or employment at the University of Tulsa as Head Football Coach, then Coach shall have no responsibility, obligation, or liability to the University.

The University and the ULMAF 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 Louisiana at Monroe's request for approval of the contractual agreement with Head Men's Football Coach, Mr. Todd Berry, effective January 1, 2013.*

UNIVERSITY OF LOUISIANA MONROE

January 7, 2013

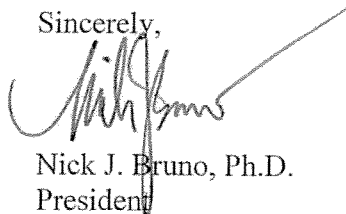
Dr. Sandra Woodley
President
University of Louisiana System
1201 Third Street, Suite 7-300
Baton Rouge, LA 70802

Dear Dr. Woodley:

Pursuant to Board of Supervisors' policy, I am requesting the approval of the contract of Mr. Todd Berry, the Head Football Coach at the University of Louisiana at Monroe. Upon Board approval, I request that his appointment be effective January 1, 2013.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Nick J. Bruno", with a long, sweeping horizontal stroke extending to the right.

Nick J. Bruno, Ph.D.
President

**EMPLOYMENT AGREEMENT
HEAD FOOTBALL COACH**

**STATE OF LOUISIANA
PARISH OF OUACHITA**

The Agreement is made and entered into on this 1st day of January, 2013, between The University of Louisiana at Monroe, through its President (hereinafter referred to as the "University" or "ULM"), The University of Louisiana at Monroe Athletic Foundation (hereinafter referred to as "ULMAF") and Todd Berry (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 Louisiana at Monroe.

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 Intercollegiate Athletics.
- 1.2 COACH shall be responsible, and shall report, directly to ULM's Director of Intercollegiate 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 ULM's President.
- 1.3 COACH shall manage and supervise the team and shall perform such other duties for ULM's athletic program as the Director may assign, provided the assignment is a reasonable request for a Head Football Coach at a Division 1 institution.
- 1.4 COACH agrees to represent ULM positively in public and private forums and shall not engage in conduct that reflects adversely on ULM 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 Director and COACH.

- 1.6 COACH shall inform the Director 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 Director.

2.0 Term

- 2.1 The term of this agreement is for a fixed period of forty-eight months, commencing on the 1st day of January, 2013, and terminating without further notice on the 31st day of December, 2016, unless extended under the terms of this agreement.
- 2.2 This agreement is renewable solely upon an offer from ULM and an 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, or shall COACH's service pursuant to this agreement count in any way toward tenure at ULM.
- 2.3 Beginning with the 2013 season, if the football team's Academic Progress Rate (APR) is below a two-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. If the teams' two-year average APR score, at the end of the one-year agreement, is equal to or greater than 940, all parties agree to negotiate a new contract, which must be approved by the Board.

3.0 Compensation

- 3.1 In consideration of COACH's services and satisfactory performance of this agreement, ULM shall pay COACH a base salary payable at the following annualized rate:

January 1, 2013 through December 31, 2013	\$200,000 per annum
January 1, 2014 through December 31, 2014	\$200,000 per annum
January 1, 2015 through December 31, 2015	\$200,000 per annum
January 1, 2016 through December 31, 2016	\$200,000 per annum

Housing Allowance

During his employment as COACH of the University's Football team, the COACH shall receive a housing allowance of \$40,000 per year which includes applicable benefits, to be paid in equal monthly amounts. In addition, COACH will be provided an annual \$1,000 housing update allowance to be paid by ULMAF.

Salary Adjustment

COACH shall receive a \$25,000 salary adjustment for posting a winning record inclusive of the post season. This salary adjustment will take effect July 1st following the previous football season and remain in effect for the duration of the current contractual agreement. This salary adjustment will only be awarded if the teams' two-year average APR score is equal to or greater than 940.

- 3.2 In addition to the base salary, housing allowance, and salary adjustment listed above, COACH shall receive the following amounts from the ULMAF on a monthly basis during the period COACH serves as Head Football Coach for the COACH'S role in the Warhawk Sports Network and as a fundraiser for ULM football.

January 1, 2013 through December 31, 2013	\$ 50,000 per annum
January 1, 2014 through December 31, 2014	\$100,000 per annum
January 1, 2015 through December 31, 2015	\$100,000 per annum
January 1, 2016 through December 31, 2016	\$100,000 per annum

Payment of this premium benefit is contingent upon COACH making reasonable efforts to promote ULM's athletic program through development, media and marketing initiatives. COACH shall not reasonably refuse to personally contact sponsors and/or potential sponsors to generate or increase advertising revenues provided such requests do not interfere with COACH'S coaching duties. 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.

- 3.3 COACH is expected to participate in pre-and post-game interviews conducted in conjunction with broadcasts of football games as well as weekly radio and/or television shows.
- 3.4 COACH shall not appear on any television, radio or internet program or advertisement not authorized by the University without prior written approval of the University except routine news media interviews for which no compensation is received. COACH may appear on television, 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.
- 3.5 The University does not guarantee amounts due under this contract beyond the current year of performance. Should the contract be terminated for any reason amounts due shall be determined in accordance with paragraph 12.1.

4.0 Term Adjustment

- 4.1 During the term of this agreement, should COACH post a winning record inclusive of the post season and the teams' two-year average APR score is equal to or greater than 940; this agreement shall be extended for twelve (12) months.

5.0 Annual Performance Incentives

5.1 Team Performance

During his employment as COACH of the University's Football team, the COACH shall have the opportunity to receive the following earned athletics competition incentives in consideration of the efforts in contributing to certain events or occurrences. These athletics competition incentives shall be subject to and inclusive of all mandatory withholdings.

Athletics Competition Incentives

Team wins regular season Conference Championship and plays in a post-season bowl game: COACH shall earn \$25,000 supplemental compensation.

Team does not win regular season Conference Championship but plays in a post-season bowl game: COACH shall earn \$10,000 supplemental compensation.

Team wins post-season bowl game: COACH shall earn \$5,000 supplemental compensation

Academic Incentives

Team records an annual APR score of 980 or better: COACH shall earn \$2,500 supplemental compensation.

Football Season Ticket Incentives

During his employment as COACH of the University's Football team, the COACH shall have the opportunity to receive the following earned salary supplements based upon the total number of football season tickets sold at a minimum of \$50 each. The number of season tickets sold shall not include trade out or in-kind season tickets. The supplemental compensation is not cumulative and will be paid as follows:

- (1) Earned salary supplement of five-thousand (\$5,000.00) dollars if the University sells 5,000 season tickets
- (2) Earned salary supplement of seventy five-hundred (\$7,500.00) dollars if the University sells 7,500 season tickets

- (3) Earned salary supplement of ten-thousand (\$10,000.00) dollars if the University sells 10,000 or more season tickets

These athletics competition, academic and ticket sales incentives will only be awarded if the team's two-year average Academic Progress Rate (APR) score is equal to or greater than 940, and shall be paid from unrestricted funds in the ULMAF.

Payments earned from incentives in section 5.0 will be subject to applicable local, state and federal withholding taxes and will be paid to COACH on or before June 30 of the respective contract year.

6.0 Annuity

- 6.1 ULMAF shall deposit \$7,000 to an interest bearing annuity on COACH's behalf on or before June 30th of each year of the contract term. This amount will increase by \$3,000 for each year COACH serves as Head Football Coach. If the term of this contract is extended under the terms of this agreement, further contributions will remain at the level set forth below in 2016.

June 30th, 2013	\$ 7,000
June 30th, 2014	\$ 10,000
June 30th, 2015	\$ 13,000
June 30th, 2016	\$ 16,000

7.0 Camps and Clinics

- 7.1 COACH may operate a camp(s) for the teaching of athletic pursuits on the University property. The use of University facilities will be determined by the availability of those facilities as established by the University.
- 7.2 It is specifically agreed that if such a camp is operated, COACH will operate such camps and that COACH acts as an independent contractor. COACH will be required to sign a separate agreement related to the operation of such camp. Facility and other fees required as part of this contract will be consistent with fees charged to other independent contractors for similar facilities.
- 7.3 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:
- 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.

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

(2) The COACH shall assist the department with the maintenance of complete records regarding income and expenditures associated with said camp and available for verification by University auditors.

8.0 Employee Benefits

8.1 COACH shall participate in the mandatory benefit plans and be eligible for optional employee plans as would any other unclassified employee.

8.2 COACH shall be provided the use of a vehicle provided by an automobile dealership. COACH will be required to maintain appropriate insurance as required by the automobile dealership and/or the Director. If a car cannot be provided, then a car allowance of \$400 per month will be provided. Funds for these automobile benefits shall be provided to the University from the ULMAF, and, as such, shall not be considered as earned compensation for the purpose of computation of retirement benefits.

8.3 COACH shall be provided a monthly cell phone allowance of \$65 per month.

8.4 For each football season, COACH shall be entitled to a total of twelve (12) tickets per home football game and four (4) tickets to all other ULM home athletic competitions.

9.0 Outside Income – Subject to Compliance with Board Rules

9.1 The COACH shall be authorized to earn other revenue while employed by the University, but such activities are independent of the University employment and the University shall have no responsibility for any claims arising there from. All outside income will be subject to approval in accordance with state statute and the Board of Supervisors for the University of Louisiana System policies. (Adopted 2/24/95). Declaration of outside employment through appropriate university forms. Shall not be earned while “on duty” or use of university equipment / facilities except as identified in section 5.

9.2 COACH shall report annually in writing to the President through the Director of Athletics on July 1st all athletically related income from sources outside the University and the University shall have reasonable access to all records of COACH to verify this report (NCAA Constitution Article 11.2.2).

10.0 Compliance with NCAA, Conference and University Rules

- 10.1** COACH shall abide by the rules and regulations of the NCAA, Conference rules, University rules, Board of Supervisor rules, federal laws, and the Laws of the State of Louisiana. If found in violation of NCAA regulations, after a hearing before the appropriate committee, 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 in violation of NCAA Level One or Level Two violations.
- 10.2** 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 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.

11.0 Football Staff

- 11.1** COACH shall have the authority to select unclassified football personnel (within the established budget) upon authorization by the Director, the President, and approval by the Board of Supervisors for the University of Louisiana System. COACH shall be expected to maintain appropriate racial and ethnic diversity in makeup of coaching staff.
- 11.2** COACH is expected to supervise football staff compliance with NCAA, Conference and University rules and regulations.

12.0 Termination

- 12.1** 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.

Should the University, with prior approval of the President of the University of Louisiana System and the ULMAF Board of Trustees, terminate this Agreement without just cause prior to the expiration of its Term, it shall be liable to COACH for the remaining months of base compensation due through the expiration of this Agreement. Amounts due for the current fiscal year of termination (from the date of termination through the subsequent June 30th) shall be paid by ULM. The remaining amounts due, which come due beyond the current University fiscal year, shall be funded by the ULMAF. ULMAF may, at its sole option, pay in a lump sum discounted at 6% or ULMAF may pay in installments of \$10,000 monthly until liquidated damages have been paid.

COACH shall make reasonable efforts to obtain full-time, gainful employment in the coaching profession. Should COACH secure employment, the liquidated damages described in this agreement shall be reduced by the amount of income received by him from said employment. New employment salary shall not be less than rate paid to previous person in that same position. Failure by COACH to make reasonable efforts to secure full-time employment in the coaching profession as described above shall be cause for the release of the ULMAF from any obligation to make further payments.

In the event that the COACH terminates this Agreement without cause to become employed as a football coach, then COACH it shall be liable to ULMAF for the remaining months of base compensation due through the expiration of this Agreement. COACH may, at his sole option, pay in a lump sum discounted at 6% or COACH may pay in installments of \$10,000 monthly until liquidated damages have been paid. If COACH terminates this Agreement for any other reason including, without limitation, retirement, health or personal reasons, disability, employment in another profession, or employment at the University of Tulsa as Head Football Coach, then COACH shall have no responsibility, obligation, or liability to ULM.

- 12.2** Just cause for termination shall include, but is not limited to a knowing or willful violation or gross disregard of state or federal laws, NCAA or Conference regulations or University policies or procedures; COACH's unreasonable failure to utilize his best efforts in the fulfillment of his duties as may be reasonably required hereunder; or behavior that brings the employee into public disrepute, contempt, scandal, ridicule, or that reflects unfavorably on the reputation or the high moral or ethical standards of ULM. Death of Coach, or substantial physical or mental incapacity lasting in excess of ninety (90) days which cannot reasonably be accommodated by the University and interferes with COACH's ability to perform essential functions and duties as Head Football Coach.
- 12.3** Upon termination of this agreement by either party for any reason, any entitlement to courtesy automobile or stipend, cell phone or stipend, etc., will cease seven (7) days after termination.

IN WITNESS WHEREOF, COACH and the duly authorized representatives of University and ULMAF have executed this Agreement as of the date first written above.

WITNESSES:

Dr. Nick J Bruno
President

Robert Staub
Director of Athletics

Todd Berry
Head Football Coach

Dr. Sandra Woodley, System President
University of Louisiana System

Jeff Foote, President
ULM Athletic Foundation