

BOARD OF REGENTS
EASTERN MICHIGAN UNIVERSITY

SECTION: 16
DATE: June 21, 2011

RECOMMENDATION

ACTION REQUESTED

Approval of the employment agreement for Head Men's Basketball Coach, Rob Murphy.

STAFF SUMMARY

Coach Murphy's contract is for a term of five years. Pursuant to Board Policy 3.1.1.2, employment agreements in excess of three years must be approved by the Board of Regents.

FISCAL IMPLICATIONS

Yes, including

- annual compensation of \$210,000;
- \$15,000 for radio show appearance;
- \$500 per month automobile stipend; and
- standard fringe benefits and incentives. (See attached.)

ADMINISTRATIVE RECOMMENDATION

The proposed Board action has been reviewed and is recommended for Board approval.

University Executive Officer
Gloria A. Hage
General Counsel

_____ 6.03.11
Date

EASTERN MICHIGAN UNIVERSITY
ATHLETIC COACH EMPLOYMENT AGREEMENT

This Employment Agreement made this 25th day of April, 2011 by and between the Board of Regents of Eastern Michigan University (hereinafter the "University") of Ypsilanti, Michigan and Robert L. Murphy (hereinafter the "Employee").

RECITALS

A. University needs the services of an athletic coach to coach University's varsity Men's Basketball team ("the Team"); and

B. Employee represents that he meets University's qualifications for the position and is available for employment in this capacity by University.

TERMS

In consideration of the mutual covenants, promises and conditions in this Agreement, University and Employee agree as follows:

1. **Employment**

1.1 Subject to the conditions stated in this Agreement, University employs Employee as Head Men's Basketball Coach at University, and Employee agrees to and accepts the terms and conditions for employment outlined in this Agreement.

1.2 Employee shall work under the immediate supervision of the Athletic Director of University ("Athletic Director") or the Athletic Director's designee, and shall confer with the Athletic Director on all matters requiring administrative and technical decisions. Employee shall be under the general supervision of the President of the University.

1.3 Employee shall manage and supervise the University's Men's Basketball Team ("Team"), and perform such other duties in the intercollegiate athletic program of University as may be assigned. University reserves the right to reassign Employee to duties other than as Employee of the Team, while retaining the salaries and benefits stated herein.

2.0 **Term.**

2.1 Subject to the approval of the Board of Regents, Employee's appointment as Head Men's Basketball Coach shall commence on April 25, 2011 and continue for a period of five years, until March 31, 2016, unless sooner terminated as provided for herein.

2.2 This employment in no way grants Employee a claim to tenure in employment, or any years of employment attributable to tenure within University.

3.0 **Compensation.**

3.1 In consideration for Employee's faithful, diligent, and successful performance of the services set forth in this Agreement, the University agrees to provide the following salary, incentives and fringe benefits to Employee during the term of this Agreement.

3.1.1 Salary. University shall pay Employee an annual salary of \$210,000 in full payment for the satisfactory performance of all duties required under this Agreement, less any applicable state and federal tax deductions or deductions authorized in writing by Employee. This amount will be paid through the University's normal payroll procedures and processes. All salary increases shall be based on the pay for performance Compensation Program if University funds are available.

3.1.2 Fringe Benefits. University shall provide Employee with the same fringe benefits and on the same terms as provided to non-bargained for administrative employees as of the date of this Agreement.

3.1.3 University shall provide the Employee with an automobile for the purpose of conducting University business. Upon termination or early termination of this Agreement, Employee shall immediately return the automobile. In lieu of an automobile, at the University's discretion, the University may provide employee with a \$500 per month stipend for an automobile. If Employee acquires a courtesy vehicle independent from the University, Employee will not be eligible to receive a vehicle from the University and will not be eligible for \$500 monthly stipend.

3.1.4 The University agrees to make all necessary arrangements, including financial, for a radio show during the term of this Agreement. For his appearance on this radio show, Employee shall be annually paid \$15,000.

3.1.5 Incentives. During the term of this Agreement Employee shall be entitled to receive each of the following bonuses and incentives, less applicable withholding (each of which shall be treated separately, unless otherwise noted):

- a. Each season that the Team wins the Mid-American Conference regular season championship or the Mid-American Conference tournament championship game, Employee shall receive a lump sum payment of fifteen thousand dollars (\$15,000). In the event Team wins both the Mid-American Conference regular season championship and Mid-American Conference tournament championship game, there will be a single bonus in the amount of twenty thousand dollars (\$20,000). Payment of either of these bonuses shall negate all payments specified in Section 3.1.5 (e).
- b. Each Season that the Team participates in the NIT, Employee will receive an additional lump sum payment of five thousand dollars (\$5,000).
- c. Employee will receive additional lump sum payments of two thousand five hundred dollars (\$2,500) for each win the NIT tournament;
- d. Employee will receive the following amounts for NCAA tournament participation and performance. Except for the payment in paragraph e.(i), these amounts shall not be cumulative, so the maximum amount employee is eligible to receive is \$125,000:
 - i. Each season that the Team receives an automatic or at-large bid to the NCAA tournament, employee shall receive a lump sum payment of twenty thousand dollars (\$20,000); and
 - ii. Each season that the Team advances to the final 32 of the NCAA tournament, Employee shall receive an additional lump sum payment of twenty-five thousand dollars (\$25,000);

- iii. Each season that the Team advances to the Sweet Sixteen of the NCAA tournament, Employee shall receive an additional lump sum payment of forty thousand dollars (\$40,000)
- iv. Each season that the Team advances to the Elite Eight of the NCAA tournament, Employee shall receive an additional lump sum payment of fifty thousand dollars (\$50,000)
- v. Each Season that the Team advances to the Final Four of the NCAA tournament, Employee shall receive an additional lump sum payment of seventy five thousand dollars (\$75,000);
- vi. Each Season that the Team advances to the Championship game of the NCAA tournament, Employee shall receive an additional lump sum payment of one hundred thousand dollars (\$100,000);
- vii. Each Season that the Team wins the NCAA tournament championship, Employee shall receive an additional lump sum payment of one hundred twenty-five thousand dollars (\$125,000);
- e. Each Season that the Team is the sole regular season champion of the West Division of the Mid-American Conference and/or the highest seed among West Division schools in the Mid-American Conference Tournament, Employee shall receive a lump sum payment of ten thousand dollars (\$10,000). If Team ties for the West Division championship and is not the highest seed among West Division schools in the Mid-American Conference Tournament, Employee shall receive a lump sum payment of five thousand dollars (\$5,000).
- f. Each Season that Employee is named Mid-American Conference Coach of the Year, Employee shall receive an additional lump sum payment of five thousand dollars (\$5,000);
- g. Each Season that Employee is named National Coach of the Year, Employee shall receive an additional lump sum payment of ten thousand dollars (\$10,000);
- h. Each season the University determines that paid attendance for home men's basketball games averages 2,500 to 2,999, University shall pay Employee a bonus of \$10,000. Each season the University determines that paid attendance for home men's basketball games averages 3,000 to 3,999, University shall pay Employee a bonus of \$15,000. Each season the University determines that paid attendance for home men's basketball games averages 4,000 to 4,999, University shall pay Employee a bonus of \$20,000. Each season the University determines that paid attendance for home men's basketball games averages 5,000 to 5,999, University shall pay Employee a bonus of \$25,000. Each season the University determines that paid attendance for home men's basketball games averages 6,000 or more, University shall pay Employee a bonus of \$35,000.
- i. Each season the Team wins 12 games versus Division IA opponents, University shall pay Employee a bonus of \$5,000. Each season the Team wins 15 games versus Division IA opponents, University shall pay Employee a bonus of \$7,500. Each season the Team wins 18 games versus Division IA opponents, University shall pay Employee a bonus of \$10,000. Each season the Team wins 20-plus games versus Division IA opponents, University shall pay Employee a bonus of \$25,000. Each season the Team wins 25+ games versus Division IA opponents,

University shall pay Employee a bonus of \$30,000. These amounts shall not be cumulative, so the maximum amount employee is eligible to receive is \$30,000.

Bonuses for the achievements set forth in this Section 3.1.5 shall be paid on or before May 1 of each year of this Agreement.

3.1.6 Tickets. University shall annually provide Employee, without charge, twenty (20) reserve tickets to each home men's basketball game, four (4) reserve tickets to each home football game and two (2) reserve tickets to each home women's basketball game. In addition, University shall annually provide Employee without charge eight (8) tickets to all sessions for the MAC Tournament and four (4) ticket to any and all participating NCAA Tournament games. All costs of NCAA Tournament games will be deducted directly from the men's basketball operational budget.

3.1.7 Final Four Tickets. To the extent eight or more tickets are made available to the University for the NCAA Tournament Semi-Final and Championship games, University shall provide Employee, at a charge to Employee of their face value, four (4) tickets to the NCAA Tournament Semi-Final and Championship games.

3.1.8 Moving Expenses. University shall reimburse Employee up to \$10,000 for documented moving expenses related to Employee and his family relocation to Michigan. Documented expenses must be submitted within 12 months of the commencement of employment.

3.1.9 Temporary Housing. University will provide employee with up to 6 months rent free housing at University's Westview Apartments. The value of this housing will be included on Employee's w-2 tax form for the applicable year.

4.0 Employee's Duties.

4.1 In consideration of the annual salary and other benefits, Employee promises and agrees as follows:

4.1.1 Faithfully and conscientiously perform all duties related to the establishment, direction and development of an educationally sound and competitive athletic program, and to perform all duties prescribed and assigned herein by university's Board of Regents, President, Athletic Director, and Assistant Athletic Director within the budget allocated.

4.1.2 Plan, direct, and implement all phases of a varsity intercollegiate athletic program, including recruitment of academically and athletically qualified students, developing competitive schedules, budget preparation and supervision for programs, conduct practice sessions, conditioning programs, clinics, public relations activities, and fund raising. Attendance is expected at staff meetings, community events, and other appropriate athletic activities.

4.1.3 Devote full-time, attention, and energy to the duties of Employee as required herein, to the promotion of the University's Athletic program; and to avoid any business or professional activities or pursuits that would prevent Employee from devoting full time to performance of the duties under this Agreement, or that would embarrass University or conflict with or materially detract in any manner from the duties outlined herein;

4.1.4 NCAA, Mid American Conference and University Rules and Regulations: Know, recognize and comply with the laws, rules, and regulations governing the University (University Rules), the National Collegiate Athletic Association (NCAA Rules), and the Mid American Conference (Conference Rules) (The University Rules, the NCAA Rules and the Conference Rules are hereinafter sometimes referred to as the "Governing Rules"), as now constituted or as they may be amended during the term of this Agreement, in each case as in effect and interpreted by the applicable body and which relate to the Program.

Employee will also use best efforts to ensure compliance with Governing Rules by the Program's student athletes, assistant coaches, and all other Men's Basketball Program personnel that directly report to Employee. In the event that the Employee becomes aware, or has reasonable cause to believe, that violations of Governing Rules may have taken place in connection with the conduct of the Men's Basketball Program, he shall report it promptly to the Athletic Director. The Employee shall cooperate fully with the University in efforts to establish, educate, investigate, and enforce these Governing Rules for the Men's Basketball Program. The University agrees that it will provide relevant updates and training to the Men's Basketball Program and his staff regarding any changes in NCAA Rules.

4.1.5 If the Employee is determined by the NCAA, the Conference, or the University to have committed a violation of the Governing Rules, whether while employed by the University or during prior employment at another NCAA member institution, the Employee may be subject to disciplinary or corrective action as set forth in the applicable provisions of the Governing Rules. Further, if the Employee is determined by the NCAA, the Conference, or the University to have committed or been aware of and not reported a major violation of the Governing Rules, whether while employed by the University or during prior employment at another NCAA member institution, the employment of Employee may be terminated as provided in Section 6.0 of this Agreement. Further, if it is determined by the NCAA, Conference, or the University that a major violation of the Governing Rules has been committed in the Men's Basketball Program during the term of this Agreement, the employment of the Employee may be terminated as provided in Section 6.0 of this Agreement.

4.1.6 The Employee shall represent the University positively in public and private forums and shall not engage in conduct that reflects adversely on the University or the Men's Basketball Program. The Employee shall perform his duties and comport himself at all times in a manner consistent with high moral, ethical and academic standards of the University and its athletic department.

4.1.7 Develop programs and procedures with respect to the evaluation, recruitment, training, and coaching of student athletes to compete successfully while assuring the welfare of student athletes;

4.1.8 Observe and uphold all academic standards, requirements, and policies of University;

4.1.9 Encourage student athletes to perform to their highest academic potential, obtain the highest grades possible and graduate.

4.2 It is further agreed that, except as provided herein, Employee will not receive outside compensation (including but not limited to income, annuities, sports camps, housing benefits, complimentary ticket sales, television and radio programs, and endorsement or consultation contracts with athletic footwear, apparel or equipment manufacturers) without prior written consent of the University's President, or Athletic Director, which consent shall not be

unreasonably withheld and shall disclose to University all outside compensation Employee receives and the source of such compensation. Reports regarding outside compensation must be made on an annual basis in conjunction with the annual performance evaluation which is conducted in accordance with the Pay for Performance Program. The document must include information concerning athletically related outside income for the previous contract period.

4.3 Employee shall maximize radio and television coverage favorable to University, but shall receive remuneration for such appearances, for any endorsements, or public presentations only upon securing prior written consent, which consent shall not be unreasonably withheld as noted in Section 4.2. University shall have no right to receive any part of employee's compensation from pre-approved outside employment.

5.0 Travel.

Employee shall conduct such travel within the allotted budget as is necessary to carry out duties as Head Men's Basketball coach, and Employee shall be entitled to reimbursement for transportation and per diem expenses at the rate provided to nonrepresented administrative employees.

6.0 Termination for Just Cause.

6.1 University has the right to terminate this Agreement for Just Cause, in which case prior to termination but subject to the provisions concerning suspension, Employee shall be given written notice and an opportunity to be heard. "Just Cause" shall be understood to include, any or all of the following:

6.1.1 A deliberate failure or refusal or unwillingness to perform the duties set forth in this Agreement in good faith and to the best of Employee's abilities, which includes in addition to the usual and customary coaching activities, recruiting, assisting duly authorized alumni, booster club and University Development Foundation activities and reasonably cooperating with the news media;

6.1.2 A breach by Employee of any of the other terms and conditions of this Agreement not remedied after fifteen (15) days written notice thereof to Employee;

6.1.3 A deliberate or serious violation of any law, regulation, rule, constitutional provision or bylaw of University, the MAC, or the NCAA, which violation may reflect adversely upon University or its athletic program, including any serious violation that could result in University being placed on probation or punished more severely by the MAC or the NCAA;

6.1.4 The NCAA, the Conference, or the University determines that Employee has committed a major violation of the Governing Rules, has intentionally committed any other type of violation of the Governing Rules pursuant to sections 4.1.4 and 4.1.5 of this Agreement, or that a major violation of the Governing Rules has occurred within the Men's Basketball Program during the term of this Agreement.

6.1.5 Failure to promptly report to the Athletic Director a violation of the governing rules by himself, an assistant basketball coach, Men's Basketball Program Staff member, Student-Athlete who is a member of the Men's Basketball Program, or other representative of the University's Athletic Interest of which the Employee had actual knowledge, or in his capacity as Head Basketball Coach, reasonably should have known.

6.1.6 Prolonged absence from duty without University's Consent;

6.1.7 Engaging in criminal activity, or misuse of University funds or resources;

6.1.8 Conduct of Employee which offends public decency or morality as shall be determined by the standards prevailing in the community; and

6.1.9 Any conduct which violates the rights of student athletes.

6.2 The Athletic Director shall have administrative authority to immediately suspend Employee on a pre-hearing basis from performance of some or all duties with salary payments, temporarily for a period of up to one month without termination of this Agreement for causes set forth in this Section 6.0 et. seq.

6.2.1 Employee shall have the procedural right, upon written request, for a review and hearing relative to any such suspension ordered by the Athletic Director. Any such hearing shall be governed by the normal University's Non-Bargained for Dispute Resolution procedures provided for non-academic administrative employees, as now or hereafter amended, unless other procedures are agreed upon by the parties in lieu thereof.

6.3 Termination of this Agreement by University for Just Cause may occur only by decision of the President after thirty (30) days prior written notice of the charges against Employee and an opportunity for Employee to present evidence. Employee may seek/obtain the assistance of an attorney to aid in the production of evidence, however, such attorney may not actively participate in the proceeding.

6.4 In the event University terminates this Agreement for Just Cause prior to the end of this Agreement, all obligations of University to make further payments and/or to provide other consideration hereunder shall cease on the termination date specified in the notice of termination.

7.0 Termination Without Cause.

7.1 Notwithstanding any other provision of this Agreement, this Agreement shall terminate automatically if Employee dies or becomes totally or permanently disabled (as defined by University). Any such termination shall not be reason for payment of any liquidated damages set forth below.

7.2 At any time after commencement of this Agreement, University may terminate this Agreement without cause by giving written notice to Employee.

7.2.1 In the event University terminates this Agreement without cause, University, shall pay to Employee, as liquidated damages, an amount equal to twelve months of Employee's annual base salary as specified in Section 3.1.1 or the remaining portion of the salary amount which would have been due Employee from the date of early termination of the Agreement through the Agreement expiration date, whichever is less, to be paid at University's option in one lump sum or on a monthly basis prorated over the remainder of the term of the Agreement. In no case shall the Employer be liable for the loss of any collateral business opportunities or any other benefits, or income from any sources that might ensue as a result of Employer's termination of this Agreement without cause.

7.2.2 Full payment by the University of this amount will constitute a full release of any claim relating to such termination that the employee might otherwise assert against the University, or any of its representatives, agents, or employees.

7.2.3 The parties have bargained for and agreed to the foregoing liquidated damages provision, giving consideration to the fact that Employee may lose certain benefits, supplemental compensation or outside compensation relating to his employment at University, which damages are extremely difficult to determine with certainty, or fairly or

adequately. The parties further agree that payment of such liquidated damages by University and acceptance thereof by Employee shall constitute adequate and reasonable compensation to Employee for damages and injury suffered because of such termination by University. The foregoing shall not be, nor be construed to be, a penalty.

7.2.4 The Employee is required to mitigate the University's obligations under section 7.2.1 by making reasonable efforts to obtain other basketball related employment as soon as possible following such termination. If the Employee is employed in a basketball related position, or receives compensation related to basketball (e.g. as a consultant), elsewhere after the University's termination of this agreement, then the University's obligation to pay the Employee as set forth in 7.2.1 shall be reduced by the head coach's total compensation from all such sources. If head coach does obtain other basketball related employment or compensation, he shall immediately provide written notice to the University describing his position and total compensation.

7.3 Employee recognizes that the promise to work for University for the entire term of this Agreement is of the essence of this Agreement. Employee also recognizes that University is making a highly valuable investment in Employee's employment by entering into this Agreement and that University's investment would be lost if Employee were to resign or otherwise terminate employment with University before the end of the contract term. Nonetheless, it is agreed that at any time after commencement of this Agreement, Employee may terminate this Agreement by giving written notice to University.

7.3.1 In the event Employee terminates this Agreement without cause, Employee shall pay to University, as liquidated damages, an amount equal to one year's base salary or the remaining portion of the salary amount which would have been paid Employee from the date of early termination of the Agreement through the Agreement expiration date, whichever is less, to be paid at Employee's option in one lump sum or on a monthly basis prorated over the remainder of the term of the Agreement. Employee shall not be liable for the loss of any collateral business opportunities or any other benefits, or income from any sources that might ensue as a result of Employee's termination of this Agreement without cause.

7.3.2 The parties have bargained for and agreed to the foregoing liquidated damages provision, giving consideration to the fact that University will incur administrative, recruiting and resettlement costs in obtaining a replacement for Employee, in addition to potentially increased compensation costs if Employee terminates this Agreement prior to its expiration, which damages are extremely difficult to determine with certainty. The parties further agree that the payment of such liquidated damages by Employee and acceptance thereof by University shall constitute adequate and reasonable compensation to University for the damages and injury suffered by it because of such termination by Employee. The foregoing shall not be, nor be construed to be, a penalty.

8.0 Outside Employment.

Employee agrees not to personally, or through any agent accept other full-time or part-time employment of any nature during the term of this Agreement without first having obtained written consent from the Athletic Director and from the President of University.

9.0 Personal Services.

9.1 Employee represents to have special, exceptional, and unique knowledge, skill, and ability as a Head Men's Basketball coach which, in addition to the future development of coaching experience at University as well as University's special need for continuity in its Team Sport program, will render Employee's services unique. Employee recognizes that the loss of Employee's services to University, without University's approval and release, prior to the expiration of the term of this Agreement or any renewal thereof, would cause an inherent loss to

University which cannot be estimated with certainty, or fairly or adequately compensated by money damages.

9.2 Employee therefore agrees, and specifically promises, not to accept employment, under any circumstances, as a Basketball coach at any institution of higher education which is a member of the MAC, or for any Basketball team participating in any professional league or conference in the United States or elsewhere, requiring performance of duties prior to the termination of this Agreement or the expiration date of the term of this Agreement or any extension thereof, whichever occurs first, without first obtaining a written release of this Agreement or a negotiated settlement thereof in writing accepted by Employee and the President of the University.

9.3 Employee agrees that University shall have the right, in addition to any other rights which University may possess, to obtain an injunction by appropriate judicial proceedings to prevent Employee from performing coaching activities or other related services in violation of this Agreement, for any person, institution, firm, corporation or other entity; and against any other breach of this Agreement.

10.0 Support Staff

Employee shall have the right to select and retain three assistant basketball coaches and one director of basketball operations subject to the approval of the Athletic Director. Employment and discharge of such assistants shall be effected under University regulations and policies.

11.0 Relationship Between the Parties.

The relationship between Employee and University shall be determined solely by the terms and conditions of this Agreement.

12.0 Governing Law.

This Agreement shall be governed by and construed under the laws of the State of Michigan, the courts of which shall be the forum for any lawsuits arising from or incident to this Agreement.

13.0 Severability.

If any provision of this Agreement shall be determined to be void, invalid, unenforceable or illegal for any reason, it shall be ineffective only to the extent of such prohibition and the validity and enforceability of all the remaining provisions shall not be affected thereby.

14.0 Entire Agreement: Modification.

This Agreement contains all the terms between the parties and may be amended only in writing signed by both parties.

IN WITNESS WHEREOF, Employee and the authorized representative(s) of University have executed this Agreement on this 21st day of April, 2011.

EASTERN MICHIGAN UNIVERSITY

EMPLOYEE:

By: _____
Derrick L. Gragg, Director
Intercollegiate Athletics

By: _____
Head Men's Basketball Coach

By: _____
Susan W. Martin
President