

BOARD OF REGENTS
EASTERN MICHIGAN UNIVERSITY

SECTION: 11
DATE: October 1, 2013

RECOMMENDATION

ACTION REQUESTED

It is recommended that the Board of Regents approve the employment agreement for Vice President and Athletic Director, Heather Lyke.

STAFF SUMMARY

Heather Lyke's contract is for a term of five years, from July 22, 2013 through July 21, 2018. 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 \$245,000; 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

Date

**EASTERN MICHIGAN UNIVERSITY
VICE PRESIDENT/ATHLETIC DIRECTOR EMPLOYMENT AGREEMENT**

This Employment Agreement is made this 28th day of June, 2013, by and between the Board of Regents of Eastern Michigan University (hereinafter the "University") of Ypsilanti, Michigan and Heather Lyke (hereinafter the "Employee") and is subject to approval by the University's Board of Regents.

RECITALS

A. University needs the services of a Vice President/Athletic Director to manage, supervise and promote the University's intercollegiate athletic program.

B. Employee represents that she meets University's qualifications for the position, that the information she has provided concerning her education and professional background is accurate and complete, and that she 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:

1.0 Employment

1.1 Subject to the conditions stated in this Agreement, University employs Employee as Vice President/Director of Intercollegiate Athletics 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 President of the University ("President") or the President's designee, and shall confer with the President on all significant issues.

1.3 Employee shall manage and supervise the University' Intercollegiate Athletic Program, and perform such other duties in the program as may be assigned. University reserves the right to reassign Employee to duties other than as Vice President/Director of Intercollegiate Athletics, while retaining the salaries and benefits stated herein.

2.0 Term

2.1 Employee's employment shall begin on July 22, 2013 and continue for a period of five (5) years until July 21, 2018, unless sooner terminated as provided herein. Employee shall be a member of the Administrative Professional job classification. Except as modified in this Agreement, all policies applicable to Administrative Professional employees will apply to Employee.

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 and fringe benefits to Employee during the term of this Agreement.

3.1.1 Salary University shall pay Employee an annual salary of \$245,000 (\$10,208.33 semimonthly) 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. Employee will not be eligible for a salary increase until October 1, 2014. Subsequent salary increases shall be based on annual review by the President or his/her designee.

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

3.1.3 University shall provide Employee with a leased vehicle for her use on University business or a vehicle allowance of \$500 per month. Upon termination or early termination of this Agreement, Employee shall immediately return the automobile to the University.

3.1.4 For each year during the term of this Agreement in which the University's varsity Football Team wins a Mid-American Conference (MAC) Divisional Championship, Employee shall be entitled to a lump sum bonus payment of \$2,500.

3.1.5 For each year during the term of this Agreement in which the University's varsity Football Team participates in a post-season bowl game, Employee shall be entitled to a lump sum bonus payment equal to one month of the Employee's base salary as set forth in Provision 3.1.1. In addition, for each year during the term of this Agreement in which the University's varsity Football Team participates in a Bowl Championship Series bowl game, Employee shall be entitled to a lump sum bonus payment equal to one month of the Employee's base salary as set forth in Provision 3.1.1.

3.1.6 For each year during the term of this Agreement in which the University's varsity Football Team's actual home game attendance averages 15,000 or more, Employee shall be entitled to a lump sum bonus payment of \$5,000.

3.1.7 For each year during the term of this Agreement in which the University's varsity Women's Basketball Team wins a MAC Divisional Championship, Employee shall be entitled to a lump sum bonus payment of \$1,000.

3.1.8 For each year during the term of this Agreement in which the University's varsity Women's Basketball Team participates in the National Invitation Tournament (NIT), Employee shall be entitled to a lump sum bonus payment of \$3,500.

3.1.9 For each year during the term of this Agreement in which the University's varsity Women's Basketball Team participates in the National Collegiate Athletic Association (NCAA) Tournament, Employee shall be entitled to a lump sum bonus payment of \$5,000. In addition, for each year during the term of this Agreement in which the University's varsity Women's Basketball Team participates in the NCAA Tournament and makes it to the NCAA Elite 8 round, Employee shall be entitled to a lump sum bonus payment of \$2,500.

3.1.10 For each year during the term of this Agreement in which the University's varsity Women's Basketball Team home game attendance averages 2,500 or more, Employee shall be entitled to a lump sum bonus payment of \$2,000.

3.1.11 For each year during the term of this Agreement in which the University's varsity Men's Basketball wins a MAC Divisional Championship, Employee shall be entitled to a lump sum bonus payment of \$1,000.

3.1.12 For each year during the term of this Agreement in which the University's varsity Men's Basketball Team participates in the National Invitation Tournament (NIT), Employee shall be entitled to a lump sum bonus payment of \$3,500.

3.1.13 For each year during the term of this Agreement in which the University's varsity Men's Basketball Team participates in National Collegiate Athletic Association (NCAA) Tournament, Employee shall be entitled to a lump sum bonus payment of \$5,000. In addition, for each year during the term of this Agreement in which the University's varsity Men's Basketball Team participates in the NCAA Tournament and makes it to the NCAA Elite 8 round, Employee shall be entitled to a lump sum bonus payment of \$2,500.

3.1.14 For each year during the term of this Agreement in which the University's varsity Men's Basketball Team's home game attendance averages 3,500 or more, Employee shall be entitled to a lump sum bonus payment of \$2,000.

3.1.15 For each year during the term of this Agreement in which a University non-revenue generating varsity sports team wins a MAC Championship, Employee shall be entitled to a lump sum bonus payment of \$1,000 for each MAC Championship.

3.1.16 For each year during the term of this Agreement in which the University wins the MAC Reese Cup, the Employee shall be entitled to a lump sum bonus payment of \$2,500.

3.1.17 For each year during the term of this Agreement in which the University wins the MAC Jacoby Cup, the Employee shall be entitled to a lump sum bonus payment of \$2,500.

3.1.18 For each year during the term of this Agreement in which the University wins both the MAC Reese Cup and the MAC Jacoby Cup, the Employee shall be entitled to a lump sum bonus payment of \$2,500.

3.1.19 To the extent eight or more tickets are made available to the University for the NCAA Tournament Men's Basketball Championship game, University shall provide Employee with four complimentary tickets to the Championship game. To the extent eight or more tickets are made available to the University for the NCAA Tournament Women's Basketball Championship game, University shall provide Employee with four complimentary tickets to the Championship game.

3.1.20 Moving Expenses. Upon submission of appropriate invoices, the University shall pay Employee's moving company the standard costs associated with her moving from her current residence to the Ypsilanti, Michigan area. University's payment shall include packing and unpacking fees. The moving company must be selected based on two competitive bids. Preapproval from the University must be obtained before the moving company is hired.

3.1.21 Yearly Academic Progress Rate ("APR"), as calculated by the NCAA and issued in the Spring of each year:

\$1,000 for 960 or better APR (average of all teams); or
\$1,500 for 970 or better APR (average of all teams); or
\$2,000 for 980 or better APR (average of all teams).

3.1.22 Percentage of all student-athletes identified as scholar athletes (3.0 cumulative GPA or better) at the end of each Spring semester by EMU pursuant to established standards:

\$1,000 for a scholar athlete rate of 60% or better for the academic year; or
\$1,500 for a scholar athlete rate of 65% or better for the academic year, or
\$2,000 for a scholar athlete rate of 70% or better for the academic 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, fully compliant, and competitive intercollegiate athletic program, and to perform all duties prescribed herein and assigned by University's Board of Regents, President, and President's designee within the budget allocated.

4.1.2 Plan, direct, and implement all phases of University's intercollegiate athletic program, including managing, supervising and ensuring legal and rule compliance by athletic program administrators, coaches and other employees; recruitment of academically and athletically qualified students of sound character; developing competitive schedules; budget preparation and supervision for the program; public relations activities; and fund raising. Attendance is expected at the President's executive team meetings, community events, and other appropriate University activities;

4.1.3 Devote full-time attention and energy to the duties of Director of Intercollegiate Athletics 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 detract in any manner from the duties outlined herein;

4.1.4 Know, recognize and comply with the laws, policies, rules, and regulations governing the University and its employees and the rules of the National Collegiate Athletic Association (NCAA) and the Mid-American Conference (MAC), as now constituted or as they may be amended during the term hereof, to supervise and ensure that program administrators, coaches and any other employees for which Employee is administratively responsible for comply with the aforesaid policies, rules, and regulations and to immediately advise the President if Employee has cause to believe violations have occurred or will occur;

4.1.5 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;

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

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

4.2 It is further agreed that 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 Board or President, which consent shall not be unreasonably withheld and shall disclose to the University President all outside compensation Employee receives and the source of such compensation.

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 as noted in Section 4.2.

5.0 Travel

Employee shall conduct such travel within the allotted budget as is necessary to carry out duties as Director of Intercollegiate and Employee shall be entitled to reimbursement for transportation and per diem expenses at the rate provided to University's non-represented Administrative Professional 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. In addition to its normally understood meaning in the employment context, the term "just cause" shall be understood to include, but not be limited to, all of the following:

6.1.1 A deliberate or serious violation of the duties set forth in this Agreement or refusal or unwillingness to perform such duties in good faith and to the best of Employee's abilities.

6.1.2 As of the effective date of this agreement, a significant, repetitive or intentional violation (or a pattern of conduct which may constitute or lead to a major violation), as reasonably determined by University, by Employee (or any other person under Employee's supervision and direction, including but not limited to coaches) of any laws, University rules and regulations or governing athletic rules (including but not limited to NCAA or Mid-American Conference Rules);

6.1.3 A violation by Employee of any of the other terms and conditions of this Agreement;

6.1.4 Any conduct of Employee that constitutes moral turpitude, or which would tend to harm the reputation of the University, or failure to follow the high moral and ethical standards commonly expected of Employee as the leading representative of the Department of Intercollegiate Athletics at University;

6.1.5 A deliberate or serious violation of any law, regulation, rule, constitutional provision or bylaw of University or knowledge of violation by a member of the Athletic Department and failure to report such violation to the President of the University or another appropriate person.

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; and

6.1.8 Any conduct which violates the rights of student athletes under the law, the EMU Student Code of Conduct, EMU Athletics Department policy, or NCAA policies.

6.1.9 Failure of a team within the Department of Intercollegiate Athletics to earn a minimum Academic Progress Rate (APR) to be eligible to participate in post-season competition for three consecutive years with no plan for improvement in place during those three years.

6.2 The President shall have administrative authority to immediately suspend Employee on a pre-hearing basis from performance of some or all duties 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 President. Any such hearing shall be governed by the normal University's grievance procedures provided for non-bargained for administrative employees, as now or hereafter amended, unless other procedures are agreed upon by the parties in lieu thereof.

6.3.1 In the event University terminates this Agreement with cause, all salary and benefits shall cease as of the date of termination of the Agreement. University shall pay to Employee, as liquidated damages, an amount equal to 6 months of the Employee's base salary, at the University's option in one lump sum or on a monthly basis pro-rated over the remainder of the term of this Agreement. To be eligible for either payment, Employee shall execute a release and waiver agreement within such timelines and subject to such terms and conditions as are established by University, including, but not limited to, a waiver of any and all legal claims or potential legal claims Employee has or may have against University and any of its related entities, its regents, officers, employees and agents. University shall not be liable for any liquidated damage or loss of any collateral business opportunities or any other benefits, or income from, any sources that might ensue as a result of University's termination of this Agreement without cause.

6.3.2 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 her 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.

6.3.3 The Employee is required to mitigate University's obligations under this Section 6 by making reasonable and diligent efforts to obtain a vice president/athletic director or other comparable employment position as soon as practicable following such termination.

6.3.4 If the Employee is employed elsewhere post-termination, the University's obligations to pay Employee as set forth in Section 6.3.1 shall be reduced by the Employee's total compensation from all sources related to such position. University

shall pay such revised amount, after the Employee's date of hire to the new position, in monthly installments for the remaining term of the Agreement.

6.4 In no case shall University be liable to Employee for any liquidated damages, or loss of any collateral business opportunities or any other benefits, or income from any other sources.

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, all salary and benefits shall cease as of the date of termination of the Agreement. University shall pay to Employee, as liquidated damages, an amount equal to 12 months of the Employee's base salary, at the University's option in one lump sum or on a monthly basis pro-rated over the remainder of the term of this Agreement. To be eligible for either payment, Employee shall execute a release and waiver agreement within such timelines and subject to such terms and conditions as are established by University, including, but not limited to, a waiver of any and all legal claims or potential legal claims Employee has or may have against University and any of its related entities, its regents, officers, employees and agents. University shall not be liable for any liquidated damage or loss of any collateral business opportunities or any other benefits, or income from, any sources that might ensue as a result of University's termination of this Agreement without cause.

7.2.2 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 her 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.

7.2.3 The Employee is required to mitigate University's obligations under this Section 7 by making reasonable and diligent efforts to obtain a vice president/athletic director or other comparable employment position as soon as practicable following such termination.

7.2.4 If the Employee is employed elsewhere post-termination, the University's obligations to pay Employee as set forth in Section 7.2.1 shall be reduced by the Director's

total compensation from all sources related to such position. University shall pay such revised amount, after the Employee's date of hire to the new position, in monthly installments for the remaining term of the Agreement.

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 President of University.

9.0 Relationship Between the Parties

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

10.0 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 lawsuit arising from or incident to this Agreement.

11.0 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.

12.0 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 28th day of June, 2013.

EASTERN MICHIGAN UNIVERSITY

EMPLOYEE:

By: _____

By: _____

Date: 6/28/13

Date: June 28, 2013