

131590 Status Pending Delegated Decision

9500079817

Kellie Harper

\*Contract Title Memorandum of Understanding for Em

David Woodall 00143360

New Contract

Copy Existing Record

nation

E018611001

\*Account Name W Basketball Team

Womens Basketball

01

\*Budget Entity Name Knoxville

Memorandum of Understanding for Employment of Kellie Harper as Head Women's Basketball Coach at Knoxville Campus 2019-24.

Athletics Coach

Contract Type Zero Dollar Contract

No

\*Competitive Type No Bid

04/09/2019



\*Contract End Date

04/15/2024



Bradley Briggs 00312096

David Woodall 00143360

Add Requester Info to Notification List

Approved for Signature:

Chris Cimino  
Sr. Vice Chancellor

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MOU") is entered into between **THE UNIVERSITY OF TENNESSEE** ("University"), a public educational corporation of the State of Tennessee, for and on behalf of The University of Tennessee, Knoxville ("UTK") and its Athletics Department, and **KELLIE HARPER** ("Coach"), and records the agreement of the University and Coach as to the principal terms and conditions under which the University shall employ Coach and Coach accepts employment as UTK's Head Women's Basketball Coach. This MOU constitutes a binding agreement between Coach and the University, subject to the execution of a formal Employment Agreement, which shall not be inconsistent in any material way with this MOU, and cancels and supersedes all prior existing oral and written agreements between the University and Coach. In consideration of the mutual promises contained herein, the parties agree as follows:

**1. TERM, DUTIES & AUTHORITY:** Coach shall be employed as UTK's Head Women's Basketball Coach from April 9, 2019 through April 15, 2024 ("Term"), with the duties and authority ordinarily associated with a head women's basketball coach at a major university that participates at the NCAA Division I level.

**2. COMPENSATION & BENEFITS (ALL SUBJECT TO APPLICABLE STATE AND FEDERAL LAWS; DOLLARS STATED IN GROSS AMOUNTS; PARTIAL MONTHS/YEARS PRORATED):** The University shall provide Coach with the following compensation and benefits:

- (a) Annual base compensation of \$275,000 ("Base Pay").
- (b) Annual supplemental compensation of \$475,000 payable from income earned by the University under various broadcast, endorsement and/or consultation contracts ("Supplemental Pay").
- (c) Annual incentive compensation for athletic and academic achievements as provided in Exhibit A, which is incorporated herein by reference.
- (d) Either a monthly vehicle allowance of \$850 or one (1) vehicles of a quality, in terms of make and model, similar to vehicles provided to other University head coaches, for Coach's personal use. The University shall be solely responsible for maintaining liability insurance coverage on the vehicle. Coach shall be solely responsible for maintaining full comprehensive and collision insurance coverage on the vehicle, for paying fuel costs, and for otherwise complying with the courtesy vehicle program.
- (e) A one-time moving allowance of \$35,000 in accordance with University rules.
- (f) Coach shall be included in the University's athletic play/practice insurance coverage. Coach shall be eligible for participation in the same fringe benefit programs for which other regular full-time employees are eligible. The University shall not be required to compensate Coach for her accrued and unused annual leave upon the termination of her employment for any reason. Coach shall be entitled to the maximum annual amount of retirement contributions by the University allowed by federal and state law.

**3. BUYOUT EXPENSE:** The University shall be responsible for the payment of Coach's buyout obligation to Missouri State University if there is such a buyout, not to exceed \$150,000, resulting from her acceptance of employment with the University (the "Expense"). The University has authorized this amount to be paid as a reimbursable employee business expense of Coach and does not consider it compensation. The University acknowledges that payment of the Expense was necessary to obtain the services of Coach, and therefore substantially benefits the University. Further, the University has determined that the requirements of its accountable plan have or shall be satisfied with respect to the Expense. Coach acknowledges that she has not and shall not be reimbursed for this expense from any other source. Additionally, Coach acknowledges that she shall not take a deduction for the Expense on her personal income tax return. Should the Expense be determined to be non-qualified under the University's accountable plan or if it taxed as Coach's income, the University shall neutralize the actual tax impact to Coach resulting from the University's payment of the Expense. In such case, Coach must claim all deductions allowable under applicable tax law, including the Expense. The parties shall review Coach's pertinent tax information, including signed income tax returns (and any amended returns) for 2019 (or other applicable tax year) to substantiate such amount as is necessary to effectuate this desired outcome. If Coach terminates this MOU or the Employment Agreement without cause before April 15, 2021, then in addition to the separation payment that Coach shall pay to the University pursuant to Paragraph 6, Coach shall also re-pay the

University an amount equivalent to 100% of the Expense, on or before the thirtieth (30th) day of following the date of termination of this Agreement.

**4. TERMINATION FOR CAUSE BY UNIVERSITY:** The University has the right to terminate this MOU or the Employment Agreement at any time for cause as determined in the reasonable and good faith judgment of the University. For the purpose of terminating this MOU, "cause" shall be interpreted consistently with its meaning in the most recent head coach's employment agreement, excluding a memorandum of understanding, executed by the University. For the purpose of terminating this MOU, "cause" shall also mean the failure of Coach to execute an Employment Agreement within one hundred twenty (120) calendar days of the date on which an Employment Agreement is first presented to her by the University. Termination of the Employment Agreement for "cause" shall be in accordance with the definitive terms and conditions set out in the Employment Agreement, which shall be generally consistent with, but not limited to, those included in the most recent head coach employment agreement, excluding a memorandum of understanding, executed by the University. In the event of a termination of either this MOU or the Employment Agreement for "cause," the University shall not be liable to Coach for any unearned or unaccrued payments or benefits after the date of termination. The University may suspend Coach with pay pending an investigation or decision relating to termination for "cause." For any one or more acts, omissions, or events that would be grounds for termination for "cause," the University may take other disciplinary or corrective action against Coach short of termination, including but not limited to suspension without pay (said suspension not to exceed 90 days). Prior to any final determination regarding a possible termination for "cause," then the University shall afford Coach notice and an opportunity to meet with the Director of Athletics to respond to any allegations or proposed termination. Coach voluntarily waives all rights to a post-termination opportunity to contest a for-cause termination, including but not limited to her rights under the Tennessee Uniform Administrative Procedures Act, Tennessee Code Annotated § 4-5-301 et seq. In the event a termination of this MOU or the Employment Agreement is ultimately found to be a breach of this Agreement by the Tennessee Claims Commission or a court of competent jurisdiction, after any available appeals have been exhausted, then Coach shall be entitled only to the remedies that would be available to her under this MOU or the Employment Agreement if the University terminated this MOU or the Employment Agreement without cause, according to the date of termination, in lieu of all other legal remedies or equitable relief.

**5. TERMINATION WITHOUT CAUSE BY UNIVERSITY:** In its sole discretion and at any time during the Term, the University may terminate this MOU or the Employment Agreement without cause upon written notice to Coach. If the University terminates this MOU or the Employment Agreement without cause, then the University shall pay Coach a separation payment in an amount equal to thirty-three percent (33%) of the aggregate Base Pay and Supplemental Pay that would have been earned by Coach under the MOU or the Employment Agreement from the termination date through April 15, 2024, with any part of a month prorated and subject to all applicable state and federal tax reporting and withholding requirements (the, "University Separation Payment"). Payment of the University Separation Payment shall be made in equal monthly installments over the time remaining until April 15, 2024. The first monthly installment of the University Separation Payment shall be due on or before the thirtieth (30th) day of following the date of termination of this Agreement. The University's obligation to pay the University Separation Payment shall not accrue interest (so long as not in arrears). As a condition of being eligible to receive the University Separation Payment, Coach shall be required to: (1) execute a waiver and release of claims; and (2) use her best efforts to mitigate the University's obligation to pay the University Separation Payment by making reasonable, good faith, and diligent efforts as soon as practicable following termination to obtain a comparable employment position or paid services opportunity, and such mitigation obligations shall be interpreted consistently with the terms and conditions of mitigation included in the most recent assistant football coach employment agreement, excluding a memorandum of understanding, executed by the University.

**6. TERMINATION WITHOUT CAUSE BY COACH:** In her sole discretion and at any time during the Term, Coach may terminate this MOU or the Employment Agreement without cause. If Coach terminates this MOU or the Employment Agreement without cause before April 15, 2021, then in addition to the payment that Coach shall pay to the University pursuant to Paragraph 3, Coach shall pay the University a separation payment in the amount of \$1,000,000. If Coach terminates this MOU or the Employment Agreement without cause on or after April 15, 2021, and on or before April 15, 2023, then Coach shall pay the University a separation payment in the amount of \$500,000. If Coach terminates this

MOU or the Employment Agreement without cause after April 15, 2023, then Coach shall pay the University a separation payment in the amount of the aggregate Base Pay and Supplemental Pay that would have been earned by Coach under the MOU or the Employment Agreement from the termination date through April 15, 2024.

**7. MISCELLANEOUS:**

- (a) In addition to the terms and conditions concerning the matters set out in Paragraphs 1 through 6 above (excluding terms and conditions applicable only while the MOU is in effect), the Employment Agreement shall include, among other things, provisions concerning the following: (i) duties and authority of Coach as Head Women's Basketball Coach; (ii) provisions relating to the principles of institutional control; (iii) reasonable limitations on outside activities by Coach, including commercial endorsements; (iv) enforcement of NCAA, Southeastern Conference, and other governing athletic rules, including without limitation provisions relating to Coach's responsibility to establish an atmosphere of compliance in the women's basketball program, monitor the activities of all coaches and staff members in the women's basketball program, and cooperate fully in the NCAA infractions process; (v) the University's rights to use Coach's name, likeness, image, etc.; (vi) forfeiture and repayment of incentive compensation for athletic performance achievements paid to Coach if any achievement is subsequently vacated or if the women's basketball program is subsequently sanctioned by the NCAA; (vii) indemnification of the University against certain damages incurred by the University as a direct result of any investigation or proceeding resulting in a finding of NCAA rules violations relating to the women's basketball program; (viii) operation of women's basketball camps; (ix) Coach's obligation to notify the Director of Athletics about material discussions about employment with another college or university or with a professional women's basketball organization; (x) limitation of remedies and waiver of claims by both parties; (xi) nepotism; and (xii) restrictions on Coach's disclosure of confidential information relating to the women's basketball program during the Term.
- (b) Coach represents that she has disclosed to the University all material information concerning previous NCAA, conference, or institutional rules violations or potential violations committed by her or any coach, staff member, or other person under her direct or indirect control at any other NCAA member institution prior to the date on which she executed this Agreement; similarly, the University represents that it has disclosed to Coach all material information it has regarding any pending and/or ongoing NCAA investigations or inquiries relating to UTK's women's basketball program. Coach also represents that: neither she nor any person acting on her behalf knowingly misrepresented material information, knowingly withheld material information, or knowingly provided incomplete or false material information during the University's process of interviewing and hiring Coach; she is not restricted from entering into this Agreement by any conflicting obligations to another authority, person, body, or entity; and she has never been convicted of, pled guilty to, or pled nolo contendere to a criminal act that constituted either (i) a felony or (ii) a misdemeanor involving moral turpitude (excluding minor traffic offenses). This MOU is conditioned on a satisfactory criminal background check and NCAA compliance check, to be completed within ten (10) business days after the University's execution of this MOU.
- (c) This MOU may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but all such counterparts shall together constitute one and the same MOU. This MOU shall be governed by the laws of the State of Tennessee.


***[signature page follows; remainder of page intentionally left blank]***

The parties acknowledge their agreement by signing and dating this Memorandum of Understanding below.

**THE UNIVERSITY OF TENNESSEE**

**KELLIE HARPER**

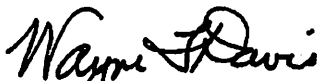
By:

  
Phillip Fulmer  
Director of Athletics  
The University of Tennessee, Knoxville

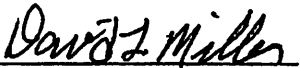
  
Kellie Harper

4/10/19  
Date

4/7/19  
Date

  
Dr. Wayne J. Davis  
Interim Chancellor,  
The University of Tennessee, Knoxville

4/10/19  
Date

  
David L. Miller  
Chief Financial Officer  
The University of Tennessee

4/10/2019  
Date

**EXHIBIT A – INCENTIVE COMPENSATION**

In recognition of exemplary athletic and academic performance by the women’s basketball team (the “Team”) and the additional work required by Coach therewith, and as an incentive for Coach to assist the Team in achieving the goals described below, the University agrees to pay Coach, if earned, annual incentive compensation in an amount equal to the sum of the highest amounts described in the following subsections, subject to all applicable state and federal tax reporting and withholding requirements:

**SEC Achievements.** Either or both of the following:

- |     |   |          |
|-----|---|----------|
| (a) | Winning the SEC Regular Season Championship<br>(as determined by the SEC) | \$50,000 |
| (b) | Winning the SEC Tournament Championship                                   | \$25,000 |

**NCAA Achievement.** A maximum of one (1) of the following (payment based on highest goal achieved in this subsection):

- |     |                                  |           |
|-----|----------------------------------|-----------|
| (a) | Winning the NCAA Championship    | \$150,000 |
| (b) | Appearing in the Final Four      | \$80,000  |
| (c) | Appearing in the Elite Eight     | \$60,000  |
| (d) | Appearing in the Sweet Sixteen   | \$40,000  |
| (e) | Appearing in the NCAA Tournament | \$20,000  |

**Coach of the Year Achievements.** Either or both of the following:

- |     |                                     |          |
|-----|-------------------------------------|----------|
| (a) | Naismith National Coach of the Year | \$15,000 |
| (b) | SEC Coach of the Year               | \$10,000 |

**Academic Achievement.** \$25,000 for single year APR exceeding the national average multiyear APR in women’s basketball in the same year.

Annual incentive compensation for athletic achievements shall be paid by the University on or before May 31 following the conclusion of the women’s basketball season in which the goal was achieved. Annual incentive compensation for an academic achievement shall be paid by the University on or before June 30 following the NCAA’s publication of APR scores. Annual incentive compensation described in this Exhibit A shall be earned by and payable to Coach only if Coach is employed as the Head Women’s Basketball Coach on the day of the event that forms the basis for the incentive compensation.