

UNIVERSITY OF
NORTHERN COLORADO

BOARD OF TRUSTEES AGENDA ITEM

Meeting Date: November 11, 2022

Action Item Discussion Item Information Item

Name of Item:

Approval of Multi-Year Employment Contract for Coach Smiley

Responsible Staff Member: Jacquelynn Rich Fredericks; Darren Dunn

Summary of Issue: Recommended approval of multi-year employment agreement for Head Men’s Basketball Coach Smiley.

Pursuant to the Section 24-19-104(1.5)(a), C.R.S., each institution of higher education may have not more than six government-supported employee contracts having a duration not more than five (5) years in length. The University respectfully requests that the Board of Trustees approve issuance of one of those allowable contracts to Coach Smiley, on the terms and conditions set forth in the Agreement. The Agreement includes a term stating that the University may terminate the Agreement without penalty if sufficient funds are not appropriated, as is required by Section 24-19-104(1.5)(a)(II), C.R.S. To approve a multiyear contract, the Board must make an affirmative finding on the public record that this Agreement is necessary in order to hire the employee in light of prevailing market conditions and competitive employment practices.

To approve this Agreement, the Board of Trustees should move that “pursuant to Section 24-19-104(1.5)(A)(I), C.R.S. the contract ... is necessary for the hiring or retaining of the employee in light of prevailing market conditions and competitive employment practices.”

Recommended Action by BOT: Approval No Action Needed

Change to Board Policy Manual: Approval No Action Needed

If yes, Section:

Administrative Recommendation (Motion): Approve

Jacquelynn Rich Fredericks 11/4/22
Signature of Vice President Date

_____ _____
Signature of President Date

UNIVERSITY OF NORTHERN COLORADO
DEPARTMENT OF ATHLETICS
EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (“Agreement”) is entered into this 1st day of July, 2022, by and between the Board of Trustees of the UNIVERSITY OF NORTHERN COLORADO (“University”) and Stephen Smiley (“Smiley”). University and Smiley may be referred to herein as the “Parties” and each individually as a “Party.”

WHEREAS, University desires to employ Smiley as its Head Men’s Basketball Coach;

WHEREAS, Smiley is qualified and available for employment in this position, and

WHEREAS, pursuant to Section 24-19-104(1.5)(a)(I), C.R.S. the University’s Board of Trustees has determined that this multiyear Agreement is necessary for the hiring or retaining of Smiley in light of prevailing market conditions and competitive employment practices.

NOW THEREFORE, in consideration of the mutual promises and conditions contained herein, the parties agree as follows:

1. **EMPLOYMENT.** University hereby employs Smiley as Head Men’s Basketball Coach to perform all duties as assigned by the President and the Director of Athletics of University, including the coaching and supervision of University’s intercollegiate men’s basketball team. This contract will supersede all previous letters and other communications between University and Smiley regarding the conditions of his employment.

2. **TERM.** This Agreement shall commence on July 1, 2022, and shall be in effect until April 30, 2027, unless otherwise terminated by the Parties pursuant to the terms of this Agreement. On or before March 1, 2027, University will notify Smiley in writing whether it intends to enter into negotiations with Smiley for a new or renewal employment agreement for his employment after May 1, 2027. If the University does not so inform Smiley, Smiley will not be required to pay University the amount described in Paragraph 10, below, if he were to terminate the Agreement thereafter pursuant to Paragraph 10.

Notwithstanding, pursuant to, and as required by, Section 24-19-104(1.5)(a)(II), C.R.S. University remains free to terminate this Agreement without penalty if sufficient funds are not appropriated.

3. **SALARY.** Smiley shall be paid an annual base salary of \$161,646.00 per year at the commencement of the Term of this Agreement, payable by the University in equal monthly installments on the same payroll dates as other University employees. Smiley will be eligible and considered for compensation adjustments to his annual base salary as consistent with and applicable to University’s exempt employees.

4. **BENEFITS.** Smiley shall be eligible to participate in or receive benefits under any exempt employee benefit plan made available to other University exempt employees, including participation in retirement and health plans. Smiley shall not be entitled to tenure, accrued sick or vacation leave, or access to University's grievance procedures in the event of termination pursuant to this Agreement. In addition, pursuant to applicable University policies and guidelines, University shall provide a courtesy car and cell phone to Smiley.

5. **INCENTIVE COMPENSATION.** Provided that (a) Smiley achieves one or more of the goals described in sub-paragraphs (i) through (x), below, (b) Smiley remains employed in the position of Head Men's Basketball Coach under the terms of the Agreement through April 30 of each full intercollegiate men's basketball season to which such goals apply, (c) this Agreement is not terminated pursuant to Paragraph 8, below, prior to the date on which payment for such Incentive Compensation is due and payable to Smiley, and (d) beginning with the 2022-2023 intercollegiate men's basketball season, University's men's basketball student-athlete academic performance is at or above 930 (multi-year) of the NCAA Academic Performance Rate, Smiley will have earned and shall receive annual Incentive Compensation for each full intercollegiate men's basketball season during the Term of this Agreement as follows:

- i. \$2,500.00 for team grade point average ("GPA") during the Fall semester at or above 2.80 for each academic year of the Term of this Agreement stated in Paragraph 2, above;
- ii. \$2,500.00 for team GPA during the Spring semester at or above 2.80 for each academic year of the Term of this Agreement stated in Paragraph 2, above;
- iii. \$2,500.00 for men's basketball student-athlete annual academic performance at or above 940 of the NCAA Academic Performance Rate;
- iv. \$2,500.00 if the University's men's basketball Graduation Success Rate ("GSR") is equal to or greater than 80 percent for each year of this Agreement;
- v. \$1,500.00 if any men's basketball student-athlete is named to the NCAA Academic All-America team;
- vi. \$1,000.00 for the men's basketball student-athletes and staff meeting the expectations of the Director of Athletics in performing marketing and community service activities throughout the academic year;
- vii. \$2,500.00 for meeting University Compliance Office departmental expectations, including documentation of recruiting call in JumpForward;
- viii. \$1,500.00 if the men's basketball team finishes in the top five, including ties, of the Big Sky regular season standings;

- ix. \$1,000.00 if the men's basketball team finishes first, including ties, in the Big Sky regular season standings; and
- x. \$2,500.00 if the men's basketball team makes the NCAA Tournament.

The amount of Incentive Compensation earned under subparagraph (i) shall be due and payable (less applicable Federal, State, and local taxes) on January 31 in each year of the Agreement to which such goals apply. The amount of Incentive Compensation earned under subparagraphs (ii) through (x) of this Paragraph 5 shall be due and payable in one lump sum (less applicable Federal, State, and local taxes) on June 1 following each full intercollegiate men's basketball season to which such goals apply.

Should Smiley be employed under this Agreement on June 30th in each year of the Agreement, Smiley will earn a \$30,000 payment, less applicable deductions for federal, state, and local taxes as an earned retention incentive. Retention incentives will be paid solely from donated funds.

6. **ASSISTANT COACHES/RECRUITING/TEAM TRAVEL.** Subject to prior approval of University and its Director of Athletics, Smiley, pursuant to institutional hiring practices and procedures shall have the right to select the Assistant Men's Basketball Coaches and men's basketball support staff to assist in administering and executing University's intercollegiate men's basketball program within annual compensation amounts as approved by the Director of Athletics or designee. Smiley shall be responsible for the performance of each Assistant Coach, and support staff and may recommend to the Director of Athletics the discharge or release of any such person subject to terms of their contract with University. During the Term of this Agreement, any revenue received by University specifically for intercollegiate men's basketball game guarantees in excess of one hundred thousand and 00/100 dollars (\$100,000.00) shall be utilized for expenses incurred by University for incentive compensation for men's basketball assistant coaches, men's basketball student-athlete recruitment, men's basketball team travel, or other program costs as approved by the Director of Athletics or designee.

7. **RESPONSIBLE TREATMENT OF STUDENT-ATHLETES.** Smiley shall at all times in the performance of his duties and responsibilities under this Agreement engage in conduct that encourages and supports student-athletes in regard to academic activities and achievements, including an emphasis on academic excellence and each student-athlete's completion of their undergraduate degree program.

8. **TERMINATION FOR CAUSE.** University shall have the right to terminate this Agreement during the term of the Agreement for cause. For the purposes of this Agreement, "cause" is defined as:

- a. Determination by University, the NCAA, or the Big Sky Conference that Smiley has committed a major infraction(s) of the constitution, by-laws, or rules, regulations, or policies of University, the NCAA or Big Sky Conference;
- b. Determination by University, the NCAA, and/or the Big Sky Conference that any Assistant Coach, Coordinator, or support staff who assisted in administering and executing University's intercollegiate men's basketball program has committed a major infraction(s) of the constitution, by-laws or rules, regulations, or policies of University, the NCAA, or Big Sky Conference;

- c. Any conduct by Smiley that results in his conviction of, or plea of guilty or nolo contendere to, a violation of any Federal, State, or local criminal statute;
- d. Smiley betting money or anything of value on the outcome or score of any athletic contest involving a team or athlete representing University; or
- e. Smiley's failure or unwillingness to perform the duties of Head Men's Basketball Coach as specified in writing by the Director of Athletics of University.

In the event University terminates Smiley's employment under this Agreement for "cause," he shall not be entitled to any salary or benefits from the University after the effective date of termination.

9. **TERMINATION WITHOUT CAUSE.** Termination "without cause," as defined in this Agreement, is defined as any reason not constituting "cause" as defined in Paragraph 8, above. Should University terminate this Agreement "without cause" on or before April 30, 2027, University will pay Smiley severance of the lesser of one (1) year's annual base salary or the remaining base salary payable under this Agreement (less applicable Federal, State, and local income taxes and other lawful deductions). Any such severance payment will be paid out over a twelve (12) month period, and will be reduced by any salary or compensation Smiley receives as a basketball coach with another employer from the date of his termination "without cause" through the duration of the payment period. University, in its sole discretion, may pay such severance in a lump sum or in equal monthly installments over a one (1) year period. Any payment under this Paragraph 9 shall be made in conformance with Section 24-19-103, C.R.S.

10. **VOLUNTARY TERMINATION.** Smiley shall have the right to terminate this Agreement for any reason upon seven (7) days written notice to University. If Smiley terminates this Agreement pursuant to this Paragraph 10, he shall not thereafter receive any salary or benefits from the University after such written notice to University. If Smiley terminates this Agreement pursuant to this Paragraph 10 because he intends to assume a position as a head men's basketball coach at another college or university, he will be required to pay to the University of Northern Colorado Foundation Blue and Gold Area of Greatest Need within thirty (30) days of submission of such written termination notice to University the sum of \$50,000.00.

11. **N.C.A.A. RULES COMPLIANCE.** As an employee of University, which is an NCAA member institution, Smiley is subject to all applicable rules and regulations set forth by the NCAA and acknowledges the obligation to uphold a standard of rules compliance, specifically NCAA Bylaw, Article 10 Ethical Conduct. Failure to comply with such regulations may result in disciplinary or corrective actions as set forth in the provisions of the NCAA enforcement procedures, including suspension without pay or termination of employment for significant or repetitive violations. Further, Smiley shall not engage in any conduct, or condone any conduct (by a member of the Athletic Team's coaching staff or any person under Smiley's supervision and direction, including a student-athlete), whether or not related to the performance of duties under this Agreement, that constitutes: (a) a Level I or Level II violation or repetitive Level III violations of NCAA rules, bylaws, or regulations, as defined by the NCAA; (b) a violation of UNC policies, rules, and regulations including but not limited to UNC's Board Policy Manual and University Regulations; (c) a violation of applicable Big Sky Conference rules, legislation, or regulations; or (d) a violation of Federal, State, or local laws or regulations. For purposes of this Paragraph 11, "condone" shall mean: (a) Smiley's actual knowledge of and complicity in a violation by a member of the Athletic Team's coaching staff or any person under Smiley's

supervision and direction, including a student-athlete; or (b) Smiley's failure to report a known violation by a member of the Team's coaching staff or any person under Smiley's supervision and direction, including a student-athlete, to the Director of Athletics within a reasonable period of time after Smiley knew or should have known of the violation.

12. **OUTSIDE EMPLOYMENT.** In his capacity as Head Men's Basketball Coach, Smiley will be permitted to use the Bank of Colorado/Butler-Hancock Athletic Center and the Campus Recreation Fields for up to four (4) weeks for men's basketball-related camps each summer, provided that notice by Smiley of a firm commitment to hold such men's basketball-related camps and the dates upon which such camp(s) are to be held are received by, and coordinated with, the University's Director of Athletics and University Conference Services a reasonable time prior to the commencement of such camp(s). Smiley shall pay University for the use of University facilities and services attendant to any such camp(s) prior to the commencement of such camp(s) in an amount agreed upon by Smiley and University. In the conduct of such camp(s), Smiley shall follow all University rules and regulations, including but not limited to those of Conference Services and the Athletic Department, as well as all NCAA rules, regulations, and policies for summer men's basketball camps.

Smiley shall devote such time, attention, and efforts as necessary to fulfill the duties under this Agreement and shall not become associated directly with any other business or in any other employment without first obtaining the prior written consent from the Director of Athletics, which consent, will not be unreasonably withheld. For purposes of this Agreement, Smiley's participation in speaking engagements and personal appearances, coaches' clinics, men's basketball camps, radio and TV appearances, and athletic shoe/apparel and equipment endorsement contracts shall be considered outside employment. Smiley shall provide any agreement for his outside employment to the Director of Athletics within a reasonable time prior to the engagement to allow for review and approval.

13. **FUND RAISING AND PUBLIC APPEARANCES.** It is expected that Smiley, as part of his duties under this Agreement, shall engage in fundraising and promotional activities for University's men's basketball program. All such fundraising activities shall be with the prior consent and approval of the Director of Athletics or their designee. Smiley will also be expected to make public appearances at both on and off campus events as required by the Director of Athletics or their designee.

14. **SCHEDULING.** Smiley shall have responsibility for developing University's annual men's basketball schedule, consistent with the philosophy of University and subject to the approval of the Director of Athletics.

15. **NOTICES.** Each Party shall give the other written notice of all matters necessary to effectuate the provisions of this Agreement at the addresses listed below for Smiley and for the Director of Athletics at University of Northern Colorado, 208 Butler Hancock Athletic Center, Greeley, CO 80639. Each Party is responsible for providing prompt written notice of any change of address.

16. **AMENDMENTS TO AGREEMENT.** No amendments to this Agreement shall be effective unless in writing and executed by Smiley and University.

17. **APPLICABLE LAW.** This Agreement shall be governed by and interpreted pursuant to the laws of the State of Colorado.

