



ONE UNIVERSITY PLAZA • CAPE GIRARDEAU, MISSOURI 63701-4799 • (573) 651-2000 • <http://www.semo.edu>

January 31, 2011

Marlon (Tony) Samuel
Athletics - Football
MS7000

Dear Mr. Samuel:

On behalf of Southeast Missouri State University, I am pleased to extend the following offer of employment. This offer is conditioned upon and subject to all University general policies and procedures and is subject to final approval by the Board of Regents. The specifics of this offer are:

Job Title: Head Coach, Football

Department: Athletics

Term: If you accept this offer, the term of your employment will begin on February 1, 2011, and will continue until the close of business on March 31, 2016. This employment agreement can be extended only by written agreement.

Employment Status: This position is full time.

Salary: The University offers a salary of \$10,416.67 per month (or \$125,000.04 per year) plus an annual supplement equal to 5% of the net revenue of all guaranteed football games (net revenue equals total gross game guaranteed revenue, less team travel expenses for guaranteed games, less any game guarantees paid to another team). The supplement will be paid annually, no later than ten (10) days after final net revenue for the season has been determined.. In addition, an annuity will be provided to you, and revenues resulting from camps, fund raising, and personal endorsements may be paid to you as set out below.

Benefits: You will continue to be eligible to participate in University benefits as defined in the plan documents, which control each benefit plan. In the event of any discrepancy between a benefit plan document and this offer, the terms of the benefit plan document shall prevail.

In general, University benefits include participation in our health, dental, and vision insurances. Rates vary according to coverage selections. Long-term disability insurance and term life insurance (two and one-half times the annual equivalent of your base salary, not to exceed \$50,000 total coverage) is provided. You may purchase additional amounts of individual life coverage and/or dependent life coverage. In accordance with Internal Revenue Service code, you may participate in one of the University's medical spending accounts (Health Savings Account or Medical Reimbursement Plan), Tax Deferred Annuity Program, Deferred Compensation Program, Employee Fee Waiver Program, Dependent Tuition Reimbursement Program, and the Dependent Care Assistance plan. The University contributes toward your retirement through the Missouri State Employees Retirement System (MOSEERS), a defined benefit retirement plan.

Due to the nature of responsibilities performed by coaches, coaches are not covered under the University paid time off plan; however, you are covered by the University's sick leave policy. Employment with the University is covered under Social Security, unemployment insurance and Workers' Compensation insurance.

Termination of this Agreement by Coach: The Coach recognizes that his promise to work for the University for the entire term of this Agreement ending on March 31, 2016, is the essence of this Agreement with the University. The Coach also recognizes that the University is making a highly valuable investment in his continued employment by entering into this Agreement and that its investment would be lost were he to resign or otherwise terminate his employment with the University prior to the expiration of the term of this Agreement. Nevertheless, the parties agree that the Coach may terminate this Agreement prior to its normal expiration on March 31, 2016, but only upon the following terms and conditions:

- a) Written Notice: The Coach may terminate this Agreement during its term by giving the University thirty (30) days advance written notice of his intention to terminate his employment with the University. Unless agreed by the other parties, in no event shall the Coach make public his intention to terminate this Agreement until after the official playing season, including post-season competition. Upon termination of this Agreement during its term by the Coach, all obligations of the University under this Agreement, including with respect to salary and benefits, shall cease, to the full extent permissible by applicable law.
- b) Liquidated Damages Upon Termination by Coach: If the Coach terminates this Agreement, and accepts a coaching position at another NCAA institution, prior to expiration of the term of this Agreement, the Coach shall pay to the University, as liquidated damages, \$40,000.00 per year for the remainder of the contract; pro-rated to the effective date of the resignation.

Such liquidated damages shall be due and payable in a lump sum within 30 days after the effective date of the termination of this Agreement or after he accepts such other position, whichever is later. Failure to timely pay said liquidated damages shall constitute a breach of this Agreement and said sum shall be recoverable, together with reasonable attorneys' fees by action brought in any court of competent jurisdiction in the State of Missouri. The parties have bargained for and agreed to the foregoing liquidated damages provision, giving consideration to the fact that the University will incur administrative, recruiting and resettlement costs and loss of ticket revenues if the Coach terminates this Agreement while serving as Head Coach of the University's intercollegiate football team, which damages are extremely difficult to determine with certainty or fairly or adequately. The parties further agree that the payment of such liquidated damages by the Coach shall constitute adequate and reasonable compensation to the University for the damages and injury suffered by it because of such termination by the Coach. The foregoing shall not be, nor shall it be construed to be, a penalty.

Termination of this Agreement by the University:

- a) Termination without Cause: If the University terminates this Agreement during its term without cause, the University shall pay to the Coach, as liquidated damages, an amount equal to one-half the remaining base salary due under the current agreement. Such amount shall be payable in a lump sum within thirty (30) days after the termination becomes effective. Failure to timely pay said liquidated damages shall constitute a breach of this Agreement and said sum shall be recoverable, together with reasonable attorney's fees, by action brought in any court of competent jurisdiction in the State of Missouri. The parties have bargained for, and agreed to, the foregoing liquidated damages provision, giving consideration to the fact that termination of this Agreement by the University without

cause prior to its normal expiration may cause the Coach to lose certain benefits, supplemental compensation or outside compensation relating to his employment at the University, which damages are extremely difficult to determine with certainty or fairly or adequately. The parties further agree that the payment of such liquidated damages by the University shall constitute adequate and reasonable compensation to the Coach for the damages and injury suffered by him because of such termination by the University. The foregoing shall not be, nor shall it be construed to be, a penalty.

- b) Termination for Cause: Upon written Notice to Coach, the University may terminate this Agreement for Cause during its Term without prior notification. If the University so terminates this Agreement for Cause, Coach shall be entitled to only (i) salary that is earned but unpaid up to the date of termination; and (ii) performances stipends that have vested but are unpaid on the date of termination. For purposes of this Agreement, "Cause" shall be deemed to exist when the University makes a good faith determination that:
- you have failed to promote an atmosphere of compliance with applicable policies and regulations within your athletic program and/or failed to monitor activities of your assistant coaches (if applicable) and other staff involved in the program who report directly to you;
 - you have engaged in significant or repeated violations of NCAA and/or OVC bylaws, rules or regulations;
 - you have acted in a fraudulent, malicious, reckless or grossly negligent manner in the performance of your duties;
 - you have engaged in a material violation of University policy or procedures, or of the terms of this Agreement;
 - you have failed to conduct yourself in a professional manner in your role as coach, and/or to provide student-athletes with a respectful, positive and supportive environment in which they can achieve their academic, social and athletic potential;
 - you have failed to meet job performance objectives of a performance improvement plan, after receiving a 'does not meet' performance evaluation;
 - you have reported to work under the influence of alcohol, controlled substances or prescription medications which were not prescribed for you; and/or
 - you are convicted of any felony or a misdemeanor involving (a) fraud, (b) threatening, inciting or committing violence, or (c) improper use, possession, or distribution of alcohol or a controlled substance.

In the event that, after reasonable investigation and deliberation, the University makes a good faith determination that you have engaged in the behavior that falls within one of the categories set forth above, the University may suspend you without pay, immediately terminate this Agreement, or impose such other sanctions as the University deems appropriate in the circumstances. In the event that the University terminates this Agreement under this provision, you shall be entitled to receive only (1) salary that is earned but unpaid up to the date of termination; and (2) benefits (excluding life insurance) up to the end of the month in which the agreement is terminated, except as may otherwise be required by law.

In addition, individuals employed by Southeast Missouri State University must follow all NCAA and OVC regulations, and failure to follow such regulations could result in disciplinary action. More specifically, if you are found by the NCAA to be in violation of NCAA regulations, you shall be subject to disciplinary or corrective action as set forth in the provisions of the NCAA enforcement procedures, including suspension without pay, or termination of employment for significant or repetitive violations.

Extensions: This employment agreement can be extended only by written agreement.

Other:

- a) **Annuity:** Employer shall provide \$25,000.00 per year, paid on a monthly basis, for the Head Coach to purchase an annuity or other retirement instrument.
- b) **Automobile:** Coach will be provided an automobile for official travel, including insurance, maintenance, and business-related fuel expense. Coach agrees that any personal travel must be recorded and provided at least quarterly to the University Athletics Director and the Payroll Office. In accordance with IRS regulations, any personal travel will be reported as personal income on the appropriate form
- c) **Radio/TV:** Coach will be provided \$10,000.00 per year, paid on a monthly basis, for radio/television appearances.
- d) **Camps:** Coach will be allowed to establish and conduct football camps. Coach shall be entitled to earn income generated from this activity not to exceed \$10,000.00 per year.
- e) **Booster Supplement:** The University will allow for annual income supplements from a football booster group to be paid in cash or to the annuity. The Booster Supplement shall not exceed \$10,000.00 per year. In order to receive any such payments, the money needs to be raised on an annual basis through the efforts of Coach and the Athletic Director.
- f) **Performance Stipend:** If the following goals and recognitions are achieved by Coach and/or the University's football team, the following stipends will be paid for the year in which the goal is reached:

Individual Performance Goals:

- i. If team cumulative GPA > 2.8 at AY end - \$3,000.00
- ii. If OVC Coach of the Year - \$5,000.00
- iii. If NCAA Regional Coach of the Year - \$5,000.00
- iv. If National Coach of the Year - \$8,000.00

Team Performance Goals:

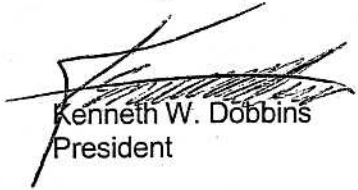
- v. If the football team has a final ranking in the top 25 of the NCAA FCS - \$2,500.00
- vi. If the football team wins the OVC Championship - \$5,000.00 or
- vii. If the football team is selected for the NCAA FCS Championship playoffs - \$3,500.00 or
- viii. If the football team advances to the NCAA FCS Championship Final - \$10,000.00 or
- ix. If the football team wins the NCAA FCS National Championship - \$25,000.00

It is understood that the stipends listed in the paragraph above are not cumulative; for example, if the team is selected for the NCAA FCS Championship playoffs, and then advances to the NCAA FCS Championship Final, the total earned stipend would be \$10,000.00.

As a condition precedent to your employment with Southeast Missouri State University, you acknowledge that you will be required to sign and date both copies of this letter and return one copy to Dana Seabaugh, Human Resources (Mailstop 3150). It must be **received** at the University not later than January 31, 2011. Failure to return the letter by the date shown may invalidate this offer.

If you have any questions, please contact me, and I will be glad to answer them. We look forward to your continuing with the University and with the Southeast tradition!

Sincerely,



Kenneth W. Dobbins
President

c: John Shafer
Personnel file

I hereby accept this offer under the terms and conditions as stated in this letter of Agreement. I agree to abide by all University policies and procedures, both as they now exist and as they may be promulgated, amended, changed, or deleted from time to time. Further, I recognize that University policy and procedures may change from time to time and that my employment will be governed by such changes. I also agree that this employment is for the period contemplated in this Agreement, but that it may be ended prior to the end of the **"Term"** as provided in the **"Termination of this Agreement"** paragraph above. Further, by my signature, I acknowledge that this letter of Agreement constitutes the full and complete agreement by the parties, all understandings, agreements, and terms and conditions are reflected in this document and that any modifications must be in writing and signed by both parties.

Signature



Date

2/1/2011