

STATE OF ALABAMA     )  
  )  
LEE COUNTY             )

AGREEMENT

This agreement made by and between Auburn University (hereinafter called "Auburn" or "University") and Willie Martinez (hereinafter called "Coach").

WITNESSETH THAT:

For and in consideration of the mutual promises herein contained, the parties hereto do hereby agree as follows:

1.     EMPLOYMENT: University hereby employs Coach in the position of assistant football coach, and Coach does hereby accept such employment and agrees to perform all those services pertaining to football as set forth herein and as prescribed by Auburn through the President, Athletics Director and head football coach which are required of Coach.
2.     TERM: The contract shall commence on February 17, 2012 and end on June 30, 2013. This agreement can be extended at any time only by written agreement of Coach and Auburn.
3.     SALARY: University will pay Coach an annual base salary of Two Hundred Fifty Five Thousand Dollars (\$255,000.00) for each entire calendar year, payable in equal monthly installments at the end of each month during the term of this agreement, less any withholdings required by state or federal laws or other authorized deductions.
4.     ATHLETIC PERFORMANCE BONUS AND OTHER BENEFITS:  
(a) Assuming the availability of funds as determined solely in the discretion of the Athletics Director, Coach will also receive competitive bonuses for competitive success, and in accordance with the Auburn University

bonus policy which rewards head and assistant coaches deemed to have played an important role in the team's success. In order to qualify for a bonus, coach must operate within the football program's established budget parameters and follow normal and accepted departmental and University fiscal policies and procedures, and otherwise comply with Athletic Department, University, SEC and NCAA rules and regulations.

(b) University will use its best efforts to furnish Coach with the use of an automobile through its dealer program or Coach will be provided a car allowance in the amount equal to five (5) percent of Coach's base salary, or \$4,000 whichever is greater, but in no event to exceed \$16,250.

5. BEST EFFORTS: Coach will at all times promote the welfare of the University and its intercollegiate athletic program to the best of his ability.
6. WORK SCHEDULE: Coach is employed by the University to succeed at a specific task. Because time demands in the coaching profession are unique, largely on a seasonal basis, and requiring coaches to work a normal 40-hour work week would be counterproductive to success, coaches are given the flexibility to establish their own work schedule reflecting seasonal demands and success goals for the program. Coaches are expected to be reasonably available to meet with student-athletes, staff, alumni, media and friends of the University. Coach agrees that he will appear in or participate in radio post-game shows and television preview or post-game shows, as reasonably requested by the Head Football Coach, the University or University's multimedia rights holder. Because normal 40-hour work weeks are not the norm, and because coaches under contract set their own schedule, coach will not

accrue annual leave but will have all other leave benefits normally provided to University employees.

7. TRAVEL EXPENSES: University agrees to provide or reimburse Coach for travel expenses in connection with University activities and in accordance with University policy. Coach agrees to be personally responsible for expenses which are not in accordance with University policy. Coach agrees that if for any reason he does not personally remit amounts for such non-University related travel expenses to the Director of Athletics or his designee within thirty (30) days from the date such expenses were incurred, University shall be entitled to collect remittance through payroll deduction without advance notice to Coach. Coach is encouraged to seek prior approval before incurring any questionable expense.
8. PROSPECTIVE EMPLOYMENT: Unless notice has been given to Coach by the University of his termination, Coach shall not under any circumstances discuss or negotiate directly or indirectly his prospective employment with any other institution of higher learning or professional athletic team without notice to the Head Coach or the Director of Athletics and the express permission of the University which shall not be unreasonably withheld.
9. COOPERATION: Coach recognizes the University serves as an institution of higher learning and shall fully cooperate with the faculty and administrators of the University in connection with the academic pursuits of student athletes and shall use his personal best efforts to encourage and promote those efforts. In that respect, Coach recognizes that a goal of the University is that every student athlete obtain an undergraduate degree and agrees to fully support the attainment of that goal.

10. COMPLIANCE WITH POLICIES, RULES AND REGULATIONS: Coach will faithfully perform the duties and obligations of the position to the best of his/her ability to do so, and Coach will conform to the policies, rules, and regulations of Auburn, its Department of Intercollegiate Athletics, and to the rules and regulations of the NCAA and the SEC including the enforcement, penalty, and other disciplinary provisions and procedures of the NCAA and SEC including but not limited to the provisions of Article 4 of the SEC Constitution and SEC Bylaw 19.8. Coach will at all times exercise due care that all persons under his supervision or subject to his control or authority shall abide by said duties, obligations, policies, rules and regulations and further will monitor the conduct of those persons under his supervision or subject to his control or authority. Without limiting the foregoing, Coach acknowledges and agrees that Coach reports through the head coach ultimately to the Athletic Director and unless expressly provided to the contrary therein, that those duties, obligations, policies, rules and regulations include the obligation to respect the administrative line of authority. Coach shall further observe and respect the principles of institutional control of every aspect of the athletic programs of Auburn. It is agreed that the Coach shall be subject to disciplinary or corrective action which the University determines is appropriate, including but not limited to termination from employment, if the University, the SEC, or the NCAA concludes or believes Coach or any person under his supervision or subject to his control or authority is involved in significant or repetitive violations of University, SEC or NCAA regulations, policies or rules.

This paragraph addresses the NCAA standards that apply for serious or repetitive violations of NCAA rules. Pursuant to NCAA Bylaw 11.2, it is agreed that Coach may be suspended for a period of time without pay or his employment may be terminated if he or any person under his supervision or subject to his control or authority is found by Auburn, SEC, or NCAA to be involved in significant or repetitive violations of NCAA regulations or had knowledge of but failed to report such violations by others. Coach also agrees that he may be suspended without pay or terminated if he is found to have been involved in significant or repetitive violations of NCAA regulations during previous employment at another institution.

If Coach is terminated under Paragraph 10, he will be entitled to receive no further payment from Auburn of any sort, and all obligations of the University and other parties furnishing benefits due to Coach's employment will immediately cease.

11. PERSONAL CONDUCT: Auburn shall have the right to terminate the Agreement in the event it concludes that Coach has engaged in personal conduct that is unreasonably contrary to the positive image and conduct Auburn expects from its assistant football coach. Examples of such conduct would include but not be limited to charges or conviction of criminal conduct (except for minor traffic offenses), personal conduct of a nature that puts Coach and Auburn in an unreasonably negative light or other conduct that is inconsistent with conduct generally expected of representatives of Auburn. Auburn retains the reasonable discretion to determine, after notice to Coach (including being made aware of the allegations at issue) and an opportunity to be heard, whether any conduct

by Coach falls within the scope of the personal conduct paragraph. Coach acknowledges and agrees that in the event Auburn decides to terminate Coach pursuant to the personal conduct paragraph, Coach will be entitled to receive no further payment from Auburn of any sort except for those payments that Coach had (1) fully earned under Paragraph 3 prior to the event(s) or conduct underlying the University's decision to terminate Coach under Paragraph 11, and (2) not yet received from University at the time of his termination.

12. OUTSIDE INCOME: Pursuant to NCAA Bylaw 11.2.2 and institutional policy, Coach agrees to obtain annually prior written approval from the President of Auburn University through the Director of Athletics for all athletically-related income and benefits from sources outside the University (including, but not limited to the following: annuities, sports camps; housing benefits; country club memberships; television and radio programs; and endorsement or consultation contracts with athletics shoe, apparel or equipment manufacturers). A request for approval shall be in writing and shall include the amount and the source of the income. Coach also agrees to provide to the President of the University through the Director of Athletics annually (by August 1 of each year) a detailed written accounting of all such income and benefits. Coach further agrees that as part of this Agreement, he acquires no rights to use of the Auburn logo, Auburn team nicknames, Auburn emblems, films or videotapes of any competition or practice or any trademark associated with Auburn or its athletic program. Coach acknowledges and agrees that such logos, nicknames, emblems, films, videotapes or trademarks are the exclusive

property of Auburn and that he has no right to use any of these, but agrees to use or display the same in accordance with the wishes of Auburn in the performance of any activities pursuant to this Agreement. Coach acknowledges and agrees that Coach has no right to receive any income from activities that expressly or implicitly suggest Auburn or its athletic teams endorse any commercial product or service or engage in any activity that is inconsistent with existing or future University commitments.

13. TERMINATION OF CONTRACT OF EMPLOYMENT WITHOUT CAUSE:

Should the University elect to terminate Coach's employment prior to the end of the term of this agreement for any reason other than those reasons permitting termination pursuant to paragraph 5, 9, 10, 11, or 12 above, then University will pay to Coach any and all annual base salary which Coach would have received from the date of such termination for the remainder of the contract. During this period, Coach will receive monthly salary payments in the same amount and manner he did while employed by University. The amount paid to Coach following his termination shall be reduced by an amount equal to any income Coach earns or receives from other employment or work during the payment period following his termination. Coach acknowledges that he is obligated under this Agreement to use reasonable efforts to obtain other employment or work and to report in writing to University any income he earns or receives from other employment or work. If, during the term of this Agreement, Coach dies, or resigns his employment, no further compensation or benefits shall be due Coach under this Agreement.

14. WAIVER OF CLAIMS: In the event of termination of Coach's employment, neither University nor Coach shall be entitled to receive, and each hereby waives any claim against the other, and their respective trustees, officers, administrators, agents, employees, successors, and personal representatives for consequential damages by reason of any alleged economic loss, including without limitation loss of collateral income, loss of earning capacity, loss of business opportunity, loss of perquisites, loss of speech, camp or other outside activity fees, or expectation income, or by reason of alleged humiliation or defamation resulting from the fact of termination, the public announcement thereof, or the release by University or Coach of information or documents required by law. Coach acknowledges that in the event of termination of this agreement he shall have no right to occupy the position of assistant football coach and that his sole remedies are provided herein and shall not extend to injunctive relief. Coach acknowledges that he has no expectation of tenure. Coach acknowledges as part of this Agreement, he forfeits all rights he might have to file a grievance under University policy related in any way to his termination. In no event, unless otherwise expressly provided herein, is Coach, after termination of employment, entitled to any other benefits or privileges, including but not limited to parking, tickets, or access to athletic events which otherwise are or may be available to Coach while employed or after employment.
15. OWNERSHIP OF RECORDS: All documents, records, or materials, including without limitation personnel records, recruiting records, team information, films, statistics, or any other material or data, furnished to Coach by University or developed by Coach on behalf of or at the expense

of University or otherwise in connection with the employment of Coach are and shall remain the sole and confidential property of the University.

Within the (10) days of the expiration or termination of this agreement, Coach shall cause any such materials in his possession or control to be delivered to the University. At the same time Coach shall return to the University all credit cards and/or keys issued to him by the University.

Documents and records related to camps conducted by Coach are and shall remain the sole and confidential property of coach. However, Coach agrees to make those records available to Auburn for audit and review upon request.

16. PHYSICAL OR MENTAL DISABILITY/INABILITY TO PERFORM: In the event of Coach's physical or mental disability or inability to perform his duties under this agreement for a period of time which would cause a substantial adverse impact on University's intercollegiate program, University will pay to Coach a sum equal to sixty (60%) percent of his annual base salary for the remainder of this contract, and upon such payment, his employment will be terminated without further obligation of either party, but Coach will continue to have the right to receive any benefits to which he is entitled because of his prior employment by University. This item is not intended to confer any death benefit, nor shall it be applied in any manner which violates applicable law concerning handicaps or disability. Determination of such disability or inability shall be made by University in accordance with applicable law and Auburn policies and procedures after due notice to Coach and after reasonable opportunity for hearing by or on behalf of Coach.

17. REPRESENTATION: University understands that Coach is currently not

represented by legal counsel or other representatives. University will discuss directly with Coach all matters related to his employment with University. In the event Coach retains legal counsel or other representation, he agrees that he will notify University's Athletic Director of such representation promptly, providing the person's/group's name and contact information. University reserves the right to continue to discuss all matters related to Coach's employment by University directly with Coach in the event Coach retains legal counsel or other representation.

18. ENTIRE AGREEMENT: This Agreement constitutes the entire Agreement between the parties hereto and there are no collateral oral or written Agreements or understandings. This Agreement supersedes any prior oral or written Agreement or understanding between parties. Coach acknowledges and agrees that he has not relied on any representation of Auburn or its representatives in entering the contract and he had the opportunity to consult with legal counsel of his choice before executing this Agreement.
19. ACCEPTANCE OF EMPLOYMENT: Coach hereby accepts employment by University as assistant football coach on the terms and conditions herein contained.
20. PREVIOUS CONTRACTS: Coach hereby warrants and represents that there are no binding contracts between Coach and any third party that would entitle the third party to approve any provision or all of this Agreement prior to its execution or to participate in or receive any proceeds to be paid to Coach pursuant to this Agreement. Coach further agrees and acknowledges that in the event any claim or legal action or administrative action is instituted against Auburn by any third party wherein it is alleged,

among other things, that Coach in fact is bound by such contract, Coach will indemnify and hold harmless Auburn from any award, judgment or settlement received by the party asserting the claim or bringing the administrative action or legal action. As part of this agreement to indemnify and hold harmless, Coach acknowledges and agrees that he will be responsible for payment of any legal fees and related expenses incurred by Auburn as a result of any such claim, administrative action or legal action.

21. MISCELLANEOUS:

(a) Choice of Law: This Agreement shall be governed by and interpreted and enforced in accordance with the laws of the State of Alabama (without regard for any conflict of laws provisions). Coach consents to the jurisdiction of any court of the State of Alabama and any federal courts in Alabama, waiving any claim or defense that such forum is not convenient or proper. Coach agrees that any such court shall have in person jurisdiction over Coach, and consents to service of process in any manner authorized by Alabama law. By entering into this Agreement, University does not waive any legal defenses or protections available to it, including, but not limited to, sovereign immunity.

(b) Headings: The paragraph headings of this Agreement are for convenience only and are in no way intended to affect the meaning or interpretation of any provision of this Agreement.

22. OPPORTUNITY TO REVIEW: COACH ACKNOWLEDGES THAT HE HAS HAD ADEQUATE OPPORTUNITY TO REVIEW THIS AGREEMENT AND HAS HAD TIME TO RETAIN LEGAL REPRESENTATION OF HIS CHOOSING TO REVIEW THE CONTRACT

ON HIS BEHALF. COACH FURTHER ACKNOWLEDGES THAT HE IS ENTERING THIS AGREEMENT KNOWINGLY AND VOLUNTARILY.

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the 20 day of February, 2012.

WITNESS:

AUBURN UNIVERSITY  
a corporation

Joy Stephenson TO

BY J. Jacobs  
Jay Jacobs  
Athletics Director

Laura Meadows TO

Willie Martinez  
Willie Martinez  
Assistant Coach  
Football

Recommended by:

Tim Jackson  
Tim Jackson  
Sport Administrator

Gene Chizik  
Gene Chizik  
Head Football Coach