



THE UNIVERSITY OF NEW MEXICO  
ALBUQUERQUE, NM 87131

**Birmingham, Ray J.**

**Athletics Baseball – 925G0**

Position Number: S01799

Job Suffix: 00

After consultation with appropriate University authorities, it has been determined that your appointment status will be **Head Coach – Y7020** for the period of service from 07/01/2018 to 06/30/2021.

ANNUAL SALARY	MONTHS OF SERVICE	PERCENT TIME	PERIOD DURING WHICH PAYMENTS ARE MADE		INSTALLMENTS	
			BEGINNING	ENDING	AMOUNT	NO.
\$185,572.00	12.00	100	07/01/2018	06/30/2019	\$15,464.33	12.00
\$200,572.00	12.00	100	07/01/2019	06/30/2020	\$16,714.33	12.00
\$220,572.00	12.00	100	07/01/2020	06/30/2021	\$18,381.00	12.00

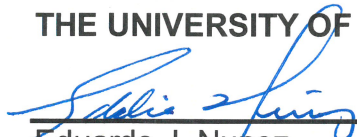
Additional terms and conditions applicable to the annual salary schedule are given in the Employment Contract Addendum, paragraph two (2), Salary and Contract Period. Together, Employment Contract Addendum and this contract shall be referred to as the "Agreement."

This appointment is governed by applicable policies as stated in the University's Regents Policy Manual and the University Administrative Policies and Procedures Manual, as they are amended from time to time, published and distributed by the University, and by relevant federal and state laws and regulations. In conformance with UNM Policy 3240, the University reserves the right to renew or not renew this contract.

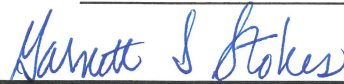
Please sign, and forward the original of this contract to the Division of Human Resources, 1700 Lomas Boulevard NE, Suite 1400, and keep a copy for your records.

I accept the appointment described above.

THE UNIVERSITY OF NEW MEXICO

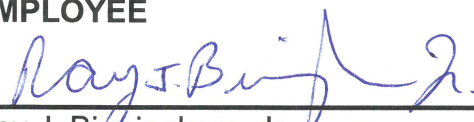
  
\_\_\_\_\_  
Eduardo J. Nunez  
Director, Intercollegiate Athletics

Date: 11-19-18

  
\_\_\_\_\_  
Garnett S. Stokes  
President, Office of the President

Date: 11/27/2018

EMPLOYEE

  
\_\_\_\_\_  
Ray J. Birmingham, Jr.  
Head Coach, Baseball

Date: 11-19-18

## INTERCOLLEGIATE ATHLETICS

### Employment Contract Addendum – **HEAD COACH**

---

**Name:** Ray J. Birmingham, Jr.      **Contract Type:** Multi-Year      **Sport:** Baseball

**Title:** Athletic Coach 4 (Y7020)      **Working Title:** Head Coach Baseball

---

The following additional terms and conditions shall be an addendum to the standard printed employment contract between **The Regents of the University of New Mexico ("University")** and **Ray J. Birmingham, Jr. ("Coach")**. Together, this Addendum and Coach Ray Birmingham's standard printed contract shall be referred to as the "Agreement."

1. **Position:** Coach shall be responsible for all duties assigned by and under the direct supervision of the Director of Intercollegiate Athletics ("DIA"). Coach shall devote full-time to the duties and responsibilities of Head Coach/Baseball and shall not engage in any other athletics-related employment, except as specifically approved by the DIA or as provided below. Further, under no circumstances, shall Coach interview for, negotiate for, or accept employment as a coach of any other institution of higher education or with any professional sports team, requiring performance of duties prior to the expiration of this Agreement, without the prior approval of the DIA. Such approval shall not be unreasonably withheld. Failure to obtain such prior approval from the DIA shall constitute a material and actionable breach of this Agreement.
2. **Salary And Contract Period:** The contract term shall be for **three (3) years** for the period **July 1, 2018 through June 30, 2021** (the "Contract Term"), which constitutes **three (3)** separate and distinct contract employment years (each a "Contract Employment Year" or collectively the "Contract Employment Years"). For Contract Year One (1), Coach's base salary will be **One-Hundred and Eighty-Five Thousand, Five Hundred Seventy-Two Dollars (\$185,572.00)** from **July 1, 2018 through June 30, 2019**.

For Contract Year Two (2), Coach's base salary will be **Two-Hundred Thousand, Five Hundred Seventy-Two Dollars (\$200,572.00)** from **July 1, 2019 through June 30, 2020** and is contingent upon the Baseball program raising **One-Hundred Fifty Thousand Dollars (\$150,000)** in donor funds by **May 31, 2019**. The donations must be identified by the donor for the Baseball Coaching Enhancement Fund. If the Baseball program does not receive the required donor funds by **May 31, 2019**, Coach's base salary for Contract Year Two (2) will remain the same as his base salary for Contract Year One (1).

For Contract Year Three (3) Coach's base salary will be **Two-Hundred Twenty Thousand Five Hundred Seventy-Two Dollars (\$220,572.00)** from **July 1, 2020 through June 30, 2021** and is contingent upon the Baseball program raising an additional **One-Hundred and Fifty Thousand Dollars (\$150,000.00)** in donor funds by **May 31, 2020**. The donations must be identified by the donor for the Baseball Coaching Enhancement Fund. If the Baseball program does not receive the required donor funds by **May 31, 2020**, Coach's base salary for Contract Year Three (3) will remain the same as his base salary for Contract Year One (1).

To support Coach's base salary increases for Contract Years Two (2) and Three (3), a minimum of Three-Hundred Thousand Dollars (\$300,000) must be raised by the deadlines given in this Section.

Coach will not be entitled to salary increases as provided in University Administrative Policy (UAP) 3500, Wage and Salary Administration, Section 4.1. Coach understands and agrees that this Agreement does not guarantee or entitle Coach to any annual increases in base salary unless otherwise expressly provided in this Section. Employer-paid fringe benefits shall be paid in addition to the base salary consistent with University policies, provided, however, that Coach may accrue up to 168 hours of paid annual leave but will not be

Coach's Initial 

entitled to payment for unused annual leave upon separation from employment as provided in UAP 3400, Annual Leave, Section 7.

3. **Other Compensation:** Coach may be granted the following compensatory benefits during the period of performance of this Agreement:

- a. **Car Donor Program:** Subject to availability and at the discretion of the DIA, in accordance with the car donor program and in cooperation with local Albuquerque car and truck dealers, the University may provide a courtesy car for Coach's personal and business use. Coach shall be responsible for obtaining automobile liability insurance in accordance with insurance laws of the State of New Mexico, and will name the University as a third party beneficiary of such insurance policies. In addition, Coach shall comply with all other federal and state laws, National Collegiate Athletic Association (NCAA) rules, University policies, and any other policies or directives of the Athletic Department applicable to the car donor program. Coach understands and agrees that the provision of a courtesy car is in the exclusive discretion of the DIA, and that Coach will surrender any courtesy car provided upon request of the DIA. Coach further understands and agrees that any courtesy car provided pursuant to this Section constitutes taxable compensation to Coach and that Coach is solely responsible for the tax consequences associated therewith.
- b. **Media Participation/Cooperation:** The University may enter into agreements with radio and/or television station(s) under which the University will receive revenue subject to conditions and terms negotiated between the University and third parties. Irrespective of the University entering into any Media Agreements during the Contract Term, the University will, in addition to the foregoing amounts, pay to Coach the additional sum of **Fifty-Three Thousand One Hundred Dollars (\$53,100.00)** per Contract Employment Year, in addition to his base salary, to make appearances as a representative of the University and/or which will otherwise fulfill the obligations of the University with regard to those third-party contacts or other arrangements. The University will pay the **\$53,100.00** described in this Section in twelve (12) approximately equal installments during the Contract Employment Year, as part of Coach's monthly compensation but in addition to, not a component of, Coach's base salary. Coach shall assist the University in obtaining contracts and arrangements as described in this Section, and will not unreasonably withhold or refuse any appearance which is necessary to meet the University's contractual and other obligations under this Section. Coach will not enter into any individual agreements which conflict with the rights of the University as described in this Section. Coach understands and agrees that payments to him pursuant to this Section constitute taxable compensation to him, and that Coach is solely responsible for the tax consequences associated therewith.
- c. **Incentive Payments:** In addition to the compensation set forth above, Coach is eligible for incentive payments according to the following categories of professional achievement:

Mountain West Conference Achievement

- |  |            |
|--|------------|
| 1. Mountain West Season Champion (Including Tie) | \$5,000.00 |
| 2. Mountain West Tournament Champion             | \$5,000.00 |

Post Season Tournament Achievement

- |                                   |             |
|-----------------------------------|-------------|
| 1. NCAA Regional Appearance       | \$2,500.00  |
| 2. NCAA Super Regional Appearance | \$5,000.00  |
| 3. NCAA College World Series      | \$7,500.00  |
| 4. NCAA National Champion         | \$10,000.00 |

Coaching Recognition

- |   |            |
|---|------------|
| 1. National Coach of the Year                 | \$2,500.00 |
| 2. Mountain West Conference Coach of the Year | \$2,500.00 |

Coach's Initial 

If earned, a maximum of one incentive payment per professional achievement category shall be paid per Contract Year not to exceed a total incentive payment of **Seventeen Thousand, Five Hundred Dollars (\$17,500.00)**. Coach will be eligible for such incentive salary payments after completing the Contract Employment Year in which the incentive is earned. Incentive payments, if any, will be paid no later than **sixty (60)** days after the end of such Contract Employment Year. Coach understands and agrees that incentive payments, if any, are taxable compensation to him and that Coach is solely responsible for the tax consequences associated therewith.

All compensatory benefits are subject to compliance with University policies and procedures, the Mountain West Conference (MWC) rules and regulations, and the NCAA policies and procedures.

4. **Independent Income:** Subject to compliance with Athletics Department, University, MWC and NCAA policies, as currently in force and from time to time amended, and with advance written permission of the DIA, Coach may earn other athletics-related income during the period of this Agreement. Coach understands and agrees that such activities are independent of Coach's University employment and the University shall have no liability or responsibility for any claims arising therefrom. Coach agrees to indemnify the University and hold it harmless from any claims arising out of any independent contractual or other business and/or employment arrangements with third parties. Coach's advance written requests pursuant to this Section shall include the sources and amounts of any independent income contemplated by this Section. Coach understands and agrees that he is solely responsible for any tax liability associated with such activities.

With the written permission of the DIA, Coach may organize and conduct a camp, clinic, lessons, or sports league pursuant to the Athletics Department's summer camp policy. Coach understands and agrees to comply with the terms UNM Athletics' Camp Manual Policy and Procedures provided by the UNM Athletics Compliance office including, but not limited to, income reporting and background checks. These activities are performed in addition to Coach's assigned duties and responsibilities, and shall not interfere with those assigned duties and responsibilities. Coach shall receive no compensation from the University in connection with these activities. Coach understands and agrees that he is solely responsible for any tax liability associated with such activities and that the University shall have no liability or responsibility for any claims arising therefrom. Coach shall be responsible for obtaining general liability insurance in accordance with insurance laws of the State of New Mexico, and will name the University as a third party beneficiary of such insurance policies. Coach agrees to indemnify the University and hold it harmless from any claims arising out of any camp-related activities.

5. **Conduct of Athletics Personnel:** Coach, hired to administer, conduct, and/or coach intercollegiate athletics, shall act with honesty and sportsmanship at all times in promoting the honor and dignity of fair play in the context of the high standards associated with collegiate competitive sports. Coach understands and agrees that honesty and sportsmanship at all times, and the promotion of the honor and dignity of fair play in the context of the high standards associated with collegiate competitive sports, are material to this Agreement, and that any conduct that undermines these values may be grounds for discipline, which can include termination for cause in accordance with Section 8.

Coach shall not engage in activities or conduct injurious to the reputation of the University, without limitation, including repeatedly conveying to one person, or conveying to an assembled public group, negative information concerning the University. This shall not prohibit Coach from making communications prohibited by whistleblower laws.

6. **Unethical Conduct:** Coach will refrain from unethical conduct. Unethical conduct may include, but is not limited to, the following examples of misconduct:
- a. Refusal to furnish information relevant to an investigation of a possible violation of an NCAA regulation when requested to do so by the NCAA or the University;
  - b. Knowing involvement in arranging for fraudulent academic credit or false transcripts for a prospective or an enrolled student-athlete;

Coach's Initial 

- c. Knowing involvement in offering or providing a prospective or an enrolled student-athlete an improper inducement or extra benefit or improper financial aid;
- d. Knowingly furnishing the NCAA or the University false or misleading information concerning Coach's involvement in or knowledge of matters relevant to a possible violation of an NCAA regulation;
- e. Receipt of benefits by Coach for facilitation or arranging a meeting between a student-athlete and an agent, financial advisor, or a representative of an agent or advisor (e.g., "runner");
- f. Refusal to furnish information relevant to an investigation of a possible violation of federal or state law or University policy when requested to do so by lawfully authorized federal or state agents or University officials or when otherwise required to report under University policy; or
- g. Refusal to comply with regulatory or policy requirements, including but not limited to the reporting requirements imposed by the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, Title IX of the Education Amendments of 1972 (the "Clery Act"), and any and all University policies relating thereto.

Coach's agreement to refrain from unethical conduct is a material term of Coach's employment and this Agreement. Coach expressly understands and acknowledges that unethical conduct is sufficient justification for **Termination for Agreement for Cause** as described in Section 8.

7. **Compliance With Laws, Policies, Rules and Regulations:** Coach shall be responsible for being fully knowledgeable of, and being in full compliance with, the policies, rules, and regulations of the University, the MWC, or any other conference with which the University may elect to affiliate, the NCAA (all as currently in force and as amended from time to time), as well as applicable federal laws, including, but not limited to the Clery Act; Title IX of the Education Amendments of 1972; applicable New Mexico laws; and University policies regarding crime reporting and sexual harassment, including, but not limited to sexual harassment, sexual misconduct, and sexual violence. Coach shall immediately report any apparent or confirmed violations of the above laws, policies, rules, and regulations occurring in the department to the DIA or the Division of Human Resources, as well as other University official/departments as required by University policy. Upon receiving any information about a person who has experienced sexual misconduct, harassment, sexual assault or other sexual violence, Coach must report the information to OEO within 24 hours, or as soon as reasonably practicable, by calling OEO at 505-277-5251 or by email at [oeo@unm.edu](mailto:oeo@unm.edu). If the University determines that Coach is in violation of MWC or NCAA rules and regulations while employed by the University, or was in violation of NCAA or conference rules and regulations during prior employment at another NCAA member institution, Coach shall be subject to disciplinary or corrective action as set forth in the NCAA enforcement procedure and may be suspended by the University at the University's sole discretion for a period of time without pay, or terminated as described in Section 8. If Coach fails to meet his obligations as stated in this Section and/or fails to complete any University-required campus security authority training within six (6) months of the Effective Date of his employment, or otherwise has failed or refused to meet his obligations under any law, regulation, policy or procedure, Coach may be subject to disciplinary action up to and including suspension and/or termination as described in Section 8. Because this Agreement creates no expectancy of or property interest in continued employment as set forth in Sections 8 and 10, no University Administrative Policy addressing and/or governing progressive discipline, suspension, discharge or the appeal process for suspension or discharge shall be applicable to the Coach.

Coach specifically acknowledges and agrees that his compliance with applicable laws, policies, rules, and regulations are material obligations of this Agreement.

8. **Termination of Agreement for Cause:** The University reserves the right to terminate this Agreement for "adequate cause" at any time. "Adequate cause" includes violation of any material obligation of Coach under this Agreement or any amendments thereto; insubordination; neglect of duty; malfeasance; conduct involving moral turpitude; being charged with, indicted for, or being convicted of either (i) any felony; or, (ii) any misdemeanor involving gambling, drugs or alcohol; major or repeated minor violation of policies, rules, or regulations of the University; major or repeated secondary infractions of the MWC or NCAA rules (including

Coach's Initial 

any similar infraction which may have occurred at Coach's prior employment); major or repeated minor violation of New Mexico or federal laws, regulations, or policies; failure to ensure such compliance by his staff or student-athletes in the Baseball program where applicable; willful or grossly negligent conduct injurious to the intercollegiate Baseball program at the University; or, any other reason constituting adequate cause for termination pursuant to official written employment policies of the University and/or its Athletics Department. If this Agreement is terminated for adequate cause, the University shall have no further liability except for base salary and fringe benefits accrued to the date of termination.

Nothing in this Section shall prevent, limit or otherwise interfere with the University's right to terminate the services of the Coach without adequate cause at any time subject to the provisions of Section 10 herein. Therefore, this Section creates no expectancy of or property interest in continued employment and no University Administrative Policy addressing and/or governing progressive discipline, discharge or the appeal process for discharge shall be applicable to Coach.

9. **Termination by Request of Coach:** Coach may terminate this Agreement at any time upon **thirty (30) days' notice** to the DIA. In the event that Coach terminates this Agreement pursuant to this Section, the University shall have no further liability except for base salary and benefits accrued to the date of termination.

Coach understands and agrees that termination of this Agreement pursuant to this Section prior to the expiration of the Contract Term of this Agreement will cause irreparable harm to the reputation and athletic programs of the University in an amount not capable of precise calculation or quantification. Therefore, if Coach terminates this Agreement upon the event that Coach is named Head Coach or Assistant Coach at an NCAA college or university (regardless of what NCAA division), or with a professional team, then Coach shall pay the University liquidated damages, and not as penalty, the sum of **One-Hundred Thousand Dollars (\$100,000.00)** within **sixty (60) days** of the termination of this Agreement. If Coach terminates this agreement in order to entirely retire from coaching at the university level, then no liquidated damages shall be paid.

If Coach terminates this Agreement during Contract Year Three (3) and prior to the expiration of the term of the Agreement, liquidated damages may be modified to a lesser amount at the discretion of the DIA, with approval of the University President.

Pursuant to this Section, any liquidated damages sum shall be paid in full to the University within sixty (60) days of termination. Failure to pay the full liquidated damages sum shall constitute a material and actionable breach of this Agreement. The liquidated damages shall be the University's sole and exclusive quantification and limitation of Coach's damages owed to the University pursuant to this Section and the University shall seek no other remedies or damages whatsoever against Coach related to Coach's termination of this Agreement.

10. **Termination by Request of University:** The University may voluntarily terminate this Agreement at any time by giving Coach thirty (30) days' written notice.

- a. **Severance:** In the event of termination of this Agreement by the University other than for cause as defined in Section 9, the University may initiate and Coach may agree, if he so chooses, to accept payment of his base salary, as described in paragraph two (2) above, for the remainder of the Contract Year in which notice is given, plus and additional Fifty Thousand Dollars (\$50,000.00) for each additional year remaining in the Contract Term.

This additional sum shall be deemed a severance payment to Coach. The sum described in this Section will be paid in monthly payments to Coach, with New Mexico and federal tax withholdings associated with the payment of salary, until paid in full. Coach understands and agrees that there will be no retirement withholding or contribution on the severance payments described in this Section, and that no benefits of any kind will accrue to Coach as a result of such payment. Coach agrees that as a condition of receiving any severance payments under this Section, except for any earned but unpaid compensation to the date of termination and any legally protected rights Coach has under any employee benefit plan, Coach must execute a comprehensive release in the form to be determined by the University, in its sole discretion (the "Release"). Severance payments will not commence until

Coach's Initial 

Coach has fully executed the Release. If Coach brings a claim or lawsuit against the University, Coach will forfeit his right to receive any severance payments from the University, and will repay to the University any amounts received by him under this Section.

- b. **Mitigation/Offset:** Coach agrees that the University's obligation to make payments under this Section shall be subject to Coach's obligation to mitigate his damages by making reasonable, good faith and diligent efforts to obtain comparable employment as soon as reasonably possible after termination of this Agreement. Comparable employment includes employment as a head or assistant Baseball coach at a Division I college or university or professional team. Should Coach obtain such comparable employment, University's financial obligations under this Section shall cease so long as Coach's monthly compensation from such comparable employment, including base salary, deferred compensation, public relations and bonuses and incentive salary, but excluding reasonable and usual non-monetary fringe benefits such as health and life insurance, club memberships and use of vehicles ("Monthly Compensation"), is equal to or greater than University's obligation to pay severance under this Section, prorated on a monthly basis.

If Coach's Monthly Compensation from such comparable employment is less than University's monthly obligation to pay severance under this Section, the amount of University's obligation to pay severance shall be reduced by the amount of Coach's Monthly Compensation from such comparable employment.

If, after diligent efforts to obtain comparable employment as described above, Coach obtains employment that is not comparable employment, his income from such employment (plus or minus raises and adjustments) shall be off-set against University's obligations to pay severance under this Section.

Any amount received in mitigation of damages by Coach that acts as an offset against the amount being paid contractually by the University shall apply retroactively.

- c. **Notice:** Coach shall promptly, but no less than ten (10) days from acceptance of other employment, notify the DIA in writing of such employment and the total compensation to be paid to Coach for the employment during the Term of this Agreement (had it naturally expired). In addition, Coach agrees to provide the University with a copy of his W-2 form for each calendar year as long as the University has the obligation to make severance payments under this Section.

Except as otherwise expressly provided in this Section, all rights and obligations due from each party to the other under this Agreement shall cease upon the effective date of termination as set forth in the written notice required by this Section.

Additionally, no notice from the University shall be required for the Agreement to expire by its terms on **June 30, 2021**. There exists no expectancy of renewal of this Agreement beyond the term stated in Section 2 herein. University's failure to provide timely notice in accordance with the foregoing Section does not entitle Coach to renewal of this Agreement.

11. **Complete Agreement:** The standard printed employment contract and this Agreement to that contract, and any Exhibits attached hereto and incorporated herein by reference, constitute the final and complete agreement between the parties. Any amendments or further addenda, hereafter agreed to by both parties, shall be in writing and executed with the same formality. All prior and contemporaneous negotiations and agreements pertaining to this Agreement are deemed incorporated into this Agreement and such documents and instruments are deemed to have been abandoned if not so incorporated. No verbal understandings, statements, promises, or inducements contrary to the terms of this Agreement exist.
12. **Severability:** If any provision of this Agreement is held to be invalid or unenforceable for any reason, such provision shall be ineffective to the extent of such invalidity or unenforceability; provided, however, that the remaining provisions will continue in full force without being impaired or invalidated in any way unless such invalid or unenforceable provision or clause shall be so significant as to materially affect the Parties'

Coach's Initial 

expectations regarding this Agreement. The Parties shall replace any invalid or unenforceable provision with a valid provision which most closely approximates the intent and economic effect of the invalid or unenforceable provision.

13. **Governing Law and Forum:** This Agreement, and any other amendments or addenda, shall be governed by and construed in accordance with the laws of the State of New Mexico and the policies and procedures of The University of New Mexico Board of Regents.
14. **Arbitration:** The Parties agree to submit to binding arbitration any claims that they may have against each other, of any nature whatsoever, other than those prohibited by law, pursuant to the New Mexico Uniform Arbitration Act.

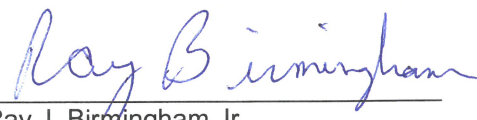
IN WITNESS HEREOF this Agreement has been duly executed by the parties hereto on the respective dates appearing below each party signature.

**THE REGENTS OF THE UNIVERSITY  
OF NEW MEXICO**


  
\_\_\_\_\_  
Eduardo J. Nuñez  
Director of Intercollegiate Athletics

Date: 11.19.18

**COACH**

  
\_\_\_\_\_  
Ray J. Birmingham Jr.  
Head Coach/Baseball

Date: 11-19-18

  
\_\_\_\_\_  
Garnett S. Stokes  
President

Date: 11/27/2018

Coach's Initial RB