

**EMPLOYMENT AGREEMENT  
FOR DIRECTOR OF TRACK AND FIELD AND CROSS COUNTRY  
WICHITA STATE UNIVERSITY**

THIS EMPLOYMENT AGREEMENT (hereinafter "Agreement") is by and between the WICHITA STATE UNIVERSITY INTERCOLLEGIATE ATHLETIC ASSOCIATION, INC., (hereinafter "ICAA"), a corporation affiliated with WICHITA STATE UNIVERSITY, a state educational institution of Kansas, (hereinafter "WSU") and STEPHEN RAINBOLT, (hereinafter "Mr. Rainbolt").

WITNESSETH:

WHEREAS ICAA requires the services of an individual to serve as Director of the intercollegiate track and field and cross country teams (hereinafter "Director") of Wichita State University; and

WHEREAS, Mr. Rainbolt has successfully served as the Director since 2002;  
and

WHEREAS, the parties are mutually desirous of extending the current employment relationship with an updated and restated Agreement; and

WHEREAS, ICAA and Mr. Rainbolt believe it to be in their mutual best interest to enter into this Agreement and to specifically set forth the terms and conditions of their agreement in writing;

NOW THEREFORE, in consideration of the above premises and the individual and mutual promises of the parties hereinafter set forth, and for other good and valuable consideration, it is hereby agreed by and between the parties hereto:

**1. *Terms of Employment***

1.1. This Agreement shall be considered to have commenced as of June, 2002, and shall terminate as of June, 2024, unless extended by mutual agreement of the parties.

1.2. This agreement in no way grants Mr. Rainbolt a claim to tenure in employment at WSU or with ICAA, nor shall Mr. Rainbolt's services as Director pursuant to this Agreement count in any way toward tenure at WSU.

1.3. Notwithstanding any other provision of this Agreement, said Agreement will terminate automatically if Mr. Rainbolt dies or becomes totally or permanently disabled as defined by the ICAA's retirement program, its worker's compensation program, or by any other applicable supplemental disability program.

## **2. Responsibilities of Director of Track and Field**

2.1. Mr. Rainbolt shall well and faithfully serve as Director, and shall at all times devote his whole time, attention and energies to the conduct and coaching of the intercollegiate track and field and cross country programs of WSU (hereinafter "Program") and to the administration and management of the Program in a fiscally responsible manner within established operating budgets.

2.2. Mr. Rainbolt shall diligently perform the traditional duties of Director, including by way of example and not by way of limitation, recruiting, planning and running practices and workouts, scheduling games and overseeing travel arrangements, hiring and supervising assistant coaches, managing a budget and supporting fund-raising efforts.

2.3. Mr. Rainbolt shall be responsible, and shall report directly to WSU's Director of Intercollegiate Athletics (hereinafter "AD"), or the AD's designee, and shall confer with the AD or the AD's designee on all administrative and technical matters.

2.4. Mr. Rainbolt shall observe and uphold all academic standards, requirements and policies of WSU, and encourage Program athletes to perform to their highest academic potential and to graduate.

2.5. Mr. Rainbolt agrees to know, or become knowledgeable within a reasonable period of time, recognize, abide by and comply with rules, regulations, policies or requirements which have been or may be promulgated by or which are applicable to ICAA, WSU, the Conference with which Wichita State University is a member (hereinafter "Conference") or the National Collegiate Athletic Association (hereinafter "NCAA"); supervise and take appropriate steps to ensure that Mr. Rainbolt's assistant coaches, any other employees for whom Mr. Rainbolt is administratively responsible and the Program athletes know, recognize, abide by and comply with all such rules, regulations, policies or requirements; and immediately report to the AD and to the ICAA's Associate Athletic Director of Compliance if Mr. Rainbolt has reasonable cause to believe that any person or entity, including by way of example and not by limitation, representatives of WSU or ICAA's athletic interests, has violated, has possibly violated, or is likely to violate any such rules, regulations, policies or requirements. Mr. Rainbolt shall cooperate fully with the ICAA's Associate Athletic Director of Compliance at all times.

2.6. Mr. Rainbolt shall avoid any business, professional or personal activities or pursuits that would prevent Mr. Rainbolt from devoting full time to performance of the duties as Director as set forth in this Agreement, or which would otherwise detract in any manner from the duties outlined herein, or that, in the opinion of ICAA, would reflect adversely upon the Program, ICAA or WSU.

2.7. Mr. Rainbolt's job performance will be assessed annually by the AD and/or the AD's designee.

### **3. Compensation**

**3.1. Regular Compensation.** In consideration of Mr. Rainbolt's services and the satisfactory performance of the terms and conditions of the Agreement by Mr. Rainbolt, ICAA will pay Mr. Rainbolt:

**3.1.1.** An initial annual base salary of ONE HUNDRED TWENTY THOUSAND NINE HUNDRED SEVENTY TWO (\$120,972.00) said amount payable in accordance with normal payroll procedures of ICAA, commencing as of FY 2020.

**3.1.2.** Mr. Rainbolt's annual increase in base salary to be effective in each succeeding year is \$10,000.00 yearly in FY 2021, 2022, and 2023. Beginning in FY 2024, Mr. Rainbolt's annual increase will be no less than four percent (4%) of the total annual base salary paid in the previous year, not including performance incentive payments.

**3.2. Performance Incentives.** Mr. Rainbolt shall be entitled to potential annual incentives, as listed below, to the base salary amount set forth in paragraph 3.1.1. above. An annual determination will be made based upon the previous year's results for the Program and any earned annual incentive will be paid within 60 days after the incentive is earned less all amounts required to be withheld and deducted; provided however, that Performance Incentives, if any, shall not carry forward to the next twelve-month period. If payment for an annual incentive can't be made within the same fiscal year, the payment will be made at the earliest possible time in the following fiscal year. Performance Incentives are available because the generation of attention, visibility and revenue from successful performance are of significant value to ICAA and WSU and should be appropriately recognized and rewarded. The following potential Performance Incentives shall apply as long as Mr. Rainbolt is employed as Director:

**3.2.1.** For the first Conference men's and/or women's indoor and/or outdoor and/or cross country championship(s) won in any academic year during the term of this Agreement, Mr. Rainbolt will receive an additional amount equal to 50% of one month's salary. For each additional men's and/or women's indoor and/or outdoor and/or cross country championship won during the academic year, Mr. Rainbolt will receive 25% of one month's salary.

**3.2.2.** For each Conference Staff-of-the-Year designation during the term of this Agreement, Mr. Rainbolt will receive 25% of one month's salary (maximum of two per year).

**3.2.3.** For each individual student-athlete who qualifies for the NCAA Division 1 Preliminary National Outdoor Track and Field Championship, during the term of this Agreement, Mr. Rainbolt will receive 2% of one month's salary per preliminary qualifier.

3.2.4. For each student-athlete who qualifies for the NCAA Division 1 National Indoor and/or Outdoor and/or Cross Country Championships during the term of this Agreement, Mr. Rainbolt will receive 7.5% of one month's salary per qualifier.

3.2.5. For each student athlete who earns NCAA All-American status during the term of this Agreement, Mr. Rainbolt will receive 10% of one month's salary

3.2.6. For each student athlete who earns NCAA Second Team All-American status during the term of this Agreement, Mr. Rainbolt will receive 4% of one month's salary.

3.2.7. If the average team finish in the Conference of the six sports (men's and women's cross country, indoor track and outdoor track in any academic year during the term of this Agreement is 3.0 or less (1<sup>st</sup> place =1.0, 2<sup>nd</sup> place=2.0, 3<sup>rd</sup> place-3.0, etc.), Mr. Rainbolt will receive 25% of one month's salary.

3.2.8. If all of the six sports (men's and women's cross country, indoor track and outdoor track) have a multi-year Academic Progress Rate ("APR") of .985 or better, an additional amount equal to 25% of one month's salary will be paid to Mr. Rainbolt.

3.2.9. If one of the six sports (men's and women's cross country, indoor track and outdoor track) finish in the Top 25 of their NCAA National Meet in any academic year during the term of this Agreement, then Mr. Rainbolt will receive 50% of one month's salary for that sport.

3.2.10. If one of the six sports (men's and women's cross country, indoor track and outdoor track) finish in the Top 15 of their NCAA National Meet in any academic year during the term of this Agreement, then Mr. Rainbolt will receive 75% of one month's salary for that sport.

3.2.11. If one of the six sports (men's and women's cross country, indoor track and outdoor track) finish in the Top 10 of their NCAA National Meet in any academic year during the term of this Agreement, then Mr. Rainbolt will receive one month's salary for that sport.

3.2.12. If one of the six sports (men's and women's cross country, indoor track and outdoor track) finish in the Top 4 of their NCAA National Meet in any academic year during the term of this Agreement, then Mr. Rainbolt will receive one and a half month's salary for that sport.

3.2.13. If one of the six sports (men's and women's cross country, indoor track and outdoor track) win the NCAA National meet in any academic year during the term of this Agreement, then Mr. Rainbolt will receive two month's salary for that sport.

3.2.14. Academic incentives will be paid to Mr. Rainbolt based on each semester team GPA as follows:

- a. 3.0 to 3.24 GPA - \$400.00
- b. 3.25 to 3.49 GPA - \$800.00
- c. 3.5 and above GPA - \$1,200.00

3.3. Additional Benefits. In consideration of Mr. Rainbolt's services as Director and the satisfactory performance of this Agreement, ICAA will provide Mr. Rainbolt with the following additional benefits:

3.3.1. Such normal employee fringe benefits as ICAA generally provides to its comparable employees, including by way of example and not by way of limitation, worker's compensation insurance, annual leave, sick leave, hospitalization/medical insurance, retirement benefits, disability insurance.

3.3.2. A courtesy car, or an allowance in lieu of same, as determined by ICAA. If Mr. Rainbolt is provided with a courtesy car rather than an allowance, it is Mr. Rainbolt's sole responsibility, at his expense, to insure said vehicle according to requirements established by ICAA. ICAA will reimburse Mr. Rainbolt for amounts expended for vehicle registration, upon provision of appropriate proof of payment. Mr. Rainbolt may use a provided courtesy car for personal and business use. Mr. Rainbolt will be responsible for all maintenance and repair.

3.3.3. A complimentary Country Club membership, including golf privileges for so long as ICAA deems the same financially practical. All monthly dues may be paid from the Program or funds maintained for the Program with the WSU Foundation, but all other charges are the responsibility of Mr. Rainbolt.

3.3.4. ICAA shall provide Mr. Rainbolt with an annual increase of \$15,000 to his assistant coaches' salary pool in FY 2021, 2022 and 2023. If there is any department wide increase, they would only receive the greater of the two increases. All assistant coach's salary increases shall be determined in consultation with the AD.

3.3.5. ICAA shall provide Mr. Rainbolt with increases to his assistant salary pool based on whether one of the six sports (men's and women's cross country, indoor track and outdoor track) win Conference Championship(s) in any academic year during the term of this agreement. Below outlines the pool increase amounts:

- One team championship \$2,500
- Two or three team championships \$5,000
- Four or five team championships \$7,500
- Six team championships \$10,000

3.3.6. Bonus compensation. If Mr. Rainbolt is the Director on the following dates, Mr. Rainbolt will be entitled to receive bonus compensation, less all amounts required to be withheld and deducted, according to the following schedule:

May 31, 2020	\$10,000
May 31, 2021	\$10,000
May 31, 2022	\$10,000
May 31, 2023	\$17,500
May 31, 2024	\$17,500

If, and only if, Mr. Rainbolt is continuously employed as Director from the effective date of this contract through May 31, 2024, Mr. Rainbolt will be entitled to receive an additional one-time payment of TWO HUNDRED FIFTY THOUSAND AND NO/1.00 DOLLARS (\$250,000.00), less all amounts required to be withheld and deducted, to be paid by July 15, 2024, within thirty (30) days of termination without cause or at a different time agreed upon by the parties. If Mr. Rainbolt is terminated prior to May 31, 2024 for any reason other than good cause as set forth in paragraph 5 herein Mr. Rainbolt shall be entitled to the pro-rated amount of the TWO HUNDRED FIFTY THOUSAND AND NO/1.00 DOLLARS (\$250,000.00) less all amounts required to be withheld and deducted. The starting point if a pro rated amount needs to be calculated is July 1, 2014. In the event Mr. Rainbolt dies prior to May 31, 2024 and is employed by ICAA as Director at the time of his death, the pro-rated amount of payment, less all amounts required to be withheld and deducted, will be paid to his estate. The parties agree that the purpose of this additional bonus compensation is to encourage Mr. Rainbolt to continue as Director on a long-term basis. Both parties agree to act in good faith relative to the best interests of the Program and any and all decisions regarding the extension and continuation of this Agreement.

3.4. It is agreed that the compensation paid to Mr. Rainbolt by ICAA shall be subject to the same payroll deductions, including by way of example and not by limitation, state and federal taxes, FICA withholding, benefit programs requiring employee contribution, that apply to ICAA employees.

3.5. It is agreed that Mr. Rainbolt will bear ultimate responsibility for any and all tax consequences of amounts paid to Mr. Rainbolt as compensation pursuant to this Agreement.

#### **4. Travel**

Mr. Rainbolt will conduct such travel as is necessary to carry out his duties as Director, and he shall be entitled to reimbursement for transportation and per diem expenses in accordance with ICAA policies and procedures applicable to travel and expense reimbursements.

#### **5. Termination or Suspension of the Contract of Employment**

5.1. ICAA may, in its discretion, suspend Mr. Rainbolt from some or all of Mr. Rainbolt's duties as Director, temporarily or permanently, and with or without pay; or

terminate this Agreement at any time, as determined by ICAA to be in the best interest of the Program and WSU, upon the occurrence of good cause.

5.2. The term "good cause" by way of example and not by limitation, would include acts by Mr. Rainbolt constituting or involving gross professional or personal misconduct, Mr. Rainbolt's refusal to perform the duties required as Director; conviction of a felony, insubordination, Mr. Rainbolt's unavailability to ICAA to perform the duties herein; and or any knowing and deliberate Level I or Level II violation of rules and regulations of the Conference or any knowing and deliberate violation of any applicable rule, policy or procedure of the ICAA or WSU. No termination for alleged "good cause" shall occur without first giving Mr. Rainbolt notice in writing of the "good cause" actions alleged and an opportunity to be heard. The General Counsel for Wichita State University shall be notified prior to any "good cause" action being initiated by ICAA pursuant to this subsection and Mr. Rainbolt may be represented by counsel of his choosing during such discussions.

5.2.1. If found in major violation of NCAA rules and regulations, Mr. Rainbolt, may, in addition to the provisions of this paragraph 5, be subject to disciplinary or corrective action as set forth in the provisions of the NCAA enforcement procedures, whether such violations occurred at WSU or during Mr. Rainbolt's previous employment at another member institution.

5.3. In the event of termination by either party, Mr. Rainbolt agrees that he will not interfere with Program student-athletes or otherwise obstruct ICAA's ability to conduct the Program or transact business.

5.4. In the event of termination by either party, Mr. Rainbolt agrees that all materials or articles of information, including, by way of example and not by way of limitation, personnel records, recruiting records, team information, films, statistics or any other material or data relating to the Program, furnished by Mr. Rainbolt, by ICAA or developed by Mr. Rainbolt on behalf of ICAA or at ICAA's direction or otherwise for use in connection with Mr. Rainbolt's employment hereunder, are and shall remain the sole property of ICAA. Within 24 hours of the expiration of the term of this Agreement, or its earlier termination as provided in this paragraph 5, Mr. Rainbolt shall immediately cause any such materials in Mr. Rainbolt's possession or control to be delivered to the AD on behalf of the ICAA.

5.5. Rainbolt agrees to abide by all applicable rules, regulations and legislation of the Wichita State University Intercollegiate Athletic Association, Inc., Wichita State University, the Conference with which Wichita State University is a member and/or the National Collegiate Athletic Association (NCAA).

Rainbolt also acknowledges and accepts an affirmative obligation to fully cooperate and assist Wichita State University, the NCAA enforcement staff, the

Committee in the infractions process including, but not limited to, on allegations of infractions and matters involving the Infractions Appeals Committee. Full cooperation includes, but is not limited to, reporting instances of noncompliance in a timely manner; timely participation in interviews and providing complete truthful responses and relevant information; disclosing and providing access to all electronic devices used for business purposes; providing access to all social media, messaging and other applications that may be relevant to the investigation; and preserving the integrity of an investigation along with the confidentiality required.

In addition to any other provisions in this Agreement, major violation of NCAA rules; any failure to fully cooperate in the infractions process, with the NCAA Infractions Committee and/or Enforcement Staff; gross professional or personal misconduct; insubordination and/or failure to perform the required duties of your position; being convicted of a felony; and/or a violation of applicable rules, policies or procedures of the ICAA will subject Rainbolt to investigation, adjudication and penalties, up to and including discharge.

#### **6. *Mitigation of Damages***

6.1. In the event Mr. Rainbolt is terminated for any reason other than good cause as set forth in paragraph 5, Mr. Rainbolt agrees to make a good faith effort to mitigate to the fullest extent ICAA's obligation to continue the payments set forth in paragraph 3.1.1. by seeking comparable employment at a similar rate of compensation or other opportunities reasonably within the scope to render of his expertise and experience to provide personal services for remuneration. If Mr. Rainbolt obtains new employment or other opportunities, the ICAA's obligation to continue these payments will be reduced by the total compensation or other remuneration received in Mr. Rainbolt's new position. The Payment schedule will be determined by ICAA not to exceed the remainder of this Agreement. If Mr. Rainbolt fails to make a good faith effort to mitigate ICAA's obligation and fails to provide information to the ICAA regarding these efforts when asked by the ICAA, then ICAA will have no further obligation to make payments under this Agreement. The maximum payment that can be owed by ICAA will not exceed \$150,000.00 regardless of when the termination for any reason other than good cause occurs. Any amount identified in paragraph 3.3.5, above, will be paid, if owed, and is not a part of the maximum payment.

6.2. In the event this Agreement is terminated, pursuant to paragraph 5 or Paragraph 6.1 of this Agreement, the parties agree all payments including, but not limited to liquidated damages, salary and benefits will cease as of the date of the termination and the payment of the amounts set out in Paragraph 3 and 6.1 will be due and owing only if Mr. Rainbolt executes a separate release and waiver agreement within twenty-one (21) days of the effective date of his termination and does not revoke it within seven (7) days of execution. The release and waiver agreement will include, but not be limited to, a waiver of any and all legal claims or potential legal claims Mr.

Rainbolt has or may have against WSU, ICAA, any of their related entities, boards, officers, employees and agents.

## **7. Liquidated Damages to ICAA**

7.1. Mr. Rainbolt hereby represents to have special, exceptional and unique knowledge, skill, experience and ability as Director of Track and Field which, in addition to future acquisitions of coaching experience with the Program, as well as ICAA's interest in continuity in the Program, will render Mr. Rainbolt's services unique. Mr. Rainbolt recognizes that the loss of his services to the ICAA and the Program, without ICAA approval and release, prior to the expiration of the term of this Agreement, or any renewal thereof, would cause an inherent loss to the ICAA. Both parties agree that the actual losses that would be suffered by the ICAA are difficult to ascertain. Therefore, this liquidated damages provision has been negotiated, in good faith, and agreed by the parties in consideration of this fact, with both parties agreeing that the liquidated damages provision is reasonable.

7.2. The parties agree that in the event Mr. Rainbolt terminates this Agreement for any reason other than retirement or a decision to pursue another full-time career outside of intercollegiate athletics, Mr. Rainbolt will be obligated to pay ICAA as liquidated damages and not as a penalty, the sum of FORTY FIVE THOUSAND AND NO/1.00 DOLLARS (\$45,000.00), said amount to be paid within thirty (30) calendar days of Mr. Rainbolt providing notice of his intention to terminate the Agreement, said amount to be paid with a certified check from Mr. Rainbolt or a third party.

## **8. Outside Employment**

8.1. Mr. Rainbolt agrees not to personally or through any agent actively seek, negotiate for, or accept other full-time or part-time employment of any nature during the term of this Agreement without first having advised the AD of the intention to do so. Mr. Rainbolt shall also advise the AD of any inquiries or contacts exploring Mr. Rainbolt's possible interest in or availability for other full-time or part-time employment.

8.2. Mr. Rainbolt further agrees, and hereby specifically promises, not to accept employment, under any circumstances, as a director of track and field and/or cross country at any institution of higher education which is a member of the National Collegiate Athletic Association, or for any track and field and/or cross country team participating in any professional league or conference in the United States or elsewhere, requiring performance of duties prior to the expiration date of the term of this Agreement or any extension thereof, without first providing advance notification to the AD that it is a possibility and before he makes a decision.

8.3. Mr. Rainbolt agrees that the ICAA shall have the right, in addition to any other rights which ICAA may possess, to obtain an injunction or appropriate judicial proceedings to prevent Mr. Rainbolt from coaching or performing activities related

thereto in violation of this Agreement for any person, institution, firm, team, corporation or other entity, and against any other breach of this Agreement; and Mr. Rainbolt further agrees to indemnify the ICAA for its costs in any such injunction proceeding, including court costs and attorney's fees.

#### **9. *Relationship Between the Parties***

The relationship between Mr. Rainbolt and ICAA shall be determined solely by the terms and conditions of this Agreement.

#### **10. *Assignment***

Mr. Rainbolt may not assign his rights or delegate his obligations under this agreement. ICAA may not assign its rights or delegate its obligations without the consent of Mr. Rainbolt which shall not be unreasonably withheld.

#### **11. *Governing Law***

This agreement shall be deemed to have been entered into under the laws of the state of Kansas and the rights and obligations of the parties hereunder shall be governed and determined according to the laws of said state.

#### **12. *Waiver of Rights***

None of the terms or conditions herein shall in any manner be altered, amended, waived, or abandoned, except by written agreement of the parties, and no delay by ICAA in enforcing any of its rights hereunder shall be deemed a waiver of such rights.

#### **13. *Severability***

In the event that any condition, covenant or other provision herein contained is held to be invalid or void by any court of competent jurisdiction, the same shall be deemed severable from the remainder of this agreement and shall in no way affect any other condition, covenant or other provision herein contained. If such condition, covenant or other provision shall be deemed invalid due to its scope or breadth, such condition, covenant or other provision shall be deemed valid to the extent of the scope or breadth permitted by law.

#### **14. *Amendments***

No amendment or modifications of this agreement shall be effective unless in writing and signed by both parties.

#### **15. *General***

***Entire Agreement.*** This Agreement (including all documents attached or referenced) is intended by the parties as the final and binding expression of their agreement and as the complete and exclusive statement of its terms. This Agreement

cancels, supersedes, and revokes all prior negotiations, representations, and agreements between the parties, whether oral or written, relating to the subject matter of this Agreement and shall be binding upon and inure to the benefit of the parties and their respective successors, legal representatives and assigns. The article or section headings of this Agreement are for convenience of reference only and do not form a part hereof and do not in any way modify, interpret or construe the intentions of the parties. This Agreement may be executed in one or more counterparts and all such counterparts shall constitute one and the same instrument.

**16. Exemptions, Privileges, and Immunities**

It is expressly agreed and understood between the parties that nothing contained herein shall be construed to constitute a waiver by ICAA or WSU of their rights to claim such exemptions, privileges, and immunities as may be provided by law.

**17. Disclosure**

The parties acknowledge and agree that ICAA is required to comply with the Kansas Open Records Act, K.S.A. 45-215 et seq.

IN WITNESS WHEREOF, the parties hereto have executed this agreement and/or authorized same to be executed by their duly authorized representatives as of the date shown below the respective signatures, said agreement to become effective as of the later date.

"Mr. Rainbolt"

"ICAA"

STEPHEN RAINBOLT

WICHITA STATE UNIVERSITY  
INTERCOLLEGIATE ATHLETICS

B

Date 10-2-19

Name Boatright, Darren

Title A.D.

Date 9/27/19