

SEPARATION AGREEMENT AND RELEASE

This SEPARATION AGREEMENT AND RELEASE (the "Agreement") is made and entered into this 10th day of April, 2022, by and between Stephen F. Austin State University (the "SFA") and Dr. Scott A. Gordon ("Dr. Gordon") (individually "Party" and collectively the "Parties").

RECITALS

WHEREAS, Dr. Gordon is currently employed by SFA as President and also holds tenure status as a Professor pursuant to an Employment Agreement effective September 16, 2019, subsequently amended to expire on August 31, 2024, and is attached as Exhibit A and incorporated herein by reference ("Prior Agreement");

WHEREAS, the Parties have determined that it is in their mutual interest for Dr. Gordon to leave his employment on the terms and conditions set forth in this Agreement, in an amicable fashion with a clear understanding of their rights and liabilities;

WHEREAS, the Parties are entering this Agreement amicably and mutually covenant good faith toward one another in performance of this Agreement.

THEREFORE, in consideration of the mutual promises set forth herein SFA and Dr. Gordon hereby agree as follows:

1. Resignation

- (a) Dr. Gordon's departure as President (and tenured Professor) will be announced on April 10, 2022. The announcement will include positive statements (approved by Dr. Gordon) from the Board Chair.
- (b) Dr. Gordon will relinquish his title, duties, and tenure as of April 10, 2022.

2. Compensation, Severance, and Benefits

- (a) As consideration in this Agreement, the SFA Board of Regents hereby extends severance in the amount of the discounted net present cash value of remaining base salary as provided in Section 5.3.1 of the Employment Agreement, valued at \$809,124.46, to be paid out in two equal payments, without additional perks, expense allowance, or other fringe benefits, except for those benefits which have already vested as stipulated by law (previous accrued reimbursable expenses pursuant to university policy and procedure and lump sum payout of accrued vacation benefits). The first payment of \$404,562.23 (minus applicable withholding) shall be paid on May 1, 2022, along with payment of his remaining vested vacation leave benefits, timely submitted reimbursable expenses, and pay for days worked in April 2022. The second and final payment of \$404,562.23 (minus applicable

withholding) will be made on September 1, 2022. Dr. Gordon will be responsible for updating his address/direct deposit information with the SFA General Counsel as necessary to facilitate these payments.

- (b) SFA shall have no other financial obligations to Dr. Gordon under any compensation or benefit plan, program, practice, or policy and Dr. Gordon's participation in SFA compensation and benefit plans, programs, practices and policies shall cease as the date of the termination of his employment, except that he shall have the right to continue group health plan coverage as is provided under the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA").

3. Term and Termination

- (a) The Parties agree that Dr. Gordon's employment shall terminate effective no later than April 10, 2022, and that no Party shall owe or be owed any duties under this employment following said dates unless expressly provided herein. Dr. Gordon expressly acknowledges that he has no right or expectation of reappointment or continuation in anyway of his employment at SFA after the expiration of the term hereunder. This agreement shall terminate upon the last severance payment to Dr. Gordon, except that the release shall survive termination and last through all applicable statutes of limitations, and the confidentiality and nondisparagement provisions shall continue in perpetuity.

4. Release

- (a) In exchange for the payments, benefits and other consideration described herein, Dr. Gordon, agrees to release any and all claims that he might have against SFA, its officers, regents, employees, students, employee benefit plans, plan administrators, and agents (hereinafter referred to as "SFA") arising prior to his execution of this Release. Further, he understands that he is giving up all claims, known or unknown, that he might have relating to his employment with SFA which may include, but are not limited to, any and all claims for (i) discrimination, harassment or retaliation arising under federal, state or local laws prohibiting sex (gender), national origin, race, religion, disability, veteran status, or other protected class discrimination, harassment, or retaliation for protected activity under the National Labor Relations Act, as amended, Title VI and VII of the Civil Rights Act of 1964 as amended, 42 U.S.C. § 2000(e) et seq., the Civil Rights Act of 1991, the Texas Commission on Human Rights Act, Title IX of the Education Amendments Act of 1972, the Americans with Disabilities Act, as amended, the Rehabilitation Act of 1973, the Equal Pay Act, the Family and Medical Leave Act (FMLA), 29 U.S.C. § 2611 et seq., Executive Order 11246, Employee Retirement Income Security Act of 1974, as amended, ("ERISA"), 38 U.S.C. §§ 22021-26, the Fair Labor Standards Act, or the Occupational Safety and Health Act, including any amendments and/or

revisions to those laws, and similar federal, state, and local laws; (ii) Sections 1981 through 1988 of Title 42 of the United States Code; (iii) wrongful termination law or whistleblower law; (iv) state law tort or express or implied contract law; (v) any tort or invasion of privacy theory; (vi) breach of contract or other related claim; and (vii) attorneys' fees. This release does not release any claim, demand, or cause of action that may arise after the date of execution of this Agreement. In addition, nothing in this Agreement shall affect or interfere with Dr. Gordon's right to file a charge with the Equal Employment Opportunity Commission or to participate, cooperate, or assist in an investigation or proceeding conducted by the Equal Employment Opportunity Commission. However, Dr. Gordon is releasing all rights to recover money or other individual relief, including reinstatement to SFA employment, in connection with any investigation or proceeding referenced in this paragraph. Likewise, SFA releases any and all claims it may have against Dr. Gordon arising prior to the execution of this Release. This release does not include actions brought to challenge the validity of this Agreement or to enforce its terms. The Parties further agree that this release does not waive or release any rights Dr. Gordon may have under the Texas Workers Compensation Act, but it does waive all rights to future claims for unemployment compensation from SFA.

- (b) Dr. Gordon agrees that by entering into this Agreement, he hereby dismisses any complaints and waives any and all institutional appeals, grievances and procedures to which he is or may be entitled under the Policies, Regulations, and Rules of SFA.

5. Nondisparagement

- (a) Dr. Gordon agrees and covenants that neither he nor any person acting at his direction or request or with his cooperation and assistance shall at any time publicly criticize or disparage SFA, its employees, officers, regents, or students. "Criticize" or "disparage" as used herein means comments or statements that materially impugn the character, integrity, or competence of SFA, its employees, officers, regents, or students. Additionally, SFA shall retain all other equitable rights and remedies allowed by law, including but not limited to, the right to seek and obtain injunctive relief.
- (b) In addition, and in further consideration of the foregoing, Dr. Gordon hereby agrees that nothing contained in this Agreement shall constitute or be treated as an admission of liability or wrongdoing by SFA. Furthermore, SFA hereby agrees that nothing contained in this Agreement shall constitute or be treated as an admission of liability or wrongdoing by Dr. Gordon.
- (c) SFA agrees to provide a letter of reference upon request. The following Regents – Karen Gantt and Tom Mason – agree to be contacted as employment references with use of agreed talking points.

- (e) SFA, through the Office of General Counsel, will instruct each Officer that it will not be in the University's interest or their personal interest to make comments or statements publicly or to any third parties that are disparaging or critical of Dr. Gordon. "Officer" as used herein shall mean all current members of the Board of Regents, vice presidents, executive director of enrollment management, chief diversity officer, chief information officer, chief marketing communications officer, director of athletics, director of governmental relations, and current members of Dean's Council. Regents will be instructed to direct any reference inquiries about Dr. Gordon to the Regents as agreed in (c) above.
- (f) This Section does not restrict or restrain the Parties from answering questions or providing information in response to a subpoena issued by a court of competent jurisdiction or a request under the Texas Public Information Act, in complying with either parties' discovery obligations, pursuant to request of elected officials or representatives of government acting in their official capacity, or any other statements made under oath.

6. Confidentiality

- (a) Dr. Gordon agrees that he will not disclose matters relating to the components of this Agreement, the circumstances surrounding his separation of employment with SFA, or any monetary payment made by SFA to him pursuant to this Agreement, to anyone other than his attorney, accountant, financial advisor, or spouse unless required to do so by court order. Dr. Gordon agrees that such disclosure may be made only after he informs such persons of the confidentiality requirements contained in this Agreement, and obtains their written agreement to abide by the same. Additionally, SFA shall retain all other equitable rights and remedies allowed by law, including but not limited to, the right to seek and obtain injunctive relief.
- (b) SFA agrees that it will not disclose matters relating to the components of this Agreement, the circumstances surrounding Dr. Gordon's separation of employment with SFA, or any monetary payment made by SFA to Dr. Gordon pursuant to this Agreement, to anyone other than those officers or employees who require such information for SFA to perform its obligations under this Agreement. SFA agrees that such disclosure may be made only after it informs such persons of the confidentiality requirements contained in this Agreement, and obtains their written agreement to abide by the same. Additionally, Dr. Gordon shall retain all other equitable rights and remedies allowed by law, including but not limited to, the right to seek and obtain injunctive relief.
- (c) This Section does not restrict or restrain the Parties from answering questions or providing information in response to a subpoena issued by a

court of competent jurisdiction or a request made under the Texas Public Information Act, in complying with either parties' discovery obligations, pursuant to request of elected officials or representatives of government acting in their official capacity, or any other statement made under oath.

7. Other Terms.


- (a) Dr. Gordon represents and warrants that he will return all SFA property, including but not limited to, keys, computer equipment, identification cards, student records, personnel records, handbooks, and the University vehicle by April 12, 2022. Dr. Gordon will return all credit cards (if any) to SFA upon his announcement of separation. Access to SFA accounts and sensitive computer access will be terminated on the date of separation. Dr. Gordon may remain in the SFA residence through May 31, 2022. To facilitate Dr. Gordon's move-out, SFA will reimburse Dr. Gordon for personal moving expenses incurred for moving household goods and personal effects from the Juanita Curry Boynton House, up to \$30,000.00 (Thirty Thousand and No/100 Dollars). Receipts for reimbursement shall be provided to the Coordinator of Board Affairs/Compliance within sixty (60) days of completion of the move. Dr. Gordon is required to provide receipts or other documentation to support all requests for reimbursement, which shall be paid in accordance with SFA policies and procedures, state and federal law.
- (b) Dr. Gordon will remove his personal effects from his office on or about the evenings of April 10 and April 11, 2022. Dr. Gordon will mark or tag all personal books to be shipped by SFA to a location provided by Dr. Gordon.
- (c) Dr. Gordon agrees never to seek employment with SFA or any of its subsidiaries, affiliated organizations, satellite or other campuses, successors, or assigns. Further, Dr. Gordon agrees that he will not bring any claim, demand, lawsuit, charge, or other legal action based upon the failure of SFA to reinstate, reemploy, or employ him.
- (d) The Parties agree that this Agreement may not be used as evidence in any subsequent proceeding of any kind except the enforcement of the terms of this Agreement.
- (e) This Agreement was hand delivered to Dr. Gordon on April 6, 2022 and he acknowledges that SFA has advised him to seek legal counsel of his own choosing to assist in understanding this Agreement.
- (f) Except as expressly provided herein, this Agreement supersedes any prior agreements and all other understandings and agreements, oral or written, between the Parties with respect to the subject matter, and constitutes the sole agreement between the Parties with respect to its subject matter.
- (g) Each Party acknowledges that no representations, inducements, promises or agreements, oral or written, have been made by any Party or by anyone

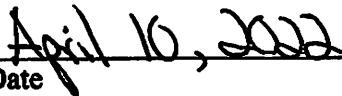
acting on behalf of any Party, which are not embodied in this Agreement, and that no agreement, statement or promise not contained in the Agreement shall be valid or binding on the Parties unless such change or modification is in writing and is signed by the Parties.

- (h) If a court of competent jurisdiction holds that any provision or subpart thereof contained herein is invalid, illegal or unenforceable, that invalidity, illegality or unenforceability shall not affect any other provision in the Agreement.
- (i) This Agreement, and all matters arising out of or relating to this Agreement, shall be governed by Texas law and the applicable provisions of federal law. Dispute resolution procedures under Chapter 2260 of the Texas Government Code shall apply. Venue for litigation relating to this agreement shall be in Nacogdoches, Texas or the appropriate federal court with jurisdiction over Nacogdoches County.
- (j) If Dr. Gordon is a party to any lawsuit filed against SFA, or in his personal capacity to the extent acting within the role and scope of his employment at SFA, he will continue to be represented by SFA in accordance with SFA policy and/or state law or regulation. Dr. Gordon agrees to fully cooperate with SFA in the defense of any such lawsuit.


DR. GORDON HEREBY ACKNOWLEDGES THAT HE HAS CAREFULLY READ THIS AGREEMENT AND AFTER HAVING HAD THE OPPORTUNITY TO CONSULT WITH AN ATTORNEY OF HIS CHOOSING, UNDERSTANDS ITS CONSEQUENCES, AND VOLUNTARILY ENTERS INTO IT WITHOUT COERCION.

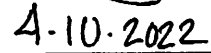
SIGNED AND AGREED BY THE PARTIES BELOW:



Dr. Scott A. Gordon


Date



Karen Gantt, SFA Board Chair


Date

EXHIBIT A

**PRESIDENT EMPLOYMENT AGREEMENT
AMENDMENT NO. 2**

This Amendment No. 2 to the President Employment Agreement is made and entered into as of the date of last signature below, by and between Stephen F. Austin State University, a state institution of higher education located in Nacogdoches, Texas, and Dr. Scott A. Gordon.

WHEREAS, the Board of Regents of Stephen F. Austin State University (SFA), by unanimous vote of its members on August 17, 2019, approved Dr. Scott A. Gordon's appointment as President for a term of September 16, 2019 through August 31, 2022;

WHEREAS, the Board of Regents of Stephen F. Austin State University (SFA), by unanimous vote of its members on April 20, 2021, amended Dr. Scott A. Gordon's contract for a term of September 1, 2021 through August 31, 2024;

WHEREAS, the parties desire to amend certain terms and provisions of the President Employment Agreement, as amended, to be effective September 6, 2021;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Section 3.1, Base Salary, is hereby amended to read as follows:

"While acting as President during the term of this Agreement, Dr. Gordon will be paid a base salary of \$365,000 (Three Hundred Sixty-Five Thousand Dollars), payable monthly through the SFA payroll system, as salary for services rendered hereunder. If SFA implements furloughs or other cost saving measures for its employees in order to meet an urgent or immediate budgetary need for cost reductions or for any other reason, this position shall be subject to those furloughs and/or other cost saving measures."

In the event of any conflict between this Amendment No. 2 and the President Employment Agreement as amended by Amendment No. 1, the terms of this Amendment No. 2 shall control and the terms of the President Employment Agreement, as amended by Amendment No. 1, shall be construed to give effect to the terms of this Amendment No. 2. Except as expressly amended herein, all of the terms and provisions of the President Employment Agreement, as amended by Amendment No. 1, are hereby ratified and reaffirmed and shall remain in full force and effect for all purposes.

IN WITNESS WHEREOF, the parties have caused this Amendment No. 2 to the President Employment Agreement to be binding between the parties as of September 6, 2021.



Karen Gantt
Stephen F. Austin State University

9.6.21

Date



Dr. Scott A. Gordon

9/6/21

Date

**PRESIDENT EMPLOYMENT AGREEMENT
AMENDMENT NO. 1**

This Amendment No. 1 to the President Employment Agreement is made and entered into as of the date of last signature below, by and between Stephen F. Austin State University, a state institution of higher education located in Nacogdoches, Texas, and Dr. Scott A. Gordon.

WHEREAS, the Board of Regents of Stephen F. Austin State University (SFA), by unanimous vote of its members on August 17, 2019, approved Dr. Scott A. Gordon's appointment as President for a term of September 16, 2019 through August 31, 2022;

WHEREAS, Dr. Gordon has received unanimously favorable performance evaluation at the July 2020 meeting of the Board of Regents;

WHEREAS, the Board of Regents of SFA desire to extend its appointment of Dr. Gordon as President of SFA, and Dr. Gordon desires to accept the extended appointment and to continue service as President under the terms and provisions of the President Employment Agreement as amended herein;

WHEREAS, the parties desire to amend certain terms and provisions of the President Employment Agreement to be effective beginning September 1, 2021;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Section 2.1, Length of Term, is hereby amended to read as follows:

"The term of this Agreement shall be for three (3) years, the maximum appointment provided by law, commencing on the 1st day of September, 2021, and terminating on the 31st day of August, 2024. For purposes of this Agreement, the period of September 1 to the following August 31 during the term of this Agreement shall be referred to as a "Contract Year". The Term is subject to any early termination provisions provided in this Agreement."

Section 3.1, Base Salary, is hereby amended to read as follows:

"While acting as President during the term of this Agreement, Dr. Gordon will be paid a base salary in the following per annum amounts: (i) Contract Year 1 (September 1, 2021 – August 31, 2022): \$450,000; (ii) Contract Year 2 (September 1, 2022 – August 31, 2023): \$475,000; (iii) Contract Year 3 (September 1, 2023 – August 31, 2024): \$500,000; in each case, payable monthly through the SFA payroll system, as salary for services rendered hereunder. If SFA implements furloughs or other cost saving measures for its employees in order to meet an urgent or immediate budgetary need for cost reductions or for any other reason, this position shall be subject to those furloughs and/or other cost saving measures."

Section 3.4, Cell Phone Allowance, is hereby deleted in its entirety.

Section 3.5, Club Membership, is hereby deleted in its entirety.

Section 3.7, Travel Expenses, is hereby amended to read as follows:

Whenever Dr. Gordon attends an athletic, fine arts, or other occasion where it is customary or expected that his spouse accompany him, he may bring his spouse/partner to the event and related activities and SFA will pay, out of the president's budget, travel expenses to Dr. Gordon for all costs associated with bringing his spouse/partner to the event and its related activities, in accordance with SFA travel regulations and state ethics rules. Travel expenses may not exceed the costs associated with bringing Dr. Gordon's spouse/partner to the event including but not limited to airfare, other travel costs such as rental car or bus fare, lodging, subsistence, and cost of admission to the event and other related activities. All costs incurred shall be consistent with and not exceed state reimbursable rates. Dr. Gordon shall timely submit any requested documentation for the costs incurred.

Section 3.11, Event Tickets, is hereby added and reads as follows:

SFA will provide, upon request, two season tickets for all SFA athletic home contests (basketball season tickets will be located behind the SFA bench or score table) and two tickets for all fine art events held on the SFA main campus. Additional tickets may be purchased for guests of the university from the Department of Athletics from appropriate funds in the president's budget.

In the event of any conflict between this Amendment No. 1 and the President Employment Agreement, the terms of this Amendment No. 1 shall control and the terms of the President Employment Agreement shall be construed to give effect to the terms of this Amendment No. 1. Except as expressly amended and extended herein, all of the terms and provisions of the President Employment Agreement are hereby ratified and reaffirmed and shall remain in full force and effect for all purposes.

IN WITNESS WHEREOF, the parties have caused this Amendment No. 1 to the President Employment Agreement to be binding between the parties as of the date of last signature below, with its terms to be effective September 1, 2021.



Karen Gantt
Stephen F. Austin State University

4-20-2021

Date



Dr. Scott A. Gordon

4/21/2021

Date

PRESIDENT EMPLOYMENT AGREEMENT

BETWEEN

**Dr. Scott A. Gordon
AND
Stephen F. Austin State University**

This Agreement is made between Stephen F. Austin State University (SFA) and Dr. Scott A. Gordon (Dr. Gordon), in order to employ the named individual to serve as President of Stephen F. Austin State University. SFA and Dr. Gordon will be known as Parties to this Agreement. The Parties agree to be bound by what is stated in the Agreement.

Whereas, the chair of the Stephen F. Austin State University Board of Regents appointed a screening committee to conduct a national search for the position of SFA President and employed the assistance of a professional search firm;

Whereas, Dr. Gordon has leadership, fundraising, academic research, and administration experience necessary to achieve the goals and aspirations of SFA;

Whereas, the Board of Regents named Dr. Gordon as the sole finalist for the position on July 23, 2019;

Whereas, the Board of Regents has determined that Dr. Gordon's employment as President is in the best interest of SFA, and, by affirmative vote of a majority of its members on August 17, 2019, has approved his appointment as President, as well as the terms and conditions of such appointment;

Whereas, the Parties hereto acknowledge that Dr. Gordon has accepted the position of President of SFASU;

Therefore, the Parties hereto agree that Dr. Gordon shall be appointed as the 9th President of SFA pursuant to the terms and conditions set forth below.

1.0 General Agreement of SFA and President

- 1.1 Appointment.** SFA employs Dr. Gordon as President, and President accepts employment as outlined in this Agreement. President understands and agrees that this Agreement and all applicable policies and procedures of SFA contain all the terms, conditions, and understandings of the Parties regarding President's employment by SFA.
- 1.2 Reporting to the Board of Regents.** Dr. Gordon shall work under the immediate supervision of and report to the SFA Board of Regents (BOR) and shall be employed at the discretion of the BOR.
- 1.3 Performance of Duties.** Dr. Gordon shall perform duties set forth in this Agreement and the Board of Regents Rules & Regulations without limitation and to the satisfaction of the BOR and other such duties as assigned.
- 1.4 Reassignment.** SFA retains the right to assign Dr. Gordon to another professional non-faculty position at SFA with significant responsibilities and with compensation equivalent to his Base Salary in Section 3.1. If SFA makes such a decision to reassign Dr. Gordon and Dr. Gordon refuses to accept such reassignment, then Dr. Gordon's employment shall terminate pursuant to Section 5.2 of this Agreement.

2.0 Term of Agreement

- 2.1 Length of Term.** The term of this Agreement shall be for three (3) years, the maximum appointment provided by law, commencing the 16th day of September, 2019, and terminating the 31st day of August, 2022. For purposes of this Agreement, the period of September 1 to the following August 31 during the term of this

Agreement shall be referred to as a "Contract Year". The Term is subject to any early termination provisions provided in this Agreement.

- 2.2 **Evaluation.** The Board of Regents will annually evaluate Dr. Gordon's performance and consider the appropriateness of any extension to the appointment.

3.0 **Compensation**

- 3.1 **Base Salary.** While acting as President during the term of this Agreement, Dr. Gordon will be paid the total annual amount of Three Hundred Sixty-Five Thousand and No/100 Dollars (\$365,000.00), payable monthly through the SFA payroll system, as salary for services rendered hereunder. Dr. Gordon may be subject to increases in salary within the sole discretion of SFA. Any increases in salary will become a modified addendum to this Agreement with regard to base salary, but shall have no effect on the other terms or conditions of this Agreement. To the extent funds are available and approved by the Board of Regents, mid-year salary increases may be made through budget adjustments. If SFA implements furloughs or other cost saving measures for its employees in order to meet an urgent or immediate budgetary need for cost reductions or for any other reason, this position shall be subject to those furloughs and/or other cost saving measures.
- 3.2 **Benefits.** Dr. Gordon shall receive standard benefits as extended to SFA staff, including but not limited to vacation, state holidays, sick leave, contributions to and/or eligibility for health and group life insurance for SFA employees and optional coverage for employees' dependents, and contribution to the appropriate State of Texas retirement program. Benefits may be changed from time to time as mandated by the State of Texas or as determined by SFA. Dr. Gordon is required by state law to contribute to a retirement account each month through withholding from his paycheck.
- 3.3 **Furnished Vehicle.** While acting as President, an automobile, as determined by SFA, will be provided to Dr. Gordon on a 24 hour/12 month per year basis. Personal use of the automobile is taxable to Dr. Gordon. Dr. Gordon is expected to maintain a monthly mileage log detailing business and personal use of the vehicle. Mileage reports are to be turned into the SFA Controller's office monthly. Dr. Gordon shall be responsible for maintaining the vehicle in good working order. No unauthorized individual will be permitted to drive the assigned vehicle. Upon termination or expiration of this Agreement, Dr. Gordon shall immediately surrender the vehicle to SFA. Dr. Gordon shall be liable for any amounts needed to repair or replace the vehicle, normal wear and tear excepted.
- 3.4 **Cell Phone Allowance.** While acting as President, Dr. Gordon shall be provided with a communication allowance to reimburse Dr. Gordon for the projected cost of business related charges. This allowance will be paid in accordance with SFA policy.
- 3.5 **Club Membership.** For the period Dr. Gordon serves as President of SFA, SFA will pay the monthly dues for a membership at the Piney Woods Country Club for the professional, business-related use by Dr. Gordon, payable from allowable funds in the budget allocated to the President's Office. Dr. Gordon shall be responsible for any charges and payments due to the usage of the membership, along with any applicable tax liability.
- 3.6 **Relocation Expenses.** SFA will reimburse Dr. Gordon or pay third-party companies on behalf of Dr. Gordon for initial personal moving expenses incurred as reasonable costs of moving household goods and personal effects from Dr. Gordon's former residence to the Juanita Curry Boynton House, up to \$30,000.00 (Thirty Thousand and No/100 Dollars). Receipts for reimbursement shall be provided to the Coordinator of Board Affairs within sixty (60) days of completion of the move. Dr. Gordon is required to provide receipts or other documentation to support all requests for reimbursement or direct payment to third-party companies, which shall be paid in accordance with SFA policies and procedures, state and federal law.
- 3.7 **Travel Expenses.** While acting as President, whenever Dr. Gordon attends an athletic or fine arts event, he may bring his spouse/partner to the event and related activities. SFA will pay, out of the president's budget, travel expenses to Dr. Gordon for all costs associated with bringing his spouse/partner to an event and its

related activities, in accordance with SFA travel regulations and state ethics rules. Travel expenses may not exceed the costs associated with bringing Dr. Gordon's spouse/partner to the event including but not limited to airfare, other travel costs such as rental car or bus fare, lodging, subsistence, and cost of admission to the event and other related activities. All costs incurred shall be consistent with and not exceed state reimbursable rates. Dr. Gordon shall timely submit any requested documentation for the costs incurred.

- 3.8 **Compensatory Time.** Dr. Gordon is expected to work the necessary hours to fulfill the obligations of his employment. In addition to vacation and sick leave provided under law, Dr. Gordon is entitled to earn compensatory time in accordance with state law and university policy.
- 3.9 **Tax Liabilities.** The compensation payable pursuant to this Agreement shall be subject to reduction by all applicable withholding, social security and other federal, state, and local taxes and deductions. Additionally, all compensation shall be subject to such deductions by SFA as are required to be made pursuant to government regulations or court order. Dr. Gordon shall be responsible for any income tax liability incurred as a result of salary or other benefits provided by this Agreement.
- 3.10 **Housing.** Dr. Gordon will reside in the Juanita Curry Boynton House for the duration of his service as SFA President. SFA will pay directly utilities, including but not limited to electricity, water, gas, telephone service, internet, and cable.

4.0 **Responsibilities of President**

- 4.1 **Duties and Responsibilities.** Dr. Gordon agrees that he will, at all times, faithfully, industriously, and with the best use of his experience, ability, and talent perform the duties of President. Dr. Gordon will perform all of the duties requires as President in accordance with this Agreement, the directives of the Board of Regents, the Board of Regents Rules and Regulations, the policies and procedures of SFA, and all applicable federal and state laws, regulations, and rules. Dr. Gordon will devote his entire professional time, attention, and energy to the business of SFA and shall not during the term of this Agreement engage in any other business or professional activity except as expressly allowed herein.
- 4.2 **Professional Activities.** Dr. Gordon is encouraged to participate in local, regional, state, national, and international efforts aimed at promoting and improving public higher education and public higher education administration. Dr. Gordon may provide advice or consultation to, and may receive compensation from, entities other than SFA provided that such activities: (a) are approved in advance by the chair of the BOR; (b) do not fall within his duties as President of SFA; (c) do not interfere with the carryout out of his official duties; (d) do not place him in a position of conflict of interest with respect to his official duties; (e) are in compliance with Chapter 572 of the Texas Government Code, all other applicable laws, Board of Regents Rules and Regulations, the policies and procedures of SFA, and all applicable federal and state laws, regulations, and rules; (f) do not involve the improper use of SFA resources, time, materials, or facilities; (g) are reported, if required by law, to the Texas Ethics Commission in the form and manner requires by the Commission; and (h) are reported to the chair of the BOR annually, including an accounting of compensation received.
- 4.3 **Comply with NCAA, Conference Rules.** Comply with rules, regulations, and advisory opinions of the National Collegiate Athletic Association (NCAA) and of the athletic conference in which SFA is a member as presently in effect or as amended during any term of this Agreement. Dr. Gordon has an affirmative obligation to cooperate fully, as defined in NCAA regulations, in the infractions process, including the investigation and adjudication of a case.

5.0 **Disciplinary Action and Termination**

- 5.1 **Mutual Agreement of Parties.** If SFA and Dr. Gordon mutually agree in writing, this Agreement may be terminated. Upon termination, Dr. Gordon shall be entitled to receive (i) any compensation earned and unpaid through the date of the termination of this Agreement; (ii) any business expense otherwise due to him through the date of the termination of this Agreement; and (iii) payment of accrued but unused vacation and other leave in accordance with state law and SFA policy and procedures.

- 5.2 **Resignation.** Dr. Gordon may resign his appointment by providing thirty (30) days prior written notice to the chair of the BOR ("Resignation Notice"). Upon submission of a Resignation Notice, Dr. Gordon agrees to faithfully perform and discharge his duties and responsibilities to SFA from the date of such Resignation Notice until such termination date. All obligations between the Parties contained herein shall cease, provided that Dr. Gordon will be entitled to receive: (i) any compensation earned and unpaid through the date of the termination of this Agreement; (ii) any business expense otherwise due to him through the date of the termination of this Agreement; and (iii) payment of accrued but unused vacation and other leave in accordance with state law and SFA policy and procedures.
- 5.3 **Termination without Cause.** The BOR may terminate Dr. Gordon's appointment and this Agreement without cause at any time. Termination without cause shall mean termination of this Agreement on any basis other than those set forth in the Section 5.4 below and under circumstances in which the BOR does not exercise its right to reassign Dr. Gordon to another position. Termination without cause shall be effectuated by delivery of written notice to Dr. Gordon of the BOR's intent to terminate this Agreement without cause. If the BOR exercises its right to terminate this Agreement under this Section, Dr. Gordon will be entitled to receive: (i) any compensation earned and unpaid through the date of the termination of this Agreement; (ii) any business expense otherwise due to him through the date of the termination of this Agreement; (iii) payment of accrued but unused vacation and other leave in accordance with state law and SFA policy and procedures; and (iv) the discounted net present cash value of remaining base salary as provided in Section 5.3.1 below.
- 5.3.1 **Limitations on Severance.** Notwithstanding any other provision of this Agreement, Dr. Gordon shall not be paid severance or any other payments on the termination of this Agreement that cumulatively exceed an amount equal to the discounted net present cash value of the base salary monthly payments, as set forth in Section 3.1 above, then remaining on the date of termination of this Agreement at the market interest rate of Six and No/100 Percent (6.00%), as set forth in Texas Education Code Section 51.948, as amended.
- 5.4 **Termination for Cause.** SFA may terminate Dr. Gordon's appointment and this Agreement, including any tenured appointment, at any time for cause. The term good cause includes, but is not limited to: (1) a material breach of this Agreement; (2) Dr. Gordon engaging in any conduct constituting a violation of SFA policies, NCAA or conference rules or regulations, or a violation of state or federal law; (3) Dr. Gordon negligent or willful violation of directives or orders of the BOR or other assigned duties; (4) Dr. Gordon's commission of an act of personal dishonesty which involves personal material profit in connection with this employment at SFA; (5) the violation of any drug, alcohol, or chemical substance abuse policy of SFA; or (6) any behavior that would tend to bring public disrespect, embarrassment, contempt or ridicule upon SFA. Prior to terminating this Agreement for cause, SFA shall provide Dr. Gordon with written notice of the allegations constituting cause and Dr. Gordon will be provided an opportunity to meet with the BOR to respond to the allegations. Upon termination of this Agreement for cause, Dr. Gordon will be entitled to receive: (i) any compensation earned and unpaid through the date of the termination of this Agreement; (ii) any business expense otherwise due to him through the date of the termination of this Agreement; and (iii) payment of accrued but unused vacation and other leave in accordance with state law and SFA policy and procedures. Termination for cause shall be in addition to all other rights allowed by law.
- 5.2.1 **Right to Suspend and/or Discipline.** If SFA has reason to believe that, or to initiate an investigation to determine whether, Dr. Gordon is or was involved in any conduct constituting cause to terminate this Agreement, SFA may in its sole and absolute judgment and discretion and in addition to any other remedy available under this Agreement, suspend Dr. Gordon with or without pay pending a final decision concerning the matter. This section is intended to give SFA the widest discretion permitted by applicable law. In lieu of termination for cause, SFA may take other disciplinary action in its sole and reasonable discretion.
- 5.5 **Termination upon Inability to Perform Essential Job Functions.** SFA shall have the right to terminate Dr. Gordon's appointment and this Agreement in the event that Dr. Gordon suffers an injury, illness, or incapacity that prevents him from performing the essential functions of his position, and such injury, illness, or incapacity shall continue for a period of more than three consecutive months. Upon termination of Dr. Gordon's appointment and this Agreement for disability, Dr. Gordon shall be paid: (i) any compensation earned and unpaid through the date of the termination of this Agreement; (ii) any business expense otherwise

due to him through the date of the termination of this Agreement; and (iii) payment of accrued but unused leave in accordance with state law and SFA policy and procedures, and (iv) any leave benefits and disability pay which he would be entitled to under state law and SFA policy and procedure.

- 5.6 **Termination upon Death.** This Agreement shall terminate automatically upon Dr. Gordon's death, and in full satisfaction thereof, Dr. Gordon's estate shall be paid: (i) any compensation earned and unpaid through the date of such death; (ii) any benefits to which Dr. Gordon may be entitled under life or accident insurance, workers' compensation coverage, etc.; (iii) any business expense otherwise due to him through the date of the termination of this Agreement; and (iv) payment of accrued but unused leave in accordance with state law and SFA policy and procedures.
- 5.7 **Non-Appropriation.** The Texas Constitution prohibits obligations beyond the current appropriations. The Board of Regents shall have the right to cancel all or part of this Agreement at any time without penalty if legislative funds are not appropriated for the services of Dr. Gordon.
- 5.8 **Limitation of Liability.** In no case shall SFA be liable to Dr. Gordon for any loss of any collateral business opportunities or any other benefits, perquisites, or income. Notwithstanding anything else stated in this Agreement, SFA's maximum liability under this Agreement shall be limited to the value of the unpaid base salary and fringe benefits referenced in Section 3.0 of this agreement.

6.0 **Tenure**

- 6.1 **Tenure.** Dr. Gordon's credentials will be submitted to SFA for review and consideration in accordance with SFA policies and procedures. Upon the recommendation of the faculty and academic leadership of SFA, the Provost and Vice President for Academic Affairs will recommend Dr. Gordon for tenure and appointment to the rank of full professor in the Department of Biology in the SFA College of Sciences and Mathematics with all rights and privileges thereto in accordance with and subject to applicable SFA policies and procedures. Tenure may only be conferred by the BOR. This Agreement does not guarantee or grant to Dr. Gordon any claim to tenure in employment, continued employment, or any other term or right to employment except as expressly provided in this Agreement.
- 6.2 **Return to Faculty.** In the event this Agreement is terminated by mutual agreement, resignation, or without cause, Dr. Gordon will be granted the right to assume teaching and research duties as a tenured professor in the Department of Biology at SFA. Dr. Gordon's faculty salary will be set in accordance with Texas Education Code Section 51.948, as amended.

7.0 **Confidential Information**

- 7.1 **Protection of Confidential Information.** Dr. Gordon recognizes and acknowledges that the BOR and/or SFA may provide him with access to information of a confidential nature in order to enable him to perform his duties and responsibilities hereunder. Dr. Gordon agrees that, except as may be required: (a) by the duties and responsibilities of his position; (b) by a lawful order of a court of competent jurisdiction; (c) in the event of litigation regarding this Agreement; or (d) to the extent that he has express authorization from the BOR, he will keep confidential indefinitely all confidential information concerning the BOR and SFA which was acquired or disclosed to him during the course of his employment with SFA, and not to disclose the same, either directly or indirectly, to any other person, firm, or business entity, or to use it in any way except for the benefit of the BOR and/or SFA or in the performance of the duties and responsibilities assigned to him. For purposes of this Agreement, the term "confidential information" means all non-public information or data relating to SFA which Dr. Gordon has learned or will learn during the course of his employment at SFA, whether or not a trade secret within the meaning of applicable law, or any other data or proprietary information or documents pertaining to the BOR and/or SFA which Dr. Gordon is told or reasonably ought to know the BOR and/or SFA regards as proprietary or confidential.
- 7.2 **Return of Property.** Dr. Gordon acknowledges that all memoranda, records, reports, manuals, handbooks, drawings, blueprints, books, papers, letters, formulas, contracts, catalogs, and other documentation (whether in draft or final form), and any and all other documents furnished to Dr. Gordon by SFA or otherwise acquired

or developed by him in connection with his employment with SFA (collectively, "Recipient Materials") shall at all times be SFA property. Within fourteen (14) days of the termination of his employment under this Agreement, Dr. Gordon shall return any Recipient Materials which are in his possession, custody, or control, including Recipient Materials retained by Dr. Gordon in his office, automobile, or home. Additionally, within fourteen (14) days of the termination of his employment under this Agreement, Dr. Gordon agrees to return any equipment or other tangible property, which he received from SFA during his employment, including but not limited to, computing equipment, printers, monitors, cellular telephones, credit cards, access cards, security cards, and keys which are in his possession, custody, or control.

8.0 Miscellaneous

- 8.1 **State Entity.** SFA is an entity of the State of Texas and, as such, no provision of this Agreement is intended to operate as a waiver or relinquishment of any right, privilege, or defense, including the defense of sovereign immunity, afforded SFA under constitutional provision or law.
- 8.2 **Amendment.** Except as otherwise expressly provided in this Agreement, no amendment or variation of the terms of this Agreement shall be valid unless in writing and signed by the authorized representative of SFA and Dr. Gordon.
- 8.3 **Choice of Law, Venue.** The Parties agree that any matter related to or arising out of this Agreement shall be resolved in accordance with laws of the State of Texas, without giving effect to its conflict of laws provisions, and venue for any proceedings shall be in Nacogdoches County, Texas.
- 8.4 **Non-delegable Duties.** Dr. Gordon acknowledges that Dr. Gordon's skills, expertise, and experience related to duties contemplated by this Agreement are unique, specialized, and non-delegable.
- 8.5 **Assignment.** Neither Party may assign any obligations, rights, or duties set forth in this Agreement without the mutual, written consent of both Parties. Notwithstanding this paragraph, SFA reserves the right, amongst other rights outlined herein, to reassign Dr. Gordon to another position within SFA for the remainder of the term of this Agreement.
- 8.6 **Savings Clause.** If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable: (a) the invalid or unenforceable provision shall be modified so as to be valid and enforceable and conform to the greatest extent possible to the original intent of such provision and this Agreement shall be construed and enforced in all respects as modified; and (b) the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.
- 8.7 **Use of Likeness.** Dr. Gordon agrees that SFA may use, without additional compensation, Dr. Gordon's name, picture, likeness and voice in connection with programs and endorsements that promote SFA and in all other respects for purposes of this Agreement.
- 8.8 **Notices.** In order to be effective, any notice sent for purposes of this Agreement must be sent to the address stated in this Agreement, by certified mail, return receipt requested, or must be delivered in person to Dr. Gordon or to the chair of the Board of Regents of SFA, as applicable, as follows:

SFA
Board of Regents
Stephen F. Austin State University
P.O. Box 13026, SFA Station
Nacogdoches, TX 75962

President
Dr. Scott A. Gordon

With copy to:
Office of the General Counsel
Stephen F. Austin State University

With copy to:

P. O. Box 13065, SFA Station
Nacogdoches, TX 75962

- 8.9 **Non-Waiver.** The waiver of a breach or default of or under any provision of this Agreement shall not be deemed a waiver of any other such breach or default of any kind or nature.
- 8.10 **Presumption Waiver.** Each party waives the presumption that this Agreement is presumed to be in favor of the party which did not prepare it, in case of a dispute as to interpretation.
- 8.11 **Independent Counsel.** Dr. Gordon and SFA acknowledge that each has had an opportunity to consult with his or its respective attorneys or advisors concerning the meaning, import, and legal significance of this Agreement, and each has read this Agreement, as signified by their signatures hereto, and are voluntarily executing the same after the opportunity to have received adequate advice of counsel or advisors for the purposes and consideration herein expressed.
- 8.12 **Entire Agreement.** This Agreement contains the entire understanding of the Parties and supersedes any prior oral or written understandings or representations of the Parties.
- 8.13 **Employment Matters.** This Agreement sets forth the terms of the Dr. Gordon's employment and rights to such employment. This Agreement is intended as the sole source of Dr. Gordon's employment rights, irrespective of any statement contained in any SFA employment manual, SFA staff manual, or any other similar document pertaining to SFA staff or faculty, unless otherwise specified herein.

ENTERED INTO AND EXECUTED BY:



Brigitte Henderson, Chair, BOR
Stephen F. Austin State University

8-17-2019
Date



Dr. Scott A. Gordon

8/19/2019
Date