

**BOARD OF SUPERVISORS FOR THE
UNIVERSITY OF LOUISIANA SYSTEM**

ATHLETIC COMMITTEE

August 26, 2021

Item H.9. **McNeese State University's** request for approval of a contract with Mr. Heath Schroyer, Director of Athletics, effective July 1, 2021.

EXECUTIVE SUMMARY

Under the proposed three-year agreement effective through June 30, 2024, the Director's salary for each year is \$200,000. During the time of employment as Director, he will have the opportunity to receive the following earned salary supplements/incentives. The supplements/incentives shall be subject to all mandatory withholdings and are inclusive of employer matches for retirement and Medicare payments. The supplements/incentives shall be funded by the McNeese State University Foundation but only with funds available through Department of Athletics restricted accounts and paid through University payroll. The potential supplements/incentives are as follows:

Performance Incentives:

- \$500 – Regular Season Championship (All Sports)
- \$1,000 – Conference Tournament Championship / NCAA Team Tournament Berth (All Sports)
- \$1,000 – NCAA Regional Championship (Baseball, Softball)
- \$5,000 – NCAA Men's Basketball Tournament Win (each win)
- \$1,000 – NCAA Football Playoff Win (each win)
- \$10,000 – NCAA National Championship (All Sports)

Academic Incentives:

- \$1,000 – 985 or higher single year Departmental APR

In the event the University terminates the contract without cause, University shall pay to Director an amount equal to all remaining compensation including, but not limited to, Base Salary (including the University Foundation Premium) and Benefits that would have been due to Director under this contract. The parties agree that any amounts due beyond the current fiscal year shall be funded solely by the McNeese State University Foundation athletic related accounts.

In the event Director terminates this contract without cause to accept a position as Director at a different University or other educational organization, Director or third party shall pay University the following amounts which shall be deemed as agreed upon liquidated damages:

- If Director terminates the contract between July 1, 2021 and June 30, 2022, University shall be entitled to receive \$50,000.

- If Director terminates the contract between July 1, 2022 and December 31, 2022, University shall be entitled to receive \$50,000.
- If Director terminates the contract after December 31, 2022, there will be no liquidated damages owed by the Director.

The University and the Foundation have combined this agreement into one joint employment agreement.

RECOMMENDATION

It is recommended that the following resolution be adopted:

***NOW, THEREFORE, BE IT RESOLVED,** that the Board of Supervisors for the University of Louisiana System hereby approves McNeese State University's request for approval of a contract with Mr. Heath Schroyer, Director of Athletics, effective July 1, 2021.*



H.9.

August 5, 2021

Dr. James B. Henderson, President
University of Louisiana System
1201 North Third Street
Suite 7-300
Baton Rouge, LA 70802

Dear Dr. Henderson:

McNeese State University requests approval of the contractual agreement with Mr. Heath Schroyer, Director of Athletics effective July 1, 2021.

Please place this item on the ULS Board of Supervisors' agenda for consideration and approval at the August 26, 2021 meeting.

Thank you for your attention in this matter.

Sincerely,

Dr. Daryl V. Burckel
President

Attachments

McNEESE STATE UNIVERSITY

DIRECTOR OF ATHLETICS CONTRACT OF EMPLOYMENT

STATE OF LOUISIANA

PARISH OF CALCASIEU

This contract is made and entered into between McNeese State University (the "University") represented by its President, Dr. Daryl V. Burckel (hereinafter referred to as President), McNeese State University Foundation represented by its Vice President for University Advancement, Dr. Wade Rousse (herein after referred to as Vice President), and **HEATH SCHROYER** (hereinafter referred to as "DIRECTOR"). This agreement is subject to the approval of the Board of Supervisors of the University of Louisiana System, the management board for McNeese State University (the "ULS Board"). Therefore, the terms and conditions set forth in this agreement should not be considered a valid contract until approval is provided by the ULS Board.

1.0 Employment

- 1.1 McNeese State University (the "University") does hereby employ DIRECTOR as **DIRECTOR OF ATHLETICS** and DIRECTOR does hereby accept employment and agrees to perform all of the services pertaining to **ATHLETICS** which are required of DIRECTOR, as well as, other services as may be contemplated hereunder, all as prescribed by the University through its President.
- 1.2 DIRECTOR shall be responsible, and shall report, directly to the Vice President for University Advancement (the VICE PRESIDENT). Both the DIRECTOR and VICE PRESIDENT shall confer with the PRESIDENT on all administrative and technical matters.
- 1.3 DIRECTOR shall manage and supervise the staff and shall perform such other duties in McNeese State University's athletic program as the VICE PRESIDENT may assign.
- 1.4 DIRECTOR agrees to represent McNeese State University positively in public and private forums and shall not engage in conduct that reflects adversely on McNeese State University or its athletic programs.

2.0 Term

- 2.1 The term of this contract is for a fixed period of thirty-six (36) months, commencing on the **1st day of July 2021**, and terminating without further notice to DIRECTOR on the **30th day of June 2024**, with the option of TWO (2) additional one (1) year extensions, without re-negotiation, conditioned upon both the DIRECTOR, and the University agreeing in writing to either option to extend.
- 2.2 After June 30, 2026, this contract is renewable solely upon an offer from McNeese State University and an acceptance by DIRECTOR, both of which must be in writing, signed by the parties, and approved by the ULS Board. This contract in no way grants DIRECTOR a claim to tenure in employment, nor shall DIRECTOR'S service pursuant to this contract count in any way toward tenure at McNeese State University.
- 2.3 This contract may be amended or extended at any time during the period of this contract only in writing and with mutual written agreement of all parties, and approved by the ULS Board.

3.0 Compensation

- 3.1 In consideration of DIRECTOR'S services and satisfactory performance and subject to section 2.1 together with all the provisions of this agreement, McNeese State University shall pay DIRECTOR a base annual (12-month) salary in the amount of **TWO HUNDRED THOUSAND DOLLARS (\$200,000)**, payable on a monthly basis and subject to all deductions as required by law.
- 3.2 The University does not guarantee amounts due under this contract beyond any particular current twelve (12) month period of performance as described in this agreement. Should the contract be terminated for any reason, amounts due shall be determined in accordance with section 10 of this contract.
- 3.3 The University may permit additional (non-recurring) supplemental pay to DIRECTOR for specific and extraordinary achievement in accordance and as stipulated by section 3.6 below and as allowed by NCAA Division I bylaw 11.3.2.3.
- 3.4 In this appointment, in accordance with ULS Policy Number FS.111.XXI-1, DIRECTOR will not accrue Compensatory Leave and DIRECTOR will be exempt from taking leave when the University is officially closed at holiday breaks.

- 3.5 DIRECTOR may be eligible for ULS Board approved cost of living or merit pay increases in addition to the stated base salary. DIRECTOR is also to be granted pay adjustment in the same manner and according to economic circumstances that affect all employees in the unclassified state service.
- 3.6 During the Term, DIRECTOR and Associated Sport Administrator(s) shall have the opportunity to earn Bonus Compensation paid to the DIRECTOR and Staff through the University's normal payroll process. The Athletic Foundation is also responsible for increased related benefit payments associated with the supplement.

Performance Incentives:

- \$500 – Regular Season Championship (All Sports)
- \$1000 – Conference Tournament Championship / NCAA Team Tournament Birth (All Sports)
- \$1,000 – NCAA Regional Championship (Baseball, Softball)
- \$5,000 – NCAA Men's Basketball Tournament Win (each win)
- \$1,000 – NCAA Football Playoff Win (each win)
- \$10,000 – NCAA National Championship (All Sports)

Academic Incentives:

- \$1,000 – 985 or higher single year Departmental APR

All Bonus Compensation for Performance Incentives shall be paid on the last University payroll date of June, in the same calendar year following the events for which the Bonus Compensation for Performance Incentives are earned.

All Bonus Compensation for Academic Incentives shall be paid on the last University payroll date of June of the following Calendar year.

4.0 Courtesy / Leased Vehicle Benefit

- 4.1 The DIRECTOR may receive a courtesy/leased vehicle if an arrangement can be made through a local dealership. The benefit shall not be considered earned income for the purpose of computation of retirement benefits, and DIRECTOR shall be responsible for all applicable taxes. The University has no obligation to furnish a vehicle to DIRECTOR. The arrangements for a vehicle may be made by the DIRECTOR.
- 4.2 Insurance on any courtesy / leased vehicle must be paid for by the dealership, the DIRECTOR, or some other arrangement agreed to by the University.
- 4.3 The DIRECTOR may be reimbursed for miles driving the courtesy / leased vehicle on school-sponsored business as authorized and approved following the University of Louisiana System Athletic Travel Policy No. IA-V.(2a).

5.0 Employee Benefits

- 5.1 The DIRECTOR shall participate in the mandatory employee benefit plans and be eligible for optional employee plans as would any other University unclassified employee. Such benefit will be based upon DIRECTOR'S base annual salary as provided by University.

6.0 Outside Income and/or Benefits

- 6.1 With approval from the PRESIDENT and in accordance with University and ULS Board policies, DIRECTOR shall be authorized to earn other revenue while employed by the University, but such activities are independent of his/her University employment, and the University shall have no responsibility for any claims arising there from. DIRECTOR shall be entitled to retain revenue generated from his/her operation of **ATHLETIC** camps and/or **ATHLETIC** clinics in accordance with University policy relating to camps or clinics conducted by Athletic Department personnel. All outside income will be subject to approval in accordance with the ULS Board policies (Adopted 2/24/95 or as amended). DIRECTOR shall report annually in writing to President all athletically-related income, revenue, and/or benefits DIRECTOR receives from sources outside University, and DIRECTOR shall abide by all NCAA regulations regarding outside compensation. Examples of outside income include, without limitation, income or benefits from (1) Endorsement or consultation contracts with apparel companies, equipment manufacturers, or television or radio programs; (2) ownership, control, or management of a foundation, organization, or other entity; and (3) participation in athletic camps outside of those offered by the University. All outside compensation must also comply with the Louisiana Code of Governmental Ethics.
- 6.2 Notwithstanding the above or anything else herein to the contrary, if DIRECTOR receives athletically related income or benefits totaling more than \$600 per year from any source or combination of sources other than Employer, DIRECTOR must report all such income or benefits to the PRESIDENT in writing at least annually. Examples include, without limitation, income or benefits from (1) endorsement or consultation contracts with apparel companies, equipment manufacturers, or television or radio programs; (2) ownership, control, or management of a foundation,

organization, or other entity; and (3) participation in athletic camps outside of those offered by Employer (see ULS Board or Bylaw 11.2.2.).

8.0 Compliance with NCAA and Conference Rules and Regulations, and University Policies and Procedures

- 8.1 DIRECTOR shall abide by the NCAA and any Conference rules and regulations and the policies and procedures of the University. Pursuant to NCAA Bylaw 11.2.1, DIRECTOR understands that DIRECTOR has an affirmative obligation to cooperate fully in the infractions process, including the investigation and adjudication of a case (see NCAA Bylaw 19.2.3). If found in violation of NCAA regulations, DIRECTOR shall be subject to disciplinary or corrective action as set forth in the NCAA enforcement procedures (NCAA Constitution 11.2.1). If found in violation of Conference rules and regulations, or University policies and procedures, DIRECTOR shall be subject to disciplinary or corrective action as set forth by Conference rules and regulations or University policies and procedures. DIRECTOR may be suspended for a period of time, without pay, or the employment of DIRECTOR may be terminated if DIRECTOR is found to be involved in deliberate and serious, or repetitive, violations of NCAA regulations (NCAA Constitution 11.2.1), Conference rules and regulations, or University policies and procedures.
- 8.2 DIRECTOR shall also abide by the State of Louisiana Code of Government Ethics, University Policy and Procedures, and the policies and procedures of the University of Louisiana System. In public appearances he/she shall at all times conduct himself/herself in a manner that befits a University official and shall always attempt to create goodwill and a good image for the University.
- 8.3 DIRECTOR shall promote an atmosphere for compliance within the program supervised by the DIRECTOR and shall monitor the activities regarding compliance of all assistant athletic directors and other administrators involved with the program who report directly or indirectly to the DIRECTOR.
- 8.4 DIRECTOR and Employer acknowledge and agree that (1) DIRECTOR has an affirmative obligation to cooperate fully in the NCAA infractions process, including the investigation and adjudication of a case (see NCAA Bylaw 19.2.3 for examples of full cooperation), and (2) an individual who is found in violation of NCAA regulations shall be subject to disciplinary or corrective action as set forth in the provisions of the NCAA infractions process (see NCAA Bylaw 19), including suspension without pay or termination of employment

9.0 Compliance with Local, State and Federal Laws

- 9.1 DIRECTOR shall abide by the laws of the local, state and federal governments. DIRECTOR may be suspended for a period of time, without pay, or the employment of DIRECTOR may be terminated if DIRECTOR is found to be involved in violation or gross disregard of local, state or federal laws.

10.0 Termination

- 10.1 Either party may terminate this agreement without just cause prior to the expiration of its terms by giving five (5) days written notice to the other party. Prior to termination of DIRECTOR, the University will obtain approval from the President of the University of Louisiana System.
- 10.2 DIRECTOR may be terminated by the VICE PRESIDENT at any time for violation or gross disregard of state or federal laws (excluding minor offenses or those punishable by citation), or deliberate and serious violations of NCAA, conference, or university rules, regulations, policies or procedures, or engaging in conduct, which is clearly contrary to the character and responsibilities of a person occupying the position of **DIRECTOR OF ATHLETICS** or which substantially negatively or substantially adversely affects the reputation of the University or McNeese State University athletics or for any violation of this contract; provided, however, prior to termination, University shall meet with DIRECTOR to notify him of alleged offending behavior under this clause, following which DIRECTOR will have fourteen (14) days to cure alleged offending behavior or violation. University shall provide a good faith opportunity for DIRECTOR to cure alleged behavior or violation. In the event of such termination, DIRECTOR will receive thirty (30) calendar days notice of termination or thirty (30) calendar day's regular pay in lieu of such notice. All compensation, including salary, benefits and other remuneration incidental to employment, cease upon termination. The judgment as to whether the conduct of DIRECTOR constitutes cause under this provision shall not be exercised arbitrarily, capriciously or in a discriminatory manner by the University. No damages or other amounts shall be due if termination is for just cause.
- 10.3 The University may at any time, and in its sole discretion, terminate the employment of DIRECTOR for any reason.
 - (a) In the event the University terminates the contract, without cause, University shall pay to DIRECTOR, within ninety (90) days and on a date mutually agreed upon by University and DIRECTOR, an amount equal to all remaining compensation, including, but not limited to Base Salary (including the University Foundation Premium) and Benefits that would have been due to DIRECTOR under this Agreement had DIRECTOR remained employed by University from the date of termination through the end of the Term (excluding any unexercised option periods). Any lump sum payments shall be paid in lump sum on the date the payment would have been due and payable had the DIRECTOR remained employed until the expiration of the Term. In addition, University will pay to DIRECTOR, within thirty (30) days in which University exercises its right to Terminate this Agreement without cause, any compensation or Bonus

Compensation actually earned and accrued but unpaid, as well as all expenses incurred in the performance of his duties but not yet reimbursed or otherwise received by the date of the termination, less all applicable taxes and other withholdings. The parties agree that any amounts due beyond the current fiscal year shall be funded solely by the McNeese State University Foundation athletic related accounts.

10.4 In the event DIRECTOR terminates this Contract without cause to accept a position as DIRECTOR at a different University or other educational organization, DIRECTOR or third party shall pay University the following amounts which shall be deemed as agreed upon liquidated damages owed to McNeese State University because the costs the University will incur to search for and hire a new **DIRECTOR** are difficult to determine. DIRECTOR shall have no further liability under this Agreement upon University's full reimbursement by a third party for the liquidated damages. Such liquidated damages shall be received by University within 90 days of termination. The amount of such reimbursements will be calculated as follows:

- If DIRECTOR terminates the contract between July 1, 2021 and June 30, 2022, University shall be entitled to receive FIFTY THOUSAND DOLLARS (\$50,000), from DIRECTOR or from third party.
- If DIRECTOR terminates the contract between July 1, 2022 and December 31, 2022, University shall be entitled to receive FIFTY THOUSAND DOLLARS (\$50,000), from DIRECTOR or from third party.
- If DIRECTOR terminates the contract between January 1, 2023 and June 30, 2026, there will be no liquidated or other similar damages owed by DIRECTOR or any other person or entity.

10.5 DIRECTOR shall promptly report to the University's Title IX Coordinator or Deputy Title IX Coordinator any Known Violation(s) of the University or the University of Louisiana System's Sexual Misconduct Policy (including, but not limited to sexual harassment, sexual assault, sexual exploitation, domestic violence and stalking) that involve any student, faculty, or staff or that is in connection with a University sponsored activity or event. Any emergency situation shall be immediately reported to 911 and/or law enforcement. For purposes of this paragraph, a "Known Violation" shall mean a violation or an allegation of a violation of Title IX and/or the University's or the University of Louisiana System's Sexual Misconduct Policy that DIRECTOR is aware of or has reasonable cause to believe is taking place or may have taken place. The University may terminate this Agreement for cause pursuant to the for-cause-termination provisions of this Agreement for any determined violation by DIRECTOR for failure to report a Known Violation of: Title IX of the Education Amendments of 1972; the University's Sexual Misconduct Policy; or the University of Louisiana System's Sexual Misconduct Policy.

10.6 Should DIRECTOR's contract be terminated for just cause, the University shall not be liable for any payments or benefits specified in this contract past the effective date of termination. Just cause for termination shall include, but not be limited to:

- (a) Violation or gross disregard of local, state, or federal laws, NCAA or Conference rules or regulations, or University policies or procedures, as well as
- (b) engaging in conduct, as solely determined by the University, which is clearly contrary to the character and responsibilities of a person occupying the position of **DIRECTOR OF ATHLETICS** or which negatively or adversely affects the reputation of the University or McNeese State Athletics in any way.

11.0 Fundraising

11.1 All fundraising activities by DIRECTOR must be coordinated with the VICE PRESIDENT to ensure that such activities are in line with the mission of the department and in compliance with University policies.

12.0 Severability

12.1 If any provision of the Contract shall be deemed invalid or unenforceable, either in whole or in part, this Contract shall be deemed amended to delete or modify, as necessary, the offending provision or to alter the bounds thereof in order to render it valid and enforceable.

13.0 Force Majeure

13.1 Neither party shall be considered in default performance of his or its obligations under this Contract if such performance is prevented or delayed by Force Majeure. "Force Majeure" shall be understood to be any cause which is beyond the reasonable control of the party affected and which is forthwith, by written notice within thirty (30) days from any event claimed by the party affected, including but not limited to war, hostilities, revolution, civil commotion, strike, lockout, epidemic, pandemic, accident, fire, wind or flood or any requirements of law, or an act of God.

14.0 Previous Agreements

14.1 This employment contract shall supersede and replace any and all previous employment contracts that may have been entered between the parties to this agreement.

IN WITNESS WHEREOF, the parties have executed this act in the presence of the undersigned competent witness.

WITNESSES:

Deb Kingrey
Deb Kingrey
Deb Kingrey

[Signature] Date 7/1/21
Heath Schroyer, Director of Athletics
McNeese State University
[Signature] Date 7/1/21
Dr. Wade Rouse, Executive Vice President
McNeese Foundation
[Signature] Date 7-1-21
Dr. Daryl V. Burckel, President
McNeese State University

Approved by the Board of Supervisors of the University of Louisiana System at its meeting on the _____ day of

_____, 20_____.

SECRETARY – Board of Supervisors

**BOARD OF SUPERVISORS FOR THE
UNIVERSITY OF LOUISIANA SYSTEM**

ATHLETIC COMMITTEE

August 26, 2021

Item H.10. **McNeese State University's** request for approval of a contract with Mr. Justin Hill, Head Baseball Coach, effective July 1, 2021.

EXECUTIVE SUMMARY

Under this agreement, through June 30, 2024, Coach will earn \$100,000 annually. The University may permit additional (non-recurring) supplemental pay to COACH for specific and extraordinary achievement in accordance and as stipulated by the University policy titled Bonuses for Specific and Extraordinary Achievement and as allowed by NCAA Division I bylaw 11.3.2.3.

During the term, Coach shall have the opportunity to earn Bonus Compensation paid to the Coach through the University's normal payroll process. The Foundation is also responsible for increased related benefit payments associated with the supplement.

Baseball Incentives:

- \$1,000 – Coach of the Year
- \$1,000 – Top 3 finish in Conference Regular Season
- \$1,500 – Regular Season Championship
- \$1,000 – Conference Tournament Championship Game Appearance
- \$3,000 – Conference Tournament Championship
- \$1,000 – Each NCAA Tournament Win
- \$10,000 – NCAA Regional Championship
- \$10,000 – NCAA Super Regional Championship

Academic Incentives:

- \$1,000 – 985 or higher single year APR

In the event the University terminates the contract, without cause, University shall pay to Coach an amount equal to all remaining compensation including, but not limited to, Base Salary (including the University Foundation Premium) and Benefits that would have been due to Coach under this agreement had Coach remained employed by University from the date of termination through the end of the term. The parties agree that any amounts due beyond the current fiscal year shall be solely funded by the McNeese State University Foundation athletic related accounts.

RECOMMENDATION

It is recommended that the following resolution be adopted:

NOW, THEREFORE, BE IT RESOLVED, that the Board of Supervisors for the University of Louisiana System hereby approves McNeese State University's request for approval of a contract with Mr. Justin Hill, Head Baseball Coach, effective July 1, 2021.



August 5, 2021

H.10.

Dr. James B. Henderson, President
University of Louisiana System
1201 North Third Street
Suite 7-300
Baton Rouge, LA 70802

Dear Dr. Henderson:

McNeese State University requests approval of the contractual agreement with Mr. Justin Hill, Head Baseball Coach effective July 1, 2021.

Please place this item on the ULS Board of Supervisors' agenda for consideration and approval at the August 26, 2021 meeting.

Thank you for your attention in this matter.

Sincerely,

Dr. Daryl V. Burckel
President

Attachments

McNEESE STATE UNIVERSITY

HEAD BASEBALL COACH CONTRACT OF EMPLOYMENT

STATE OF LOUISIANA

PARISH OF CALCASIEU

This contract is made and entered into between McNeese State University through its President, Dr. Daryl V. Burckel, McNeese State University Foundation represented by Dr. Wade Rousse, and **JUSTIN HILL** (hereinafter referred to as "COACH"). This agreement is subject to the approval of the Board of Supervisors of the University of Louisiana System, the management board for McNeese State University (the "Board"). Therefore, the terms and conditions set forth in this agreement should not be considered a valid contract until approval is provided by the Board.

1.0 Employment

- 1.1 McNeese State University (the "University") does hereby employ COACH as **Head Baseball Coach** and COACH does hereby accept employment and agrees to perform all of the services pertaining to **Baseball** which are required of COACH, as well as, other services as may be contemplated hereunder, all as prescribed by the University through its President and Athletics Director.
- 1.2 COACH shall be responsible, and shall report, directly to the University's Director of Athletics (the "Director") and shall confer with the Director or the Director's designee on all administrative and technical matters. COACH shall also be under the general supervision of McNeese State University's President.
- 1.3 COACH shall manage and supervise the team and shall perform such other duties in McNeese State University's athletic program as the Director may assign.
- 1.4 COACH agrees to represent McNeese State University positively in public and private forums and shall not engage in conduct that reflects adversely on McNeese State University or its athletic programs.

2.0 Term

- 2.1 The term of this contract is for a fixed period of thirty-six (36) months, commencing on the **1st day of July 2021**, and terminating without further notice to COACH on the **30th day of June 2024**, with the option of one (1) additional one (1) year extension, without re-negotiation, conditioned upon both the Coach, and the University agreeing in writing to either option to extend. The parties will mutually agree as to whether to exercise the option for the contract year beginning on July 1, 2024 and ending on June 30, 2025 no later than August 1, 2024.
- 2.2 After June 30, 2025, this contract is renewable solely upon an offer from McNeese State University and an acceptance by COACH, both of which must be in writing, signed by the parties, and approved by the Board. This contract in no way grants COACH a claim to tenure in employment, nor shall COACH'S service pursuant to this contract count in any way toward tenure at McNeese State University.
- 2.3 This contract may be amended or extended at any time during the period of this contract by mutual agreement of all parties.

3.0 Compensation

- 3.1 In consideration of COACH'S services and satisfactory performance and subject to section 2.1 together with all the provisions of this agreement, McNeese State University shall pay COACH a base annual (12-month) salary in the amounts below, payable on a monthly basis.
 1. July 1, 2021 to June 30, 2022 -- \$100,000
 2. July 1, 2022 to June 30, 2023 -- \$100,000
 3. July 1, 2023 to June 30, 2024 -- \$100,000
 4. July 1, 2024 to June 30, 2025 -- \$100,000
- 3.2 The University does not guarantee amounts due under this contract beyond the current year of performance. Should the contract be terminated for any reason, amounts due shall be determined in accordance with section 13 of this contract.
- 3.3 The University may permit additional (non-recurring) supplemental pay to COACH for specific and extraordinary achievement in accordance and as stipulated by the University policy entitled Bonuses for Specific and Extraordinary Achievement and as allowed by NCAA Division I bylaw 11.3.2.3.
- 3.4 In this appointment, in accordance with ULS Policy Number FS.111.XXI.-1, COACH will not accrue Compensatory Leave and COACH will be exempt from taking leave when the University is officially closed at holiday breaks.

- 3.5 COACH may be eligible for cost of living or merit pay increases in addition to the stated base salary. COACH is also subject to pay adjustment according to economic circumstances that affect all employees in the unclassified state service.
- 3.6 The above annual salary in 3.1 shall be comprised of a McNeese State University base salary amount of **\$88,400** the remaining will be paid from the McNeese Foundation. The funds shall be transferred from the Foundation to the University and paid to the COACH through the University's normal payroll process. The Foundation is also responsible for increased related benefit payments associated with the supplement.
- 3.7 During the Term, COACH shall have the opportunity to earn Bonus Compensation paid to the COACH through the University's normal payroll process. The Foundation is also responsible for increased related benefit payments associated with the supplement.

Baseball Incentives:

- \$1,000 – Coach of the Year
- \$1,000 – Top 3 finish in Conference Regular Season
- \$1,500 – Regular Season Championship
- \$1,000 – Conference Tournament Championship Game Appearance
- \$3,000 – Conference Tournament Championship
- \$1,000 – Each NCAA Tournament Win
- \$10,000 – NCAA Regional Championship
- \$10,000 – NCAA Super Regional Championship

Academic Incentives:

- \$1,000 – 985 or higher single year APR

All Bonus Compensation for **Baseball** Incentives shall be paid on the last University payroll date of June, in the same calendar year following the events for which the Bonus Compensation for **Baseball** Incentives is earned.

All Bonus Compensation for Academic Incentives shall be paid on the last University payroll date of June of the following Calendar year.

4.0 Contracts for Broadcast and/or Telecast

- 4.1 COACH may host a radio or television show to promote the McNeese State University **Baseball** Team, with approval from the Athletic Director and Sport Supervisor.
- 4.2 It is specifically agreed that in the filming or producing of such shows, COACH acts for himself/herself in his/her private capacity and not as an agent or employee of the University and that this contract constitutes merely a license to use the property and facilities subject to the conditions hereafter stated:
- (a) The COACH agrees to pay the University all out-of-pocket costs incurred by the University in the filming or production of the show.
 - (b) Long distance phone calls, University supplies, printing, postage, University vehicles, etc., will be utilized on a complete University cost recovery basis.
 - (c) Complete records will be maintained regarding income and expenditures associated with said show and available for verification by University auditors.
 - (d) The COACH agrees to protect, indemnify and save harmless the University from and against any and all expenses, damages, claims, suits, actions, judgments, and costs whatsoever, including reasonable attorney's fees, arising out of or in any way connected with any claim or action for property loss, personal injury or death resulting from said show.
 - (e) The COACH is an independent contractor during said radio or television activities and, as a University employee, will undertake to observe all general rules and policies of the University. This paragraph is designated to assure that nothing be done which is inconsistent with the maintenance of an educational campus environment and the character of a State institution which makes its facilities open to persons without discrimination.
 - (f) The Director of Intercollegiate Athletics will be the administrative officer of the University who will be advised by the COACH of any problems or questions which may arise out of the radio or television show.
- 4.3 Any compensation received by COACH for the participation in the radio or television show shall be solely for the benefit of COACH and not the University, except for reimbursements as otherwise provided for herein and in accordance with University policy relating to camps or clinics conducted by Athletic Department personnel.

5.0 Camps and Clinics

- 5.1 COACH may operate a camp for the teaching of athletic pursuits on the University property to the end of better utilization of the facilities and with suitable compensation paid to the University for the use of such facilities. The use of University facilities will be determined by the availability of those facilities as established by the University. COACH must adhere to the Policy for Use of Campus Facilities.
- 5.2 It is specifically agreed that in the operation of such camps, COACH acts for himself/herself in his/her private capacity and not as an agent or employee of the University and that this contract constitutes merely a license to use the property and facilities subject to the conditions hereafter stated:
 - (a) Special set-ups or changes in original set-up of facilities will be taken care of by the COACH with no cost to the University.
 - (b) The COACH agrees to pay the University all out-of-pocket costs incurred by the University in making the facilities available for the camps.
 - (c) The COACH agrees to secure a policy of insurance in a company approved by the University's Risk Management Office under which the Board of Supervisors of the University of Louisiana System, the University, its agents and servants, are named as the insured (or as an additional insured) which provides:
 1. Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the Labor Code of the State of Louisiana and Employers Liability coverage if COACH hires any employees to work at such camps or clinics;
 2. Comprehensive General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury, and property damage;
 3. Other Insurance Requirements: provided in the Policy for Use of Campus Facilities.
 - (d) Annual leave must be requested to cover the dates of the camp operation for all University personnel involved.
 - (e) Complete records will be maintained regarding income and expenditures associated with said camp and available for verification by University auditors.
 - (f) The COACH agrees to protect, indemnify and save harmless the University from and against any and all expenses, damages, claims, suits, actions, judgments, and costs whatsoever, including reasonable attorney's fees, arising out of or in any way connected with any claim or action for property loss, personal injury or death during the operation of said camp activities.
 - (g) The COACH is an independent contractor during said camp activities and, as such, is licensed to use certain facilities of the University. The COACH, as a University employee, will undertake to observe and require campers and its staff to conform to the general rules applicable to the use of University facilities. This paragraph is designated to assure that nothing be done which is inconsistent with the maintenance of an educational campus environment and the character of a State institution which makes its facilities open to persons without discrimination.
 - (h) The Director of Intercollegiate Athletics will be the administrative officer of the University who will be advised by the COACH of any problems or questions which may arise out of the operation of summer camps.

6.0 Courtesy / Leased Vehicle Benefit

- 6.1 The COACH may receive a courtesy/leased vehicle if an arrangement can be made through a local dealership. The benefit shall not be considered earned income for the purpose of computation of retirement benefits, and COACH shall be responsible for all applicable taxes. The University has no obligation to furnish a vehicle to COACH. The arrangements for a vehicle may be made by either the Athletics Director or COACH.
- 6.2 Insurance on any courtesy / leased vehicle must be paid for by the dealership, the COACH, or some other arrangement agreed to by the Athletics Director.
- 6.3 The COACH may be reimbursed for miles driving the courtesy / leased vehicle on school-sponsored business as authorized and approved following the University of Louisiana System Athletic Travel Policy No. IA-V.(2a).

7.0 Employee Benefits

- 7.1 The COACH shall participate in the mandatory employee benefit plans and be eligible for optional employee plans as would any other University unclassified employee. Such benefit will be based upon COACH's base annual salary as provided by University.

8.0 Outside Income and/or Benefits

- 8.1 With approval from the University President and in accordance with University and Board policies, COACH shall be authorized to earn other revenue while employed by the University, but such activities are independent of his/her University employment, and the University shall have no responsibility for any claims arising there from. COACH shall be entitled to retain revenue generated from his/her operation of **Baseball** camps and/or **Baseball** clinics in accordance with University policy relating to camps or clinics conducted by Athletic Department personnel. All outside income will be subject to approval in accordance with the Board of Supervisors for the University of Louisiana System policies (Adopted 2/24/95). Coach shall report annually in writing to President all athletically-related income, revenue, and/or benefits Coach receives from sources outside University, and Coach shall abide by all NCAA regulations regarding outside compensation. Examples of outside income include, without limitation, income or benefits from (1) Endorsement or consultation contracts with apparel companies, equipment manufacturers, or television or radio programs; (2) ownership, control, or management of a foundation, organization, or other entity; and

(3) participation in athletic camps outside of those offered by the University. All outside compensation must also comply with the Louisiana Code of Governmental Ethics.

- 8.2 Notwithstanding the above or anything else herein to the contrary, if COACH receives athletically related income or benefits totaling more than \$600 per year from any source or combination of sources other than Employer, COACH must report all such income or benefits to the PRESIDENT in writing at least annually. Examples include, without limitation, income or benefits from (1) endorsement or consultation contracts with apparel companies, equipment manufacturers, or television or radio programs; (2) ownership, control, or management of a foundation, organization, or other entity; and (3) participation in athletic camps outside of those offered by Employer (see Bylaw 11.2.2.).

9.0 Apparel, Equipment Endorsements

- 9.1 The University shall pay to COACH any funds for which he/she is responsible in obtaining for the University through his/her endorsements of show, apparel, or equipment manufacturers. The benefits shall not be considered earned income for the purpose of computation of retirement benefits, and COACH shall be responsible for all applicable taxes.

10.0 Compliance with NCAA and Conference Rules and Regulations, and University Policies and Procedures

- 10.1 COACH shall abide by the NCAA and Conference rules and regulations and the policies and procedures of the University. Pursuant to NCAA Bylaw 11.2.1, Coach understands that Coach has an affirmative obligation to cooperate fully in the infractions process, including the investigation and adjudication of a case (see NCAA Bylaw 19.2.3). If found in violation of NCAA regulations, COACH shall be subject to disciplinary or corrective action as set forth in the NCAA enforcement procedures (NCAA Constitution 11.2.1). If found in violation of Conference rules and regulations, or University policies and procedures, COACH shall be subject to disciplinary or corrective action as set forth by Conference rules and regulations or University policies and procedures. COACH may be suspended for a period of time, without pay, or the employment of COACH may be terminated if COACH is found to be involved in deliberate and serious, or repetitive, violations of NCAA regulations (NCAA Constitution 11.2.1), Conference rules and regulations, or University policies and procedures.
- 10.2 COACH shall also abide by the State of Louisiana Code of Government Ethics, University Policy and Procedures, and the policies and procedures of the University of Louisiana System. In public appearances he/she shall at all times conduct himself/herself in a manner that befits a University official and shall always attempt to create goodwill and a good image for the University.
- 10.3 COACH shall promote an atmosphere for compliance within the program supervised by the COACH and shall monitor the activities regarding compliance of all assistant coaches and other administrators involved with the program who report directly or indirectly to the COACH (NCAA Division I Bylaw 11.1.2.1 Responsibility of Head Coach).
- 10.4 COACH and Employer acknowledge and agree that (1) COACH has an affirmative obligation to cooperate fully in the NCAA infractions process, including the investigation and adjudication of a case (see NCAA Bylaw 19.2.3 for examples of full cooperation), and (2) an individual who is found in violation of NCAA regulations shall be subject to disciplinary or corrective action as set forth in the provisions of the NCAA infractions process (see NCAA Bylaw 19), including suspension without pay or termination of employment

11.0 Compliance with Local, State and Federal Laws

- 11.1 COACH shall abide by the laws of the local, state and federal governments. COACH may be suspended for a period of time, without pay, or the employment of COACH may be terminated if COACH is found to be involved in violation or gross disregard of local, state or federal laws.

12.0 Baseball Staff and Scheduling

- 12.1 Adhering to the University hiring policies, COACH shall have the authority to select associate / assistant coaches upon approval by the Athletics Director, the President, and the Board of Supervisors for the University of Louisiana System. Associate / assistant coaches shall be appointed as University unclassified personnel.
- 12.2 All scheduling must be reviewed and have final approval from the Director of Athletics and/or Sport Administrator.

13.0 Termination

- 13.1 Either party may terminate this agreement without just cause prior to the expiration of its terms by giving five (5) days written notice to the other party. Prior to termination of COACH, the University will obtain approval from the President of the University of Louisiana System.
- 13.2 COACH may be terminated by the Athletic Director at any time for violation or gross disregard of state or federal laws (excluding minor offenses or those punishable by citation), or deliberate and serious violations of NCAA, conference, or university rules, regulations, policies or procedures, or engaging in conduct, which is clearly contrary to the character and responsibilities of a person occupying the position of **Head Baseball Coach** or which substantially negatively or substantially adversely affects the reputation of the University or McNeese State University athletics or

for any violation of this contract; provided, however, prior to termination, University shall meet with COACH to notify him of alleged offending behavior under this clause, following which COACH will have fourteen (14) days to cure alleged offending behavior or violation. University shall provide a good faith opportunity for COACH to cure alleged behavior or violation. In the event of such termination, COACH will receive thirty (30) calendar days notice of termination or thirty (30) calendar day's regular pay in lieu of such notice. All compensation, including salary, benefits and other remuneration incidental to employment, cease upon termination. The judgment as to whether the conduct of COACH constitutes cause under this provision shall not be exercised arbitrarily, capriciously or in a discriminatory manner by the University. No damages or other amounts than are specified in this section 14.2 shall be due if termination is for just cause.

13.3 The University may at any time, and in its sole discretion, terminate the employment of COACH for any reason.

(a) In the event the University terminates the contract, without cause, University shall pay to Coach, within ninety (90) days and on a date mutually agreed upon by University and COACH, an amount equal to all remaining compensation, including, but not limited to Base Salary (including the University Foundation Premium) and Benefits that would have been due to COACH under this Agreement had COACH remained employed by University from the date of termination through the end of the Term (excluding any unexercised option periods). Any lump sum payments shall be paid in lump sum on the date the payment would have been due and payable had the COACH remained employed until the expiration of the Term. In addition, University will pay to COACH, within thirty (30) days in which University exercises its right to Terminate this Agreement without cause, any compensation or Bonus Compensation actually earned and accrued but unpaid, as well as all expenses incurred in the performance of his duties but not yet reimbursed or otherwise received by the date of the termination, less all applicable taxes and other withholdings. The parties agree that any amounts due beyond the current fiscal year shall be funded solely by the McNeese State University Foundation athletic related accounts.

13.4 In the event COACH terminates this Contract without cause to accept a position as a head or assistant **Baseball** coach at a different University or Community College or other educational organization or any professional athletic organization, COACH or third party shall pay University the following amounts which shall be deemed as agreed upon liquidated damages owed to McNeese State University because the costs the University will incur to search for and hire a new **Baseball** head coach are difficult to determine. COACH shall have no further liability under this Agreement upon University's full reimbursement by a third party for the liquidated damages. Such liquidated damages shall be received by University within 90 days of termination. The amount of such reimbursements will be calculated as follows:

- If COACH terminates the contract at any point in the term, there will be no liquidated or other similar damages owed by Coach or any other person or entity.

13.5 COACH shall promptly report to the University's Title IX Coordinator or Deputy Title IX Coordinator any Known Violation(s) of the University or the University of Louisiana System's Sexual Misconduct Policy (including, but not limited to sexual harassment, sexual assault, sexual exploitation, domestic violence and stalking) that involve any student, faculty, or staff or that is in connection with a University sponsored activity or event. Any emergency situation shall be immediately reported to 911 and/or law enforcement. For purposes of this paragraph, a "Known Violation" shall mean a violation or an allegation of a violation of Title IX and/or the University's or the University of Louisiana System's Sexual Misconduct Policy that COACH is aware of or has reasonable cause to believe is taking place or may have taken place. The University may terminate this Agreement for cause pursuant to the for-cause-termination provisions of this Agreement for any determined violation by COACH for failure to report a Known Violation of: Title IX of the Education Amendments of 1972; the University's Sexual Misconduct Policy; or the University of Louisiana System's Sexual Misconduct Policy.

13.6 Should COACH's contract be terminated for just cause, the University shall not be liable for any payments or benefits specified in this contract past the effective date of termination. Just cause for termination shall include, but not be limited to:

- (a) violation or gross disregard of local, state, or federal laws, NCAA or Conference rules or regulations, or University policies or procedures, as well as
- (b) engaging in conduct, as solely determined by the University, which is clearly contrary to the character and responsibilities of a person occupying the position of **Head Baseball Coach** or which negatively or adversely affects the reputation of the University or McNeese State Athletics in any way.

14.0 Fundraising

14.1 All fundraising activities by COACH must be pre-approved by the Director, or his designee, and coordinated with the Vice President for University Advancement to ensure that such activities are in line with the mission of the department and in compliance with University policies.

15.0 Severability

- 15.1 If any provision of the Contract shall be deemed invalid or unenforceable, either in whole or in part, this Contract shall be deemed amended to delete or modify, as necessary, the offending provision or to alter the bounds thereof in order to render it valid and enforceable.

16.0 Force Majeure

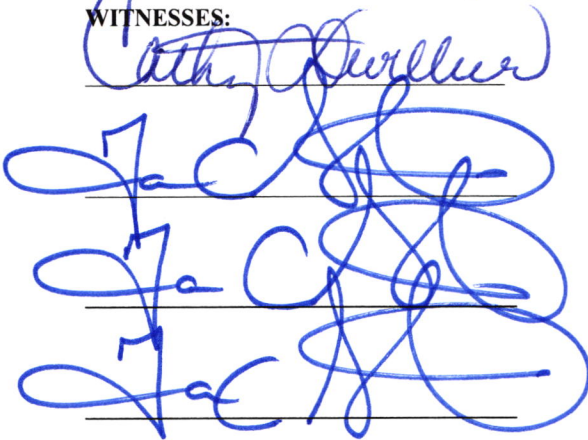
- 16.1 Neither party shall be considered in default performance of his or its obligations under this Contract if such performance is prevented or delayed by Force Majeure. "Force Majeure" shall be understood to be any cause which is beyond the reasonable control of the party affected and which is forthwith, by notice from the party affected, brought to the attention of the other party, including but not limited to war, hostilities, revolution, civil commotion, strike, lockout, epidemic, accident, fire, wind or flood or any requirements of law, or an act of God.

17.0 Previous Agreements

- 17.1 This employment contract shall supersede and replace any and all previous employment contracts that may have been entered between the parties to this agreement.

IN WITNESS WHEREOF, the parties have executed this act in the presence of the undersigned competent witness.

WITNESSES:

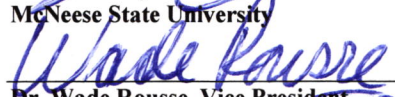


 Date 7/12/21

Justin Hill, Head Baseball Coach
McNeese State University

 Date 7/12/21

Heath Schroyer, Director of Athletics
McNeese State University

 Date 7/12/21

Dr. Wade Rousse, Vice President
McNeese Foundation

 Date 7-12-21

Dr. Daryl V. Burckel, President
McNeese State University

Approved by the Board of Supervisors of the University of Louisiana System at its meeting on the _____ day of

_____, 20_____.

SECRETARY – Board of Supervisors

**BOARD OF SUPERVISORS FOR THE
UNIVERSITY OF LOUISIANA SYSTEM**

ATHLETIC COMMITTEE

August 26, 2021

Item H.11. **Nicholls State University's** request for approval of a contract with Mr. Mike Silva, Head Baseball Coach, effective July 22, 2021.

EXECUTIVE SUMMARY

Under the proposed agreement, effective through July 21, 2026. Coach's annual salary is \$100,000 per year. The base salary funded by the University is \$80,000 and \$20,000 funded by the Colonel Athletic Association (CAA). During the time of employment, Coach will have the opportunity to receive the following earned salary supplements/incentives, funded by the CAA:

- a) \$3,000 – Regular Season Conference Championship
- b) \$5,000 – Conference Men's Baseball Tournament Championship or NCAA Regional Bid
- c) \$750 – Per victory in the NCAA Regional Tournament
- d) \$5,000 – Win NCAA Regional Tournament and advance to Super Regional Tournament
- e) \$7,500 – Win NCAA Super Regional Tournament and advance to College World Series
- f) \$15,000 – Win College World Series
- g) \$2,500 – Conference Coach of the Year
- h) \$5,000 – National Coach of the Year
- i) \$1,500 – 35 wins or more in a season
- j) \$750 – Any contract year in which the men's baseball team's cumulative GPA is 3.0 or greater
- k) \$1,000 – Any contract year in which the men's baseball team's APR (academic performance rate) is 960 or above
- l) \$1,000 – Any contract in year in which the men's baseball team's GSR (graduation success rate) is 85% or above

In the event University terminates the contract without cause, Coach is entitled to \$100,000 if termination occurs in any of the first four years, and if in year five, the remainder of the base salary. Amounts due for the year which come due during the current fiscal year ending June 30, shall be paid by the University. The remaining amounts due which come due beyond the current fiscal year, shall be funded solely by the Colonel Athletic Association. If Coach terminates agreement without cause to become employed as a baseball coach or staff member of any rank or standing with another institution, Coach would be liable to the University for liquidated damages of \$25,000.

RECOMMENDATION

It is recommended that the following resolution be adopted:

NOW, THEREFORE, BE IT RESOLVED, that the Board of Supervisors for the University of Louisiana System hereby approves Nicholls State University's request for approval of a contract with Mr. Mike Silva, Head Baseball Coach, effective July 22, 2021.



Nicholls State University

Office of the President

P.O. Box 2001 | Thibodaux, LA 70310 | 985.448.4003 | 985.448.4920 [F]

H.11.

August 5, 2021

Via Electronic Transmittal Only

Dr. Jim Henderson
University of Louisiana System President
1201 North Third Street, Suite 7-300
Baton Rouge, LA 70802

Dear Dr. Henderson:

Nicholls State University requests consideration and approval of the following to be placed on the agenda for the August 26, 2021 meeting of the Board of Supervisors for the University of Louisiana System:

Appoint Michael Silva-Head Baseball Coach.

Effective date of appointment is July 22, 2021 at an annual salary of \$80,000.00. Mr. Silva's resume is attached for your reference.

Thank you for your assistance in this matter.

Sincerely,

Jay Clune
President

JC/apf

Enclosures

- c: Dr. Sue Westbrook, Provost/Vice President for Academic Affairs, Institutional Effectiveness & Enrollment Services
Mr. Terry Braud, Vice President for Finance & Administration
Mr. Jonathan Terrell, Athletic Director
Dr. Michele Caruso, Vice President for Student Affairs
Dr. Todd Keller, Vice Provost & SACSCOC Coordinator
Mr. Steven Kenney, Assistant Vice President for Human Resources, CDIO & Title IX Coordinator
Ms. Paulette Mayon, Internal Auditor
Ms. Claire Bourgeois, Faculty Senate President
Ms. Renee Hicks, Assistant Vice President of Institutional Effectiveness Access & Success
Ms. Monique Crochet, Executive Director of External Affairs

MICHAEL SILVA

(501) 351-5264 • mike6204@hotmail.com

HIGHLIGHTS

- Four years of collegiate head coaching experience with a 139-82 (.629) overall record.
- Eight years of coaching experience at the NCAA Division I level in the WAC, Sun Belt, and Conference USA.
- 2021 Season at Louisiana Tech
 - Hosted NCAA Regional as #1 seed
 - 42-20 (.677) overall record, 22-8 (.733) Conference USA record
 - Ranked in the Top 25 of National Rankings throughout the season (USA Today Coaches Poll, D1baseball.com, and Baseball America)
- Coached 33 MLB draft picks and four All-Americans.
- Experienced pitching, hitting, infield, outfield, and catching coach.

COACHING EXPERIENCE

LOUISIANA TECH UNIVERSITY, Ruston, LA

Associate Head Baseball Coach/Pitching Coach

July 2018 – Present

- 87-50 (.635) overall record, 39-21 (.650) Conference USA record
- 2021 Season
 - 42-20 (.677) overall record, 22-8 (.733) Conference USA record
 - Hosted NCAA Regional as #1 seed
 - Ranked in the Top 25 of National Rankings throughout the season (USA Today Coaches Poll, D1baseball.com, and Baseball America)
- 2020 Season
 - Led Conference USA in ERA (3.03), WHIP (1.15) and hits per nine innings (6.78)
- 2019 season
 - Led Conference USA in strikeout-to-walk ratio (2.58K/BB)
 - 2nd in Conference USA in ERA and walks per nine innings (8.5K/9)
- Duties: Pitching Coach; responsible for recruiting nationally, organizing and planning practices, monitoring student academic progress, all-season conditioning, maintaining scouting reports, and ensuring NCAA scholarship compliance. Handle administrative duties such as team travel accommodations

UNIVERSITY OF ARKANSAS LITTLE ROCK, Little Rock, AR

Assistant Baseball Coach/Pitching Coach/Recruiting Coordinator

August 2016 – July 2018

- Lowered team ERA each season and set program record for strikeouts each season
- 2018 Season
 - 2nd in Sun Belt strikeouts (469) and strikeouts per nine innings (8.5K/9)
- 2017 Season
 - 2nd in Sun Belt in opponent batting average (.257) and 3rd in strikeouts per nine innings (8.5K/9)
- 2017 Recruiting Class was nationally recognized by *Baseball America*
- Duties: Pitching Coach and Recruiting Coordinator, responsible for all-season conditioning, recruiting nationally, organizing and planning practices, monitoring student academic progress, and ensuring NCAA scholarship compliance

SAN DIEGO PADRES, San Diego, CA

Area Scout

November 2015 – July 2016

- Duties: Actively seek and evaluate high school and college Major League Baseball prospects throughout Oklahoma, Arkansas, Kansas, Nebraska, South Dakota and North Dakota; analyze and determine player projectability and prepare various reports and evaluations.

TEXAS STATE UNIVERSITY, San Marcos, TX

Assistant Baseball Coach

July 2012 – November 2015

- Duties: Coached hitters and catchers; ensure NCAA scholarship compliance; recruit nationally; organize and plan practices; schedule games; monitor student academic progress

GALVESTON COLLEGE, Galveston, TX

Head Baseball Coach

August 2011 – June 2012

- Finished with programs first winning record in 13 years
- Ranked Top 15 in national polls
- Duties: Responsible for hitting, pitching, all defense instruction; recruiting internationally; ensuring NJCAA scholarship compliance; fundraising; all seasons conditioning; practice planning; field maintenance; monitoring student academic progress; budgeting; organizing and running camps; teaching 18 hours physical education courses per semester.

CLARENDON COLLEGE, Clarendon, TX

Head Baseball Coach

May 2008 – July 2011

Assistant Baseball Coach

January 2008 – April 2008; February 2004 – June 2005

- 186-90 (.674) overall record
- Reached postseason every year
- Ranked Top 15 in national NJCAA polls in 2010 and 2004
- Helped develop Second Team All-American and Conference Player of the Year in 2010
- Duties: Responsible for hitting, pitching, all defense instruction; recruiting internationally; ensuring NJCAA scholarship compliance; fundraising; all seasons conditioning; practice planning; field maintenance; monitoring student academic progress; budgeting; teaching 18 hours physical education courses per semester.

BETHANY COLLEGE, Lindsborg, KS

Assistant Baseball Coach

July 2005 – July 2006

- 40-14 (.741) overall record, 2nd highest win total in school history.
- Ranked Top 20 in national NAIA polls
- Duties: Responsible for hitting, recruiting internationally; all seasons conditioning; practice planning; field maintenance.

EDUCATION

EAST CENTRAL UNIVERSITY, Ada, OK

Master of Education, Sports Administration Emphasis

2009

BELLEVUE UNIVERSITY, Bellevue, NE

Bachelor of Arts, Leadership

2006

- Played college baseball at Northwestern Oklahoma State University (2001-2003) and Community College of Rhode Island (1999-2000).
- Played independent professional baseball (2003-2004).

**CONTRACT OF EMPLOYMENT
HEAD MEN'S BASEBALL COACH**

STATE OF LOUISIANA

PARISH OF LAFOURCHE

This agreement is made and entered into on the 22nd day of July 2021, between Nicholls State University through its President, Dr. John Clune, Jr., the Colonel Athletic Association (hereinafter "CAA") through its Executive Director, Mr. Jonathan Terrell, and Mr. Mike Silva (hereinafter referred to as "COACH"). This agreement is subject to the approval of the Board of Supervisors of the University of Louisiana System, the management board for Nicholls State University, and therefore the terms and conditions set forth in this agreement should not be considered a valid contract until approval is provided by the Board.

1.0 Employment

1.1 Nicholls State University (the "University") does hereby employ COACH as head men's baseball coach and COACH does hereby accept employment and agrees to perform all of the services pertaining to baseball (athletic program), which are required of COACH, as well as, other services as may be contemplated hereunder, all as prescribed by the University through its President and Athletics Director.

1.2 COACH shall be responsible, and shall report, directly to Nicholls State University's Director of Athletics (the "Director") and shall confer with the Director or the Director's designee on all administrative and technical matters. COACH shall also be under the general supervision of the Nicholls State University President.

- 1.3 COACH shall manage and supervise the team and shall perform such other duties related to the men's baseball program and Nicholls State University's athletic program as the Director may reasonably assign (but in no event shall such other duties constitute a reassignment to another position at Nicholls State University).
- 1.4 COACH agrees to represent Nicholls State University positively in public and private forums. In public appearances COACH shall conduct himself in a manner that befits a University official and shall attempt to create goodwill and a good image for the University. COACH shall not engage in conduct that reflects adversely on the University or its athletic programs.
- 1.5 Due to the nature of the position, the Board of Supervisors prohibits the earning of compensatory time. In lieu of compensatory time, COACH will be exempted from having to take leave when the university is officially closed.

2.0 Term

- 2.1 The "Term" of this Agreement is for a fixed period commencing on the 22nd day of July 2021, and terminating without further notice to COACH on the 21st day of July 2026, unless extended under the terms of this Agreement.
- 2.2 This Agreement is renewable solely upon an offer from the Nicholls State University president and an acceptance by COACH, both of which must be in writing, signed by the parties, and approved by the Board. This Agreement in no way grants COACH a claim to tenure in employment, nor shall COACH'S service pursuant to this Agreement count in any way toward tenure at Nicholls State University.
- 2.3 This Agreement may be amended or extended at any time during the Term of this Agreement by mutual signed agreement of both parties, and approved by the

Board. The parties agree that good faith negotiations related to contract renewal, including compensation, shall commence no later than May 30, 2024. If University and COACH do not come to an agreement on compensation or a contract renewal at that time, the parties will conduct good faith negotiations within thirty (30) days of the conclusion of the 2025 baseball season provided that University desires to offer COACH a new contract beyond July 2026. If the University does not desire to offer COACH a new contract beyond July 2026, then the liquidated provisions of Section 10.4 shall be rescinded for the remainder of the term of this Agreement past July 31, 2025. All other provisions of the Agreement shall remain in full force and effect until expiration of the Agreement.

3.0 Compensation

3.1 In consideration of COACH'S services and satisfactory performance of this agreement, the University shall pay COACH an annual base salary of One Hundred Thousand Dollars (\$100,000.00) per year for the Term of this agreement, on a bi-weekly basis, as well as all related benefits, subject to applicable taxes. COACH's annual base salary shall be funded as follows: the sum of Eighty Thousand Dollars (\$80,000.00) shall be funded directly by the University and the sum of Twenty Thousand Dollars (\$20,000.00) shall be funded by the Colonel Athletic Association (CAA) and paid through the University to COACH. It is understood and agreed that if at any time during the Term CAA fails to make its contribution towards COACH's salary as provided above, in no way shall that act relieve University from its obligation to compensate COACH an annual salary equal to One Hundred Thousand

(\$100,000.00) per year during a fiscal year, the initial fiscal year being prorated based on the start date of COACH's employment.

3.2 COACH will be eligible for annual cost of living or merit pay increases in addition to the stated base salary. The COACH also may be subject to pay adjustments according to economic circumstances that affect all employees of the University in the unclassified staff service.

3.3 The CAA will pay COACH a vehicle allowance of \$4,800 annually, in monthly installments of \$400 each month throughout the Term of this agreement. It is understood and agreed that if at any time during the Term CAA fails to make its contribution towards COACH's car allowance as provided above, in no way shall that act relieve University from its obligation to provide to COACH the car allowance set forth above.

3.4 The University does not guarantee amounts due under this contract beyond the current year of performance. Should the contract be terminated for any reason, amounts due shall be determined in accordance with Paragraph 10.

4.0 Incentive Compensation

4.1 During the Term of this Agreement, COACH will have the opportunity to receive the following earned salary supplements/incentives. These salary supplements / incentives are cumulative, unless otherwise stated, and shall be subject to all mandatory withholdings and are inclusive of employer matches for retirement and Medicare payments. The supplements shall be funded by the Colonel Athletic Association (CAA) and paid through University payroll. (it is understood and agreed that if at any time during the Term the CAA fails to fund

any earned incentives as set forth below, University agrees to fund any of said incentives)

- (a) \$3,000 – Regular Season Conference Championship
- (b) \$5,000 – Conference Men's Baseball Tournament Championship or NCAA Regional Bid
- (c) \$750 – Per victory in the NCAA Regional Tournament
- (d) \$5,000 – Win NCAA Regional Tournament and advance to Super Regional Tournament
- (e) \$7,500 – Win NCAA Super Regional Tournament and advance to College World Series
- (f) \$15,000 – Win College World Series
- (g) \$2,500 - Conference Coach of the Year
- (h) \$5,000 – National Coach of the Year
- (i) \$1,500 - 35 wins or more in a season
- (j) \$750 – Any contract year in which the men's baseball team's cumulative GPA is 3.0 or greater
- (k) \$1,000 – Any contract year in which the men's baseball team's APR (academic performance rate) is 960 or above
- (l) \$1,000 – Any contract in year in which the men's baseball team's GSR (graduation success rate) is 85% or above

4.2 Incentives for Head Coaches: COACH is eligible to participate and receive incentives in addition to and above the incentives in section 4.1 as outlined and according to the terms in the policy "Nicholls State University Athletics Incentives for Head Coaches" as long as said policy remains in existence and is active.

5.0 Camps and Clinics

5.1 COACH may operate camps for the teaching of athletic pursuits on the University property to the end of better utilization of the facilities and with suitable compensation paid to the University for the use of such facilities, but in no event shall said suitable compensation reward University a profit. The use of University facilities will be determined by the availability of those facilities as established by the University. Any monies earned during said camp or camps in excess of compensation paid to the University and all expenses related to the camp or camps shall be fully retained by COACH.

5.2 It is specifically agreed that in the operation of any private camp (LLC), COACH acts for himself in his private capacity and not as an agent or employee of the University and this agreement constitutes merely a license to use the property and facilities subject to the conditions hereafter stated:

- a) The COACH agrees to secure a policy of insurance in a company approved by the University's Risk Management Office under which the Board of Supervisors of the University of Louisiana System, the University, its agents and servants, are named as the insured (or as an additional insured) which provides:
 - A. Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the Labor Code of the State of Louisiana and Employers Liability coverage if COACH hires any employees to work at such camps or clinics.
 - B. Comprehensive General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage.
- b) Annual leave must be requested to cover the dates of the camp operation for all University personnel involved.
- c) Complete records will be maintained regarding income and expenditures associated with said camp and available for verification by University auditors.

- d) The COACH is an independent contractor during said camp activities and, as such, is licensed to use certain facilities of the University. The COACH, as a University employee, will undertake to observe and require campers and its staff to conform to the general rules applicable to the use of University facilities. This paragraph is designated to assure that nothing be done which is inconsistent with the maintenance of an education campus environment and the character of a State institution which makes facilities open to persons without discrimination.
- e) The Director of Intercollegiate Athletics will be the administrative officer of the University who will be advised by the COACH of any problems or questions which may arise out of the operation of summer camps.

6.0 Employee Benefits

- 6.1 COACH shall participate in the mandatory benefit plan and be eligible for optional employee plans as would any other University unclassified employee. Such benefit will be based upon COACH's base annual salary as provided by University.
- 6.2 For each Men's Baseball season, COACH shall be entitled to a total of twelve (12) tickets per home men's baseball game.

7.0 Outside Income-Subject to Compliance with Board Rules

- 7.1 The COACH shall be authorized to earn other revenue while employed by the University. Such activities are independent of his University employment and the University shall have no responsibility for any claims arising there from. COACH shall be entitled to retain revenue generated from his operation of baseball camps and/or baseball clinics in accordance with University policy relating to camps or clinics conducted by Athletic Department personnel and as noted in section 5.0. All outside employment and income will be subject to approval in accordance with the Board of Supervisors for the University of Louisiana System and University policies.

7.2 Notwithstanding the above or anything else herein to the contrary, if COACH receives athletically related income or benefits totaling more than \$600 per year from any source or combination of sources other than the University, COACH must report all such income or benefits to the University President in writing at least annually. Examples include, without limitation, income or benefits from (1) endorsement or consultation contracts with apparel companies, equipment manufacturers, or television or radio programs; (2) ownership, control, or management of a foundation, organization, or other entity; and (3) participation in athletic camps outside of those offered by the University.

8.0 Compliance with NCAA, Conference, University, System, and State Rules

8.1 In accordance with NCAA Constitution 11.2.1, COACH shall abide by the rules and regulations of the NCAA, Conference and University rules. If found in violation of NCAA regulations, COACH shall be subject to disciplinary or corrective action as set forth in the provisions of the NCAA infractions process, including suspension without pay or termination of employment for significant or repetitive violations; provided, however, COACH's employment may only be terminated under this Agreement if COACH is found, after the exhaustion of all appeals, to be in violation of a Level I or Level II violation as set forth more specifically below. If COACH is suspended without pay based on Section 8.1 and is found to have not committed a violation, then COACH will receive backpay for the entire period in which he was suspended without pay.

8.2 COACH bears the responsibility of using his best efforts to ensure that the men's baseball team maintains at least the minimum APR threshold of 930. Increasing APR scores is a product of recruiting academically ambitious student-athletes. It is the responsibility of COACH to ensure that student-athletes are maintaining

their eligibility. Academic achievement and student-athlete graduation are of the highest priority for student-athletes. If the minimum APR threshold is increased by the NCAA during the Term of this Agreement, this paragraph will be amended to reflect the same.

8.3 COACH shall also abide by the State of Louisiana Code of Government Ethics, University Policy and Regulations, and the policies and regulations of the University of Louisiana System. In public appearances he shall conduct himself in a manner that befits a University official and shall attempt to create goodwill and a positive image for the University.

8.4 COACH and University acknowledge and agree that (1) COACH has an affirmative obligation to cooperate fully in the NCAA infractions process, including the investigation and adjudication of a case (see NCAA Bylaw 19.2.3 for examples of full cooperation), and (2) an individual who is found in violation of NCAA regulations shall be subject to disciplinary or corrective action as set forth in the provisions of the NCAA infractions process (see NCAA Bylaw 19), including suspension without pay or termination of employment; provided, however, COACH's employment may only be terminated under this Agreement if COACH is found, after the exhaustion of all appeals, to be in violation of a Level I or Level II violation as set forth more specifically below. If COACH is suspended without pay based on Section 8.4 and is found to have not committed a violation, then COACH will receive backpay for the entire period in which he was suspended without pay.

9.0 Men's Baseball Staff

9.1 COACH shall have the authority to select unclassified men's baseball personnel upon authorization by the Athletic Director and approval by the Board of

Supervisors for the University of Louisiana System following the University hiring policies.

9.2 COACH is expected to supervise the men's baseball staff in compliance with NCAA, Conference and University rules and regulations. Further as described in NCAA Constitution 11.1.1.1, Responsibility of Head Coach., COACH is responsible for the actions of all institutional staff members who report, directly or indirectly, to the COACH, and it is COACH's responsibility to promote an atmosphere of compliance within the baseball program and to monitor the activities regarding compliance of all assistant coaches and other administrators involved with the program.

9.3 During the Term of this agreement, University shall employ a minimum of two full-time assistant baseball coaches. The aggregate salary pool for the two full-time assistant baseball coaches shall be a minimum of Seventy-Seven Thousand Four Hundred Fifty-Six Dollars (\$77,456.00). Such compensation shall be allocated to the staff by COACH's discretion and subject to approval of the University President and Athletic Director whose approval shall not be unreasonably withheld. COACH and University will work in good faith to establish a reasonable incentive bonus pool for staff to be allocated by COACH's discretion and subject to approval of the University President and Athletic Director whose approval shall not be unreasonably withheld. The University shall pay Sixty Thousand Two Hundred Seventy-Six Dollars (\$60,276.00) of the salary pool amount. The Colonel Athletic Association shall pay Seventeen Thousand One Hundred Eighty Dollars (\$17,180.00) of the salary pool amount. It is understood and agreed that if at any time during the Term CAA fails to make its contribution towards COACH's salary pool as provided above, in no way shall that act relieve University from its obligation

to provide COACH that portion of the salary pool for the fiscal year as set forth above.

10.0 Termination

10.1 Either party may terminate this agreement without just cause prior to the expiration of its terms by giving (30) days written notice to the other party, and by fulfilling the termination obligations set forth in Section 10.3 or 10.4. Prior to the termination of COACH, UNIVERSITY will obtain approval from the President of the University of Louisiana System.

10.2 (a) COACH may be terminated by the Director at any time for misconduct, substantial and manifest incompetence, violation or gross disregard of state or federal laws constituting a felony, and deliberate, repetitive and serious violations of NCAA that rise to a Level I or Level II violation (as defined by the NCAA Rules as amended from time to time), conference, or university rules, regulations, policies, or procedures, or availability of sufficient funding as provided by the Louisiana Legislature in its annual Appropriation of funds to the Institution (“Termination For Cause”). In the event of such Termination For Cause, COACH will receive thirty (30) calendar days’ notice of termination, and such Termination For Cause shall be subject to COACH’s Right to Remedy under 10.2(b). All compensation, including salary, benefits, and other remuneration incidental to employment, cease upon termination. The reasonable judgment as to whether the conduct of COACH constitutes “Cause” under this provision shall be made in good faith, shall not be exercised arbitrarily, capriciously, or in a discriminatory manner by the University, and shall be subject to COACH’s Right to Remedy under Section 10.2(b). No damages shall be due if termination is for just “Cause”.

10.2 (b) Prior to issuing a notice of termination or suspension, University shall give COACH a written notice of a violation, detailing the reasons for such termination or suspension, and provide COACH the “Right to Remedy” it within thirty (30) days (“Cure Period”) unless the reasons for such termination or suspension are not susceptible to being cured. Notwithstanding the foregoing, COACH shall not be suspended or terminated, and pay shall not be withheld, during the Cure Period set forth in this Section 10.2(b), unless the reasons for such termination or suspension are not susceptible to being cured.

10.3 The University may at any time, and in its sole discretion, terminate the employment of COACH without cause (“Termination Without Cause”). In the event the University terminates the Contract during any year as noted below, without cause, the COACH shall be entitled to the following payment as set forth below:

-Year 1 of the contract: \$100,000.00

-Year 2 of the contract: \$100,000.00

-Year 3 of the contract: \$100,000.00

-Year 4 of the contract: \$100,000.00

-Year 5 of the contract: The remaining base salary owed through the remainder of the Term.

Amounts listed above are not cumulative and COACH shall only be entitled to the applicable amount noted above for the year in which an event of termination may occur. Amounts due as liquidated damages which come due during the University’s current fiscal year in which COACH is terminated without cause, ending June 30 shall be paid by the University, while all other amounts due shall be paid by the CAA. It is understood and agreed that if at any time during the Term CAA fails to make its contribution towards COACH’s

liquidated damages as specified in this Section 10.3 in no way shall that act relieve University from its obligation to provide COACH that portion of the liquidated damages as set forth above for amounts due in the current fiscal year. The liquidated damages shall be due and payable in the same manner as outlined in Section 3.1.

Notwithstanding anything to the contrary contained in this section 10, to the extent applicable, the parties acknowledge that Code section 457(f) may require some or all of the bi-weekly payments described above to be taxable to COACH before their scheduled payment dates. Therefore, unless in the reasonable opinion of the University's counsel that Code section 457(f) does not apply, the University will pay the Applicable Portion (as defined below) of amounts due as set forth above before the scheduled payment dates to the extent permitted by Treasury Regulation Section 1.409A-3(j)(4)(iv) (a "Tax Distribution"); each subsequent payment shall be reduced by a pro-rated portion of any Tax Distribution. The "Applicable Portion" means an amount, as determined by the University, equal to the federal, state, local, and foreign income tax withholding that would have been remitted by the University if there had been a payment of wages equal to the income includible by COACH under Code Section 457(f) at the relevant time.¹

- 10.4** In the event COACH terminates this Agreement without cause prior to June 30, 2025, to become a baseball coach or baseball staff member of any rank with another NCAA institution, then, COACH or a designee of COACH shall pay to the University, in lieu of all other legal remedies, liquidated damages of Twenty Five Thousand Dollars (\$25,000.00). The liquidated damages shall be due and

¹ Language is intended to track language in 409A regulations that permits deferred compensation to be accelerated upon a Code 457(f) income inclusion event.

payable over six (6) months in six (6) equal payments from the date of the termination. If COACH terminates this Agreement for any other reason, then COACH shall have no responsibility, obligation, or liability to the University. Notwithstanding anything to the contrary contained in this Agreement, University agrees that COACH's obligations as contained in this Section 10.4 shall be waived by the University if the University's men's baseball program is no longer a participating member of the Southland Conference or another Division-I conference.

10.5 COACH may be terminated at any time in which the University and/or the University of Louisiana System has declaration of financial exigency. Such a termination can be based on consideration of budgetary restrictions, and priorities for maintenance of program and services related to the program's budget, but not related to COACH's compensation in particular. University must provide COACH documentation to support the financial exigency declaration. In the event of such termination, COACH will receive six (6) months notice of termination or six (6) months of his then current base salary in lieu of such notice. All other compensation, including salary, benefits, and other remuneration incidental to employment, cease upon termination.

11.0 Fundraising

11.1 All fundraising activities by COACH must be pre-approved by the Athletic Director to ensure that such activities are in compliance with University policies.

12.0 Section 409A

12.1 The Intent of the parties is that payments and benefits under this Employment Agreement comply with or be exempt from Section 409A of the Internal Revenue

Code and the regulations and guidance promulgated thereunder (collectively, “Section 409A”) and, accordingly, to the maximum extent permitted, this Employment Agreement shall be interpreted to be in compliance therewith. If COACH notifies the University (with specificity as to the reason therefore) that COACH believes that any provision of this Agreement (or any award of compensation, including benefits) would cause COACH to incur an additional tax or interest under Section 409A or the University independently makes such determination, the University shall, with consent of COACH, reform such provision to attempt to comply with or be exempt from Section 409A. To the extent that any provision hereof is modified in order to comply with Section 409A, such modification shall be made in good faith and shall, to the maximum extent reasonably possible, maintain the original intent and economic benefit to COACH and the University of the applicable provision without violating the provisions of Section 409A.

12.2 Solely to the extent necessary to comply with Section 409A, a termination of employment shall not be deemed to have occurred for purposes of the applicable provisions of this Agreement providing for the payment of amounts or benefits subject to Section 409A upon or following a termination of employment unless such termination is also a “separation from service” within the meaning of Section 409A and, for purposes of any such provision of this Agreement, references to a “termination,” “termination of employment” or like terms shall mean “separation from service.”

12.3 All expenses or other reimbursements paid under this Agreement or otherwise hereunder that are taxable income to COACH shall be paid promptly upon submission of appropriate documentation, but in no event later than the end of the calendar year next following the calendar year in which COACH incurs such

expense or pays such related tax. With regard to any provision herein that provides for reimbursement of costs and expenses or in-kind benefits, except as permitted by Section 409A, (i) the right to reimbursement or in-kind benefits shall not be subject to liquidation or exchange or another benefit, (ii) the amount of expenses eligible for reimbursement, or in-kind benefits to be provided, during any calendar year may not affect the expenses eligible for reimbursement, or in-kind benefits to be provided, in any other calendar year, provided that the foregoing clause (ii) shall not be violated with regard to expenses reimbursed under any arrangement covered by Internal Revenue Code Section 105(b) solely because such expenses are subject to a limit related to the period the arrangement is in effect and (iii) such payments shall be made on or before the last day of the calendar year following the calendar year in which the expense occurred.

- 12.4** For purposes of Section 409A, COACH's right to receive any installment payments pursuant to this Agreement shall be treated as a right to receive a series of separate and distinct payments.

13.0 Title IX and Sexual Misconduct Policy Reporting and Compliance

- 13.1** COACH shall promptly report to the University's Title IX Coordinator or Deputy Title IX Coordinator any Known Violation(s) of the University or University of Louisiana System's Sexual Misconduct Policy (including, but not limited to sexual harassment, sexual assault, sexual exploitation, domestic violence and stalking) that involve any student, faculty, or staff or that is in connection with a University sponsored activity or event. Any emergency situation shall be immediately reported to 911 and/or law enforcement. For purposes of this paragraph, a "Known Violation" shall mean a violation or an allegation of a violation of Title IX and/or the University's or the University of Louisiana System's Sexual Misconduct Policy

that COACH is aware of or has reasonable cause to believe is taking place or may have taken place.

13.2 The University may terminate this Agreement for cause pursuant to the for-cause-termination provisions of this Agreement for any determined violation by COACH for failure to report a Known Violation of:

1. Title IX of the Education Amendments of 1972; or
2. The University's Sexual Misconduct Policy; or
3. The University of Louisiana System's Sexual Misconduct Policy

14.0 Notices

14.1 Any notice or other communication which is required to be given under this Agreement shall be in writing and shall be deemed to have been given on the earlier of the day actually received or on the close of business on the fifth business day next following the day when deposited in the U.S. Mail, postage prepaid, registered or certified, addressed to the party at the address set forth after its name below or such other address as may be given by such party in writing.

If to Coach:

With a copy to:

Attention: _____

If to the University:

Nicholls State University
P.O. Box 2070
Thibodaux, LA 70310
Attention: President

If to the Colonel Athletic Association:

Colonel Athletic Association
P.O. Box 2070
Thibodaux, LA 70310
Attention: Executive Director

Thus Agreed To, by and between the herein named parties, on this 22nd day of July,

2021.



Dr. John Clune, Jr.
President, Nicholls State University



Mr. Mike Silva
Nicholls State University Head Men's Baseball
Coach



Mr. Jonathan Terrell

Executive Director, Colonel Athletic Association

Approved by the Board of Supervisors of the University of Louisiana System at its meeting on the _____ day
of _____, 2021.

Secretary – Board of Supervisors

**BOARD OF SUPERVISORS FOR THE
UNIVERSITY OF LOUISIANA SYSTEM**

ATHLETIC COMMITTEE

August 26, 2021

Item H.12. **Nicholls State University's** request for approval of a contract with Mr. Robert Podeyn, Head Soccer Coach, effective July 6, 2021.

EXECUTIVE SUMMARY

Under the proposed agreement, effective through July 5, 2025, Coach's annual salary is \$50,000 per year. During the time of employment, Coach will have the opportunity to receive the following earned salary supplements/incentives, funded by the Colonel Athletic Association:

- a) \$2,000 – Regular Season Conference Championship
- b) \$2,000 – Southland Conference Tournament Championship (in a year where COACH wins regular season and tournament championship, only the tournament championship incentive would apply)
- c) \$1,000 – Conference "Coach of the Year" honors
- d) \$500 – Per victory in the NCAA Tournament
- e) \$500 – Any contract year in which the soccer team's cumulative GPA is 3.0 or greater
- f) \$1,000 – Any contract year in which the soccer team's APR (academic performance rate) is 980 or above
- g) \$1,000 – Any contract in year in which the soccer team's GSR (graduation success rate) is 85% or above

In the event University terminates the contract without cause, Coach is entitled to \$50,000 if termination occurs in any of the first three years, and if in year four, the remainder of the base salary. Amounts due for the year which come due during the current fiscal year ending June 30, shall be paid by the University. The remaining amounts due which come due beyond the current fiscal year, shall be funded solely by the Colonel Athletic Association. If Coach terminates agreement without cause to become employed as a baseball coach or staff member of any rank or standing with another institution, Coach would be liable to the University for liquidated damages of \$5,000.

RECOMMENDATION

It is recommended that the following resolution be adopted:

NOW, THEREFORE, BE IT RESOLVED, that the Board of Supervisors for the University of Louisiana System hereby approves Nicholls State University's request for approval of a contract with Mr. Robert Podeyn, Head Soccer Coach, effective July 6, 2021.



Nicholls State University

Office of the President

P.O. Box 2001 | Thibodaux, LA 70310 | 985.448.4003 | 985.448.4920 [F]

H.12.

August 5, 2021

Via Electronic Transmittal Only

Dr. Jim Henderson
University of Louisiana System President
1201 North Third Street, Suite 7-300
Baton Rouge, LA 70802

Dear Dr. Henderson:

Nicholls State University requests consideration and approval of the following to be placed on the agenda for the August 26, 2021 meeting of the Board of Supervisors for the University of Louisiana System:

Appoint Robert Podeyn-Head Soccer Coach.

Effective date of appointment is July 6, 2021 at an annual salary of \$50,000.00. Mr. Podeyn's resume is attached for your reference.

Thank you for your assistance in this matter.

Sincerely,

Jay Clune
President

JC/apf

Enclosures

- c: Dr. Sue Westbrook, Provost/Vice President for Academic Affairs, Institutional Effectiveness & Enrollment Services
Mr. Terry Braud, Vice President for Finance & Administration
Mr. Jonathan Terrell, Athletic Director
Dr. Michele Caruso, Vice President for Student Affairs
Dr. Todd Keller, Vice Provost & SACSCOC Coordinator
Mr. Steven Kenney, Assistant Vice President for Human Resources, CDIO & Title IX Coordinator
Ms. Paulette Mayon, Internal Auditor
Ms. Claire Bourgeois, Faculty Senate President
Ms. Renee Hicks, Assistant Vice President of Institutional Effectiveness Access & Success
Ms. Monique Crochet, Executive Director of External Affairs

PROFESSIONAL SUMMARY

- ◆ Skilled and dedicated professional coach, author and instructor offering an impressive background in soccer. Experienced in coaching, administrative management, recruiting, project leadership, program development, marketing, staff and student/ athlete supervision, teambuilding, leadership training and long-term planning and goal setting. 18 Years of Head Coaching experience at the Division II and NAIA and 4 Years of Assistant Coaching at the Division I Level. Florida Youth Soccer Association State Staff Coach from 1995-2002 and Kansas State Staff Coach from 2010-2012. Assisted with training u17 Women's National Team GK's in 2001 at IMG Academy helping to prepare them for the 2001 u17 World Cup. Served as RAC Chair for NCAA Division II Central Region from 2010- 2015 and on the NCAA Division II Women's National Soccer Committee from 2012- 2015.
- ◆ Strong history and track record for re-building/ improving programs and recruiting (more than 300 players in 18 years) with a retention that has always exceeded institutional retention numbers (over 93%). Recruiting contacts cover all parts of the USA, Canada, Mexico, UK, Spain, Holland, Sweden, Brazil and Germany. Have recruited players at every school that have gone on to be the career leader in scoring at that school. Over 150 career wins and over 95 conference wins in 18 years. In the past eight years at two institutions I have had six winning seasons for a record of 74-51-12 overall and 61-29-7 in conference games (Southwest Baptist University- 2013-2014 and Fresno Pacific University- 2015-Present with two Top 4 Finishes in two of the last three years).
- ◆ Excellent communication, organization and leadership skills. Able to effectively develop the programs and processes necessary to achieve success. Focused on building a positive environment to enhance and promote the student-athlete experience. Has coached at all levels of youth, high school and intercollegiate soccer in New York, Florida, Missouri, Texas and California. Have been involved in coaching and coaching education in 45 states and 5 countries. Has consistently developed productive and motivated teams.

CAREER BACKGROUND***Head Women's Soccer Coach*****FRESNO PACIFIC UNIVERSITY, Fresno, CA.****2015 - Present**

Responsible for all aspects of managing, developing and producing a competitive intercollegiate soccer team for a competitive NCAA II Program in the PACWEST Conference. Program has only had 8 winning seasons in 20 years of existence but has had 4 winning seasons in the last 6 years, including 3 Top 4 Finishes and its first National Ranking in its history (Ranked 21st in the USC Polls- March 23, 2021). Team GPA improved from a 2.62 to a 3.42 in 6 years being recognized by the PACWEST Conference for its Academic Progress (Academics and Retention). Program went from worst academic team on campus to the top academic team on campus. 21 players selected to the ALL PACWEST Conference in 6 years. Had the 2017 Newcomer of the Year and same player selected to the All-Region Team. Winningest coach in program history (Win Pct.) with a conference record of 38-21-7. Selected as the 2017 PACWEST Conference Coach of the Year.

Head Women's Soccer Coach**SOUTHWEST BAPTIST UNIVERSITY, Bolivar, MO.****2009 - 2015**

Responsible for all aspects of managing, developing and producing a competitive intercollegiate soccer team at the NCAA II Program in the MIAA, one of the toughest rated Division II conferences for women's soccer in the country. Took team from 4-12-2 record in 2011 to 16-5-1 record and ranked 25th in the Final NSCAA Regular Season Rankings. Team appeared in two consecutive MIAA Tournament Championships winning the 2013 Championship Game. Qualified for 2 consecutive NCAA Division II National Tournaments (only 3 in program history and only 7 winning seasons in the program's 25-year history). Had 4 players selected All-American, 7 players selected All-Region (including the 2014 Region POY), and 19 players selected All MIAA Conference. 12 of 16 players in 2014 selected Academic All MIAA with a 3.0 GPA or higher. Team GPA improved from a 2.68 in 2009 to a 3.48 in 2014. One Player selected for the 2014 CoSIDA All-District Academic Team (1 of 2 in the entire conference selected). All-Time Winningest Women's Soccer Coach at Southwest Baptist University (55-47-13 with a conference record of 36-28-7 in one of the toughest rated NCAA Division II Conferences in the country- MIAA).

Head Women's Soccer Coach/ Director of Soccer Operations/ Assistant Sports Information Director**NORTHWOOD UNIVERSITY, Cedar Hill, TX.****2006 - 2009**

Responsible for all aspects of managing, developing and producing a competitive intercollegiate soccer team for a competitive NAIA Program in the Southwest. Took the program from a #212 National Ranking, a 3-12-0 record to a #29 National Ranking and two consecutive conference championships. Produced 16 All-Conference Players, 2 All-Region Players and 1 All-American in 3 years. Had 5 Conference Players of the Week, 1 Region Player of the Week, and 1 Offensive National Player of the Week. Selected the 2007 Red River Coach of the Year. Team recognized two years in a row (2007-2008) as an Academic All-American Team by the NAIA with a 3.38 GPA. Had 14 players with a GPA of a 3.0 or higher. Overall Conference Record of 18-6-0.

Head Men's and Women's Soccer Coach**WILLIAM WOODS UNIVERSITY, Fulton, MO.****2003 - 2006**

Responsible for all aspects of managing, developing and producing competitive collegiate soccer teams for a competitive NAIA Program in the Midwest. Responsibilities included individual player development, team management and development, player recruiting (more than 80 players in 3 years), implementation of training plans and methodologies for in-season and off-season training, and coordination of our year-round Strength and Conditioning Program. 2004 AMC Co-Coach of the Year. Women's program went from #104 to as high as #27 in three seasons. Voted Region V Women's Soccer Chairperson (2005-2006). Served on National Rankings Committee (2004-2006).

Assistant Coach/ Men's Soccer Program**University of Central Florida, Orlando, FL****1993-1996**

Assisted with the training and development of the Golden Knights Men's Soccer Program at the University of Central Florida working under Bob Winch. Helped team advance to the A-SUN Conference Semi-Finals twice in four years.

Starting Goalkeeper**Long Island Stars (ASL- Semi-Professional League), Long Island, NY****1984 - 1990**

7 year starting Goalkeeper for the Long Island Stars of the ASL. Three-time team MVP.

PUBLISHED WORKS

Advanced 1-4-3-3 Training (**Book**) 'World Class Coaching'

The Triangle Midfield (**Book**) 'World Class Coaching'

3-Dimensional Soccer Training (**Book**) 'World Class Coaching'

ACF Fiorentina of Italy Master Course Level 1 (**Journal**) 'World Class Coaching'

Nebraska Coaches Journal (**Journal**) 'World Class Coaching'

Coaching the Complete Goalkeeper (**Book**) 'World Class Coaching'

Dutch Drills for Total Team Training (**Book**) 'World Class Coaching'

International Coaches Seminar (**Journal**) 'World Class Coaching'

Brazilian Coaches Journal (**Journal**) 'World Class Coaching'

Coaching the Dutch 4-3-3 (**Book**) 'World Class Coaching'

Vitesse Arnhem Training Session (**Article**) 'World Class Coaching Magazine'

Teambuilding Aloha Style (**Article**) 'Northwood Magazine'

EDUCATION**William Woods University, Fulton, MO**

- ◆ **Masters of Education Degree, Athletics and Activities Administration**

Dowling College, Oakdale, NY

- ◆ **Bachelor of Arts Degree, English/ Secondary Education (Member Phi Delta Kappa)**

Suffolk Community College, Brentwood, NY

- ◆ **Associate of Applied Science Degree, Criminal Justice**

PROFESSIONAL ASSOCIATIONS

Licensed Coach; United States Soccer Federation ('A' License- 2010)

Licensed Coach; United States Soccer Federation (USSF B thru E Licenses obtained from 1990 thru 2003)

Licensed Coach; National Soccer Coaches Association of America (Premier Diploma)

Licensed Coach; National Soccer Coaches Association of America (National GK License- With Distinction)

Licensed Coach; National Soccer Coaches Association of America (National Youth Diploma)

Licensed Coach; United European Football Association (Coaching Certificate- USSF 'B' Equiv.)

Licensed Coach; English Football Association (Preliminary Badge- USSF 'C' Equiv.)

Licensed Coach; ACF Fiorentina Master Coaching Course- Italian Level 1 (USSF 'B' Equivalent)

Licensed Coach; Dutch KNVB (Advanced Team Tactical Diploma)

Licensed Coach; CBF International Coaching License (Brazilian License- Belo Horizonte, Brazil)

Member; Phi Delta Kappa (Professional Educational Organization)

**CONTRACT OF EMPLOYMENT
HEAD SOCCER COACH**

STATE OF LOUISIANA

PARISH OF LAFOURCHE

This agreement is made and entered into on the 6th day of July 2021, between Nicholls State University through its President, Dr. John Clune, Jr., the Colonel Athletic Association (hereinafter "CAA") through its Executive Director, Mr. Jonathan Terrell, and Mr. Robert Podeyn (hereinafter referred to as "COACH"). This agreement is subject to the approval of the Board of Supervisors of the University of Louisiana System, the management board for Nicholls State University, and therefore the terms and conditions set forth in this agreement should not be considered a valid contract until approval is provided by the Board.

1.1 Employment

1.2 Nicholls State University (the "University") does hereby employ COACH as head soccer coach and COACH does hereby accept employment and agrees to perform all of the services pertaining to soccer (athletic program), which are required of COACH, as well as, other services as may be contemplated hereunder, all as prescribed by the University through its President and Athletics Director.

1.3 COACH shall be responsible, and shall report, directly to Nicholls State University's Director of Athletics (the "Director") and shall confer with the Director or the Director's designee on all administrative and technical matters. COACH shall also be under the general supervision of the Nicholls State University President.

- 1.4 COACH shall manage and supervise the team and shall perform such other duties related to the soccer program and Nicholls State University's athletic program as the Director may reasonably assign (but in no event shall such other duties constitute a reassignment to another position at Nicholls State University).
- 1.5 COACH agrees to represent Nicholls State University positively in public and private forums. In public appearances COACH shall at all times conduct himself in a manner that befits a University official and shall always attempt to create goodwill and a good image for the University. COACH shall not engage in conduct that reflects adversely on the University or its athletic programs.
- 1.6 Due to the nature of the position, the Board of Supervisors prohibits the earning of compensatory time. In lieu of compensatory time, COACH will be exempted from having to take leave when the university is officially closed.

2.1 Term

- 2.2 The "Term" of this Agreement is for a fixed period commencing on the 16th day of July 2021, and terminating without further notice to COACH on the 5th day of July, 2025, unless extended under the terms of this Agreement.
- 2.3 This Agreement is renewable solely upon an offer from the Nicholls State University president and an acceptance by COACH, both of which must be in writing, signed by the parties, and approved by the Board. This Agreement in no way grants COACH a claim to tenure in employment, nor shall COACH'S service pursuant to this Agreement count in any way toward tenure at Nicholls State University.

2.4 This Agreement may be amended or extended at any time during the Term of this Agreement by mutual signed agreement of both parties, and approved by the Board.

3.1 Compensation

3.2 In consideration of COACH'S services and satisfactory performance of this agreement, the University shall pay COACH an annual base salary of Fifty Thousand Dollars (\$50,000.00) per year for the Term of this agreement, on a bi-weekly basis, as well as all related benefits, subject to applicable taxes. COACH's annual base salary shall be funded as follows: the sum of Fifty Thousand Dollars (\$50,000.00) shall be funded directly by the University.

3.3 COACH may be eligible for annual cost of living or merit pay increases in addition to the stated base salary. The COACH also may be subject to pay adjustments according to economic circumstances that affect all employees of the University in the unclassified staff service.

3.4 The University does not guarantee amounts due under this contract beyond the current year of performance. Should the contract be terminated for any reason, amounts due shall be determined in accordance with Paragraph 10.

4.0 Incentive Compensation

4.1 During the Term of this Agreement, COACH will have the opportunity to receive the following earned salary supplements/incentives. These salary supplements / incentives are cumulative, unless otherwise stated, and shall be subject to all mandatory withholdings and are inclusive of employer matches for

retirement and Medicare payments. The supplements shall be funded by the Colonel Athletic Association (CAA) and paid through University payroll .

- (a) \$2,000 – Regular Season Conference Championship
- (b) \$2,000 – Southland Conference Tournament Championship (in a year where COACH wins regular season and tournament championship, only the tournament championship incentive would apply)
- (c) \$1,000 - Conference “Coach of the Year” honors
- (d) \$500 – Per victory in the NCAA Tournament
- (e) \$500 – Any contract year in which the soccer team’s cumulative GPA is 3.0 or greater
- (f) \$1,000 – Any contract year in which the soccer team’s APR (academic performance rate) is 980 or above
- (g) \$1,000 – Any contract in year in which the soccer team’s GSR (graduation success rate) is 85% or above

4.2 Incentives for Head Coaches: COACH is eligible to participate and receive incentives in addition to and above the incentives in section 4.1 as outlined and according to the terms in the policy "Nicholls State University Athletics Incentives for Head Coaches" as long as said policy remains in existence and is active.

5.0 Camps and Clinics

5.1 COACH may operate a camp for the teaching of athletic pursuits on the University property to the end of better utilization of the facilities and with suitable compensation paid to the University for the use of such facilities, but in no event shall said suitable compensation reward University a profit. The use of University facilities will be determined by the availability of those facilities as established by

the University. Any monies earned during said camp or camps in excess of compensation paid to the University and all expenses related to the camp or camps shall be fully retained by COACH.

5.2 It is specifically agreed that in the operation of any private camp (LLC), COACH acts for himself in his private capacity and not as an agent or employee of the University and that is agreement constitutes merely a license to use the property and facilities subject to the conditions hereafter stated:

- a) The COACH agrees to secure a policy of insurance in a company approved by the University's Risk Management Office under which the Board of Supervisors of the University of Louisiana System, the University, its agents and servants, are named as the insured (or as an additional insured) which provides:
 - A. Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the Labor Code of the State of Louisiana and Employers Liability coverage if COACH hires any employees to work at such camps or clinics.
 - B. Comprehensive General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage.
- b) Annual leave must be requested to cover the dates of the camp operation for all University personnel involved.
- c) Complete records will be maintained regarding income and expenditures associated with said camp and available for verification by University auditors.
- d) The COACH is an independent contractor during said camp activities and, as such, is licensed to use certain facilities of the University. The COACH, as a University employee, will undertake to observe and require campers and its staff to conform to the general rules applicable to the use of University facilities. This paragraph is designated to assure that nothing be done which is inconsistent with the maintenance of an education campus environment and the character of a State institution which makes facilities open to persons without discrimination.

- e) The Director of Intercollegiate Athletics will be the administrative officer of the University who will be advised by the COACH of any problems or questions which may arise out of the operation of summer camps.

6.0 Employee Benefits

- 6.1 COACH shall participate in the mandatory benefit plan and be eligible for optional employee plans as would any other University unclassified employee. Such benefit will be based upon COACH's base annual salary as provided by University.

7.0 Outside Income-Subject to Compliance with Board Rules

- 7.1 The COACH shall be authorized to earn other revenue while employed by the University. Such activities are independent of his University employment and the University shall have no responsibility for any claims arising there from. COACH shall be entitled to retain revenue generated from his operation of soccer camps and/or soccer clinics in accordance with University policy relating to camps or clinics conducted by Athletic Department personnel and as noted in section 5.0. All outside employment and income will be subject to approval in accordance with the Board of Supervisors for the University of Louisiana System and University policies.
- 7.2 Notwithstanding the above or anything else herein to the contrary, if COACH receives athletically related income or benefits totaling more than \$600 per year from any source or combination of sources other than the University, COACH must report all such income or benefits to the University President in writing at least annually. Examples include, without limitation, income or benefits from (1) endorsement or consultation contracts with apparel companies, equipment

manufacturers, or television or radio programs; (2) ownership, control, or management of a foundation, organization, or other entity; and (3) participation in athletic camps outside of those offered by the University.

8.0 Compliance with NCAA, Conference, University, System, and State Rules

8.1 In accordance with NCAA Constitution 11.2.1, COACH shall abide by the rules and regulations of the NCAA, Conference and University rules. If found in violation of NCAA regulations, COACH shall be subject to disciplinary or corrective action as set forth in the provisions of the NCAA infractions process, including suspension without pay or termination of employment for significant or repetitive violations; provided, however, COACH's employment may only be terminated under this Agreement if COACH is found, after the exhaustion of all appeals, to be in violation of a Level I or Level II violation as set forth more specifically below.

8.2 COACH bears the responsibility of using his best efforts to ensure that the women's soccer team maintains at least the minimum APR threshold of 930. Increasing APR scores is a product of recruiting academically ambitious student-athletes. It is the responsibility of COACH to ensure that student-athletes are maintaining their eligibility. Academic achievement and student-athlete graduation are of the highest priority for student-athletes. If the minimum APR threshold is increased by the NCAA during the Term of this Agreement, this paragraph will be amended to reflect the same.

8.3 COACH shall also abide by the State of Louisiana Code of Government Ethics, University Policy and Regulations, and the policies and regulations of the University of Louisiana System. In public appearances he shall at all times

conduct himself in a manner that befits a University official and shall always attempt to create goodwill and a positive image for the University.

8.4 COACH and University acknowledge and agree that (1) COACH has an affirmative obligation to cooperate fully in the NCAA infractions process, including the investigation and adjudication of a case (see NCAA Bylaw 19.2.3 for examples of full cooperation), and (2) an individual who is found in violation of NCAA regulations shall be subject to disciplinary or corrective action as set forth in the provisions of the NCAA infractions process (see NCAA Bylaw 19), including suspension without pay or termination of employment; provided, however, COACH's employment may only be terminated under this Agreement if COACH is found, after the exhaustion of all appeals, to be in violation of a Level I or Level II violation as set forth more specifically below.

9.0 Soccer Staff

9.1 COACH shall have the authority to select unclassified soccer personnel upon authorization by the Athletic Director and approval by the Board of Supervisors for the University of Louisiana System following the University hiring policies.

9.2 COACH is expected to supervise the soccer staff in compliance with NCAA, Conference and University rules and regulations. Further as described in NCAA Constitution 11.1.1.1, Responsibility of Head Coach., COACH is responsible for the actions of all institutional staff members who report, directly or indirectly, to the COACH, and it is COACH's responsibility to promote an atmosphere of compliance within the soccer program and to monitor the activities regarding compliance of all assistant coaches and other administrators involved with the program.

9.3 During the Term of this agreement, the aggregate salary pool for soccer personnel shall be a minimum of Twenty-Seven Thousand Dollars (\$27,000.00) and up to Twelve Thousand Dollars (\$12,000.00) for an Intern or Graduate Assistant. Such compensation shall be allocated to the staff by COACH's discretion and subject to approval of the University President and Athletic Director whose approval shall not be unreasonably withheld. COACH and University will work in good faith to establish a reasonable incentive bonus pool for staff to be allocated by COACH's discretion and subject to approval of the University President and Athletic Director whose approval shall not be unreasonably withheld. The University shall pay these sums as they become due.

10.0 Termination

10.1 Either party may terminate this agreement without just cause prior to the expiration of its terms by giving (30) days written notice to the other party, and by fulfilling the termination obligations set forth in Section 10.3 or 10.4. Prior to the termination of COACH, UNIVERSITY will obtain approval from the President of the University of Louisiana System.

10.2 (a) COACH may be terminated by the Director at any time for misconduct, substantial and manifest incompetence, violation or gross disregard of state or federal laws constituting a felony, and deliberate, repetitive and serious violations of NCAA that rise to a Level I or Level II violation (as defined by the NCAA Rules as amended from time to time), conference, or university rules, regulations, policies, or procedures, or availability of sufficient funding as provided by the Louisiana Legislature in its annual Appropriation of funds to the

Institution (“Termination For Cause”). In the event of such Termination For Cause, COACH will receive thirty (30) calendar days’ notice of termination, and such Termination For Cause shall be subject to COACH’s Right to Remedy under 10.2(b). All compensation, including salary, benefits, and other remuneration incidental to employment, cease upon termination. The judgment as to whether the conduct of COACH constitutes “Cause” under this provision shall not be exercised arbitrarily, capriciously, or in a discriminatory manner by the University, and shall be subject to COACH’s Right to Remedy under Section 10.2(b). No damages shall be due if termination is for just “Cause”.

(b) Prior to issuing a notice of termination or suspension, University shall give COACH a written notice of a violation, detailing the reasons for such termination or suspension, and provide COACH the “Right to Remedy” it within thirty (30) days (“Cure Period”) unless the reasons for such termination or suspension are not susceptible to being cured. Notwithstanding the foregoing, COACH shall not be suspended or terminated, and pay shall not be withheld, during the Cure Period set forth in this Section 10.2(b), unless the reasons for such termination or suspension are not susceptible to being cured.

(c) COACH may be terminated with cause for failure to promptly report to the University’s Title IX Coordinator or the Athletic Department’s Senior Woman Administrator or law enforcement in the case of an emergency any illegal gender discrimination, sexual harassment, sexual assault, sexual exploitation, intimate partner violence, stalking, and/or related retaliation.

10.3 The University may at any time, and in its sole discretion, terminate the employment of COACH for any reason (“Termination Without Cause”). In the

event the University terminates the Contract during any year as noted below, without cause, the COACH shall be entitled to the following payment as set forth below:

-Year 1 of the contract: \$50,000.00

-Year 2 of the contract: \$50,000.00

-Year 3 of the contract: \$50,000.00

-Year 4 of the contract: The remaining amount owed for the year, prorated to date of termination.

Amounts listed above are not cumulative and COACH shall only be entitled to the applicable amount noted above for the year in which an event of termination may occur. Amounts due as liquidated damages which come due during the University's current fiscal year in which COACH is terminated without cause, ending June 30 shall be paid by the University, while all other amounts due shall be paid by the CAA. The liquidated damages shall be due and payable in the same manner as outlined in Section 3.1.

Notwithstanding anything to the contrary contained in this section 10, to the extent applicable, the parties acknowledge that Code section 457(f) may require some or all of the bi-weekly payments described above to be taxable to COACH before their scheduled payment dates. Therefore, unless in the reasonable opinion of the University's counsel that Code section 457(f) does not apply, the University will pay the Applicable Portion (as defined below) of amounts due as set forth above before the scheduled payment dates to the extent permitted by Treasury Regulation Section 1.409A-3(j)(4)(iv) (a "Tax Distribution"); each subsequent payment shall be reduced by a pro-rated portion of any Tax

Distribution. The “Applicable Portion” means an amount, as determined by the University, equal to the federal, state, local, and foreign income tax withholding that would have been remitted by the University if there had been a payment of wages equal to the income includible by COACH under Code Section 457(f) at the relevant time.¹

10.4 In the event COACH terminates this Agreement without cause during the Term to become a soccer coach or staff member of any rank or standing with another institution, then, COACH or a designee of COACH shall pay to the University, in lieu of all other legal remedies, liquidated damages of Five Five Thousand Dollars (\$5,000.00). The liquidated damages shall be due and payable within forty-five (45) days from the date of termination. If COACH terminates this Agreement for health or personal reasons, then COACH shall have no responsibility, obligation, or liability to the University. Notwithstanding anything to the contrary contained in this Agreement, University agrees that COACH’s obligations as contained in this Section 10.4 shall be waived by the University if the University’s soccer program is no longer a participating member of the Southland Conference or another Division-I conference.

10.5 COACH may be terminated at any time due to financial circumstances in which the University and/or the University of Louisiana System has declaration of financial exigency. Such a termination can be based on consideration of budgetary restrictions, and priorities for maintenance of program and services. In the event of such termination, COACH will receive six (6) months notice of termination or six (6) months regular pay in lieu of such notice. All

¹ Language is intended to track language in 409A regulations that permits deferred compensation to be accelerated upon a Code 457(f) income inclusion event.

compensation, including salary, benefits, and other remuneration incidental to employment, cease upon termination.

11.0 Fundraising

11.1 All fundraising activities by COACH must be pre-approved by the Athletic Director to ensure that such activities are in compliance with University policies.

12.0 Section 409A

12.1 The Intent of the parties is that payments and benefits under this Employment Agreement comply with or be exempt from Section 409A of the Internal Revenue Code and the regulations and guidance promulgated thereunder (collectively, “Section 409A”) and, accordingly, to the maximum extent permitted, this Employment Agreement shall be interpreted to be in compliance therewith. If COACH notifies the University (with specificity as to the reason therefore) that COACH believes that any provision of this Agreement (or any award of compensation, including benefits) would cause COACH to incur an additional tax or interest under Section 409A or the University independently makes such determination, the University shall, with consent of COACH, reform such provision to attempt to comply with or be exempt from Section 409A. To the extent that any provision hereof is modified in order to comply with Section 409A, such modification shall be made in good faith and shall, to the maximum extent reasonably possible, maintain the original intent and economic benefit to COACH and the University of the applicable provision without violating the provisions of Section 409A.

12.2 Solely to the extent necessary to comply with Section 409A, a termination of employment shall not be deemed to have occurred for purposes of the applicable

provisions of this Agreement providing for the payment of amounts or benefits subject to Section 409A upon or following a termination of employment unless such termination is also a “separation from service” within the meaning of Section 409A and, for purposes of any such provision of this Agreement, references to a “termination,” “termination of employment” or like terms shall mean “separation from service.”

- 12.3** All expenses or other reimbursements paid under this Agreement or otherwise hereunder that are taxable income to COACH shall be paid promptly upon submission of appropriate documentation, but in no event later than the end of the calendar year next following the calendar year in which COACH incurs such expense or pays such related tax. With regard to any provision herein that provides for reimbursement of costs and expenses or in-kind benefits, except as permitted by Section 409A, (i) the right to reimbursement or in-kind benefits shall not be subject to liquidation or exchange or another benefit, (ii) the amount of expenses eligible for reimbursement, or in-kind benefits to be provided, during any calendar year may not affect the expenses eligible for reimbursement, or in-kind benefits to be provided, in any other calendar year, provided that the foregoing clause (ii) shall not be violated with regard to expenses reimbursed under any arrangement covered by Internal Revenue Code Section 105(b) solely because such expenses are subject to a limit related to the period the arrangement is in effect and (iii) such payments shall be made on or before the last day of the calendar year following the calendar year in which the expense occurred.

12.4 For purposes of Section 409A, COACH's right to receive any installment payments pursuant to this Agreement shall be treated as a right to receive a series of separate and distinct payments.

13.0 Title IX and Sexual Misconduct Policy Reporting and Compliance

13.1 COACH shall promptly report to the University's Title IX Coordinator or Deputy Title IX Coordinator any Known Violation(s) of the University or University of Louisiana System's Sexual Misconduct Policy (including, but not limited to sexual harassment, sexual assault, sexual exploitation, domestic violence and stalking) that involve any student, faculty, or staff or that is in connection with a University sponsored activity or event. Any emergency situation shall be immediately reported to 911 and/or lawenforcement. For purposes of this paragraph, a "Known Violation" shall mean a violation or an allegation of a violation of Title IX and/or the University's or the University of Louisiana System's Sexual Misconduct Policy that COACH is aware of or has reasonable cause to believe is taking place or may have taken place.

13.2 The University may terminate this Agreement for cause pursuant to the for-cause- termination provisions of this Agreement for any determined violation by COACH for failure to report a Known Violation of:

1. Title IX of the Education Amendments of 1972; or
2. The University's Sexual Misconduct Policy; or
3. The University of Louisiana System's Sexual Misconduct Policy

14.0 Notices

14.1 Any notice or other communication which is required to be given under this Agreement shall be in writing and shall be deemed to have been given on the earlier of the day actually received or on the close of business on the fifth business day next following the day when deposited in the U.S. Mail, postage prepaid, registered or certified, addressed to the party at the address set forth after its name below or such other address as may be given by such party in writing.

If to Coach:

ROBERT PODEYN
104A ELLENDALE DR.
NICHOLLS BOX 2356
THIBODAUX, LA. 70310

With a copy to:

Attention: _____

If to the University:

Nicholls State University
P.O. Box 2070
Thibodaux, LA 70310
Attention: President

If to the Colonel Athletic Association:

Colonel Athletic Association
P.O. Box 2070
Thibodaux, LA 70310
Attention: Executive Director

Thus Agreed To, by and between the herein named parties, on this 6th day of July,

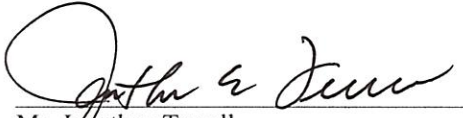
2021.



Dr. John Clune, Jr.
President, Nicholls State University



Mr. Robert Padeyn
Nicholls State University Head Soccer Coach



Mr. Jonathan Terrell
Executive Director, Colonel Athletic Association

Approved by the Board of Supervisors of the University of Louisiana System at its meeting on the _____
day of _____, 2021.

Secretary – Board of Supervisors

**BOARD OF SUPERVISORS FOR THE
UNIVERSITY OF LOUISIANA SYSTEM**

ATHLETIC COMMITTEE

August 26, 2021

Item H.13. **Nicholls State University's** request for approval of a contract with Mr. Justin Lewis, Head Softball Coach, effective July 21, 2021.

EXECUTIVE SUMMARY

Under the proposed agreement, effective through July 20, 2025, Coach's annual salary is \$67,000 per year. The base salary funded by the University is \$48,000 and \$19,000 funded by the Colonel Athletic Association (CAA). During the time of employment, Coach will have the opportunity to receive the following earned salary supplements/incentives, funded by the CAA:

- a) \$2,000 – Regular Season Conference Championship
- b) \$2,000 – Southland Conference Tournament Championship (in a year where COACH wins regular season and tournament championship, only the tournament championship incentive would apply)
- c) \$1,000 – Conference "Coach of the Year" honors
- d) \$500 – Per victory in the NCAA Tournament
- e) \$1,000 – 40 wins or more in a season
- f) \$500 – Any contract year in which the softball team's cumulative GPA is 3.0 or greater
- g) \$1,000 – Any contract year in which the softball team's APR (academic performance rate) is 970 or above
- h) \$1,000 – Any contract in year in which the softball team's GSR (graduation success rate) is 85% or above

In the event University terminates the contract without cause, Coach is entitled to \$100,000 if termination occurs in any of the first three years, and if in year four, the remainder of the base salary. Amounts due for the year which come due during the current fiscal year ending June 30, shall be paid by the University. The remaining amounts due which come due beyond the current fiscal year, shall be funded solely by the Colonel Athletic Association. If Coach terminates agreement without cause to become employed as a baseball coach or staff member of any rank or standing with another institution Coach would be liable to the University for liquidated damages of \$5,000.

RECOMMENDATION

It is recommended that the following resolution be adopted:

NOW, THEREFORE, BE IT RESOLVED, that the Board of Supervisors for the University of Louisiana System hereby approves Nicholls State University's request for approval of a contract with Mr. Justin Lewis, Head Softball Coach, effective July 21, 2021.



Nicholls State University

Office of the President

P.O. Box 2001 | Thibodaux, LA 70310 | 985.448.4003 | 985.448.4920 [F]

H.13.

August 5, 2021

Via Electronic Transmittal Only

Dr. Jim Henderson
University of Louisiana System President
1201 North Third Street, Suite 7-300
Baton Rouge, LA 70802

Dear Dr. Henderson:

Nicholls State University requests consideration and approval of the following to be placed on the agenda for the August 26, 2021 meeting of the Board of Supervisors for the University of Louisiana System:

Appoint Justin Lewis-Head Softball Coach.

Effective date of appointment is July 13, 2021 at an annual salary of \$48,103.00. Mr. Lewis' resume is attached for your reference.

Thank you for your assistance in this matter.

Sincerely,

Jay Clune
President

JC/apf

Enclosures

c: Dr. Sue Westbrook, Provost/Vice President for Academic Affairs, Institutional Effectiveness & Enrollment Services
Mr. Terry Braud, Vice President for Finance & Administration
Mr. Jonathan Terrell, Athletic Director
Dr. Michele Caruso, Vice President for Student Affairs
Dr. Todd Keller, Vice Provost & SACSCOC Coordinator
Mr. Steven Kenney, Assistant Vice President for Human Resources, CDIO & Title IX Coordinator
Ms. Paulette Mayon, Internal Auditor
Ms. Claire Bourgeois, Faculty Senate President
Ms. Renee Hicks, Assistant Vice President of Institutional Effectiveness Access & Success
Ms. Monique Crochet, Executive Director of External Affairs

Justin Lewis
2764 E. Fremont Ave
Fresno, CA 93710
520-548-9394
jlew1616@gmail.com

PROFILE

My goal is to obtain the position of Head Softball Coach at Nicholls State University. I'm currently an assistant at Fresno State University. I am the hitting coach and we lead the Mountain West Conference in every offensive category. I have also helped lead this team through a tough situation. Our head coach was put on leave in the middle of the season and has not returned. We still won the conference and we just returned from playing in the NCAA regionals at UCLA. I spent 1 ½ seasons at Texas A&M Corpus Christi before coming to Fresno State. I was the top assistant coach in charge of recruiting, hitting and coaching the infield. I also assisted the head coach in all other phases of the program like compliance, equipment and field maintenance. Before going to the Island, I spent the previous two years as the Assistant Softball Coach at Texas A&M-Kingsville. In just our second season, we led our team to a second place finish at the D2 World Series. My duties included recruiting, player operations, working with all defense and offense. I assisted the head coach with all other aspects of running the program. My last season was our second year in Kingsville. It was a record breaking season for the program. We finished the season as the national runner up in the Division II World Series.

In just our second season in Kingsville, we won the conference championship. We won the regional tournament and we played in the World Series. We made this turnaround in such a short time because of the relationships that we built. We were a force on the recruiting trail and we built that program to be a force for years to come.

I plan on developing the future leaders at Nicholls State University. Better people make better softball players. I have been building teams for years, whether it was

a sales team, my crew at the fire department or the nonprofit community I built. Building great teams requires building a culture where players feel safe, loved, and have the opportunity to develop into the people they were meant to become.

EXPERIENCE

Assistant Softball Coach, University of California, Fresno January

2021-Present Hitting coach, infield coach, recruiting coordinator. I also assist the other assistant coach in running all areas of the program.

Assistant Softball Coach, Texas A&M Corpus Christi July 2019- January

2021 Recruiting coordinator, Hitting coach, Infield coach. I also assist our head coach with all of her duties.

Assistant Softball Coach, Texas A&M-Kingsville August 2017- July 2019

In charge of defense, offense, recruiting and assisting the head coach in all other areas of the program.

Firefighter/EMT Golder Ranch Fire District; Tucson, AZ — 2008-2017

I was promoted to the position of "Engineer". I drove and operated the fire engine on emergency scenes. This was a supervisory position. I also served as an EMT (Emergency Medical Tech).

Founder/President Firefighters vs Autism; Tucson, AZ 2014-2017

Families request funds for specific items for their autistic child. Items include autism specific swim lessons, pool fences, and autism awareness training for first responders. I market, research and in charge of all fundraising.

Owner The Home Team; Tucson, AZ — 2006-2008

Owner/Operator of the Home Team Home Inspection franchise.

Loan Officer Charter Funding; Tucson, AZ — 2004-2006

Assisted homeowners with funding for a new home or a refinance of their current home. Was selected as "Rookie of the Year " in 2004.

Assistant Baseball Coach Central Arizona College; Coolidge, AZ —

2001-2003 Hitting coach and worked with outfielders. Coached third base during games. Also served as the recruiting coordinator.

Head Baseball Coach Elkhart Dusters; Elkhart, KS — 2003 Performed all duties of head baseball coach. Led Dusters to the NBC World Series.

EDUCATION

University of Missouri 2020 M.S in Positive Coaching and Athletic Leadership

University of Louisiana-Monroe 2000, B.S in Physical Education

OTHER

I played men's fast pitch softball for 15 years

REFERENCES

Mike Candrea Head coach University of Arizona

candrea@arizona.edu 520-621-4920

Ray "Smoke" Laval Retired Head baseball coach (ULM, UNF, LSU)

225-235-9953

Clint Myers Retired Hall of Fame softball coach (Auburn, Arizona State, CAC)

480-216-6521

Rodney Delong Head softball coach University of North Texas

rodney.delong@unt.edu 580-284-4591

Jason Verdugo Director of Athletics Hamline University

jverdugo@hamline.edu 651-523-2035

Ted White Head Baseball Coach Washington & Lee University

whitet@wlu.edu 412-576-9245

Kristen Zaleski Head Softball Coach at Texas A&M Corpus Christi

kristen.zaleski@tamucc.edu 512-757-6857

**CONTRACT OF EMPLOYMENT
HEAD SOFTBALL COACH**

STATE OF LOUISIANA

PARISH OF LAFOURCHE

This agreement is made and entered into on the 13th day of July 2021, between Nicholls State University through its President, Dr. John Clune, Jr., the Colonel Athletic Association (hereinafter "CAA") through its Executive Director, Mr. Jonathan Terrell, and Mr. Justin Lewis (hereinafter referred to as "COACH"). This agreement is subject to the approval of the Board of Supervisors of the University of Louisiana System, the management board for Nicholls State University, and therefore the terms and conditions set forth in this agreement should not be considered a valid contract until approval is provided by the Board.

1.1 Employment

1.2 Nicholls State University (the "University") does hereby employ COACH as head softball coach and COACH does hereby accept employment and agrees to perform all of the services pertaining to softball (athletic program), which are required of COACH, as well as, other services as may be contemplated hereunder, all as prescribed by the University through its President and Athletics Director.

1.3 COACH shall be responsible, and shall report, directly to Nicholls State University's Director of Athletics (the "Director") and shall confer with the Director or the Director's designee on all administrative and technical matters. COACH shall also be under the general supervision of the Nicholls State University President.

- 1.4 COACH shall manage and supervise the team and shall perform such other duties related to the softball program and Nicholls State University's athletic program as the Director may reasonably assign (but in no event shall such other duties constitute a reassignment to another position at Nicholls State University).
- 1.5 COACH agrees to represent Nicholls State University positively in public and private forums. In public appearances COACH shall at all times conduct himself in a manner that befits a University official and shall always attempt to create goodwill and a good image for the University. COACH shall not engage in conduct that reflects adversely on the University or its athletic programs.
- 1.6 Due to the nature of the position, the Board of Supervisors prohibits the earning of compensatory time. In lieu of compensatory time, COACH will be exempted from having to take leave when the university is officially closed.

2.1 Term

- 2.2 The "Term" of this Agreement is for a fixed period commencing on the 13th day of July 2021, and terminating without further notice to COACH on the 12th day of July , 2025, unless extended under the terms of this Agreement.
- 2.3 This Agreement is renewable solely upon an offer from the Nicholls State University president and an acceptance by COACH, both of which must be in writing, signed by the parties, and approved by the Board. This Agreement in no way grants COACH a claim to tenure in employment, nor shall COACH'S service pursuant to this Agreement count in any way toward tenure at Nicholls State University.

2.4 This Agreement may be amended or extended at any time during the Term of this Agreement by mutual signed agreement of both parties, and approved by the Board.

3.1 Compensation

3.2 In consideration of COACH'S services and satisfactory performance of this agreement, the University shall pay COACH an annual base salary of Sixty-Seven Thousand Dollars (\$67,000.00) per year for the Term of this agreement, on a bi-weekly basis, as well as all related benefits, subject to applicable taxes. COACH's annual base salary shall be funded as follows: the sum of Forty-Eight Thousand Dollars (\$48,000.00) shall be funded directly by the University and the sum of Nineteen Thousand Dollars (\$19,000.00) shall be funded by the Colonel Athletic Association (CAA) and paid through the University to COACH.

3.3 COACH may be eligible for annual cost of living or merit pay increases in addition to the stated base salary. The COACH also may be subject to pay adjustments according to economic circumstances that affect all employees of the University in the unclassified staff service.

3.4 The CAA will use best efforts to secure the use of a vehicle for COACH, or the CAA will pay COACH a vehicle allowance of \$3,600 annually, in monthly installments of \$300 each month throughout the Term of this agreement.

3.5 The University does not guarantee amounts due under this contract beyond the current year of performance. Should the contract be terminated for any reason, amounts due shall be determined in accordance with Paragraph 10.

4.0 Incentive Compensation

4.1 During the Term of this Agreement, COACH will have the opportunity to receive the following earned salary supplements/incentives. These salary supplements / incentives are cumulative, unless otherwise stated, and shall be subject to all mandatory withholdings and are inclusive of employer matches for retirement and Medicare payments. The supplements shall be funded by the Colonel Athletic Association (CAA) and paid through University payroll .

- (a) \$2,000 – Regular Season Conference Championship
- (b) \$2,000 – Southland Conference Tournament Championship (in a year where COACH wins regular season and tournament championship, only the tournament championship incentive would apply)
- (c) \$1,000 - Conference “Coach of the Year” honors
- (d) \$500 – Per victory in the NCAA Tournament
- (e) \$1,000 - 40 wins or more in a season
- (f) \$500 – Any contract year in which the softball team’s cumulative GPA is 3.0 or greater
- (g) \$1,000 – Any contract year in which the softball team’s APR (academic performance rate) is 970 or above
- (h) \$1,000 – Any contract in year in which the softball team’s GSR (graduation success rate) is 85% or above

4.2 Incentives for Head Coaches: COACH is eligible to participate and receive incentives in addition to and above the incentives in section 4.1 as outlined and according to the terms in the policy "Nicholls State University Athletics Incentives for Head Coaches" as long as said policy remains in existence and is active.

5.0 Camps and Clinics

5.1 COACH may operate a camp for the teaching of athletic pursuits on the University property to the end of better utilization of the facilities and with suitable compensation paid to the University for the use of such facilities, but in no event shall said suitable compensation reward University a profit. The use of University facilities will be determined by the availability of those facilities as established by the University. Any monies earned during said camp or camps in excess of compensation paid to the University and all expenses related to the camp or camps shall be fully retained by COACH.

5.2 It is specifically agreed that in the operation of any private camp (LLC), COACH acts for himself in his private capacity and not as an agent or employee of the University and that is agreement constitutes merely a license to use the property and facilities subject to the conditions hereafter stated:

- a) The COACH agrees to secure a policy of insurance in a company approved by the University's Risk Management Office under which the Board of Supervisors of the University of Louisiana System, the University, its agents and servants, are named as the insured (or as an additional insured) which provides:
 - A. Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the Labor Code of the State of Louisiana and Employers Liability coverage if COACH hires any employees to work at such camps or clinics.
 - B. Comprehensive General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage.
- b) Annual leave must be requested to cover the dates of the camp operation for all University personnel involved.
- c) Complete records will be maintained regarding income and expenditures associated with said camp and available for verification by University auditors.

- d) The COACH is an independent contractor during said camp activities and, as such, is licensed to use certain facilities of the University. The COACH, as a University employee, will undertake to observe and require campers and its staff to conform to the general rules applicable to the use of University facilities. This paragraph is designated to assure that nothing be done which is inconsistent with the maintenance of an education campus environment and the character of a State institution which makes facilities open to persons without discrimination.
- e) The Director of Intercollegiate Athletics will be the administrative officer of the University who will be advised by the COACH of any problems or questions which may arise out of the operation of summer camps.

6.0 Employee Benefits

- 6.1 COACH shall participate in the mandatory benefit plan and be eligible for optional employee plans as would any other University unclassified employee. Such benefit will be based upon COACH's base annual salary as provided by University.
- 6.2 For each Softball season, and at any point when Softball becomes a ticketed sport during the term of this agreement, COACH shall be entitled to a total of twelve (12) tickets per home softball game.

7.0 Outside Income-Subject to Compliance with Board Rules

- 7.1 The COACH shall be authorized to earn other revenue while employed by the University. Such activities are independent of his University employment and the University shall have no responsibility for any claims arising there from. COACH shall be entitled to retain revenue generated from his operation of softball camps and/or softball clinics in accordance with University policy relating to camps or clinics conducted by Athletic Department personnel and as noted in section 5.0.

All outside employment and income will be subject to approval in accordance with the Board of Supervisors for the University of Louisiana System and University policies.

7.2 Notwithstanding the above or anything else herein to the contrary, if COACH receives athletically related income or benefits totaling more than \$600 per year from any source or combination of sources other than the University, COACH must report all such income or benefits to the University President in writing at least annually. Examples include, without limitation, income or benefits from (1) endorsement or consultation contracts with apparel companies, equipment manufacturers, or television or radio programs; (2) ownership, control, or management of a foundation, organization, or other entity; and (3) participation in athletic camps outside of those offered by the University.

8.0 Compliance with NCAA, Conference, University, System, and State Rules

8.1 In accordance with NCAA Constitution 11.2.1, COACH shall abide by the rules and regulations of the NCAA, Conference and University rules. If found in violation of NCAA regulations, COACH shall be subject to disciplinary or corrective action as set forth in the provisions of the NCAA infractions process, including suspension without pay or termination of employment for significant or repetitive violations; provided, however, COACH's employment may only be terminated under this Agreement if COACH is found, after the exhaustion of all appeals, to be in violation of a Level I or Level II violation as set forth more specifically below.

8.2 COACH bears the responsibility of using his best efforts to ensure that the women's softball team maintains at least the minimum APR threshold of 930.

Increasing APR scores is a product of recruiting academically ambitious student-athletes. It is the responsibility of COACH to ensure that student-athletes are maintaining their eligibility. Academic achievement and student-athlete graduation are of the highest priority for student-athletes. If the minimum APR threshold is increased by the NCAA during the Term of this Agreement, this paragraph will be amended to reflect the same.

8.3 COACH shall also abide by the State of Louisiana Code of Government Ethics, University Policy and Regulations, and the policies and regulations of the University of Louisiana System. In public appearances he shall at all times conduct himself in a manner that befits a University official and shall always attempt to create goodwill and a positive image for the University.

8.4 COACH and University acknowledge and agree that (1) COACH has an affirmative obligation to cooperate fully in the NCAA infractions process, including the investigation and adjudication of a case (see NCAA Bylaw 19.2.3 for examples of full cooperation), and (2) an individual who is found in violation of NCAA regulations shall be subject to disciplinary or corrective action as set forth in the provisions of the NCAA infractions process (see NCAA Bylaw 19), including suspension without pay or termination of employment; provided, however, COACH's employment may only be terminated under this Agreement if COACH is found, after the exhaustion of all appeals, to be in violation of a Level I or Level II violation as set forth more specifically below.

9.0 Softball Staff

- 9.1 COACH shall have the authority to select unclassified softball personnel upon authorization by the Athletic Director and approval by the Board of Supervisors for the University of Louisiana System following the University hiring policies.
- 9.2 COACH is expected to supervise the softball staff in compliance with NCAA, Conference and University rules and regulations. Further as described in NCAA Constitution 11.1.1.1, Responsibility of Head Coach., COACH is responsible for the actions of all institutional staff members who report, directly or indirectly, to the COACH, and it is COACH's responsibility to promote an atmosphere of compliance within the softball program and to monitor the activities regarding compliance of all assistant coaches and other administrators involved with the program.
- 9.3 During the Term of this agreement, the aggregate salary pool for men's softball personnel shall be a minimum of Sixty-Five Thousand Five Hundred Dollars (\$65,500.00). Such compensation shall be allocated to the staff by COACH's discretion and subject to approval of the University President and Athletic Director whose approval shall not be unreasonably withheld. COACH and University will work in good faith to establish a reasonable incentive bonus pool for staff to be allocated by COACH's discretion and subject to approval of the University President and Athletic Director whose approval shall not be unreasonably withheld. The University shall pay Fifty-Four Thousand Dollars (\$54,000.00) of the salary pool amount. The Colonel Athletic Association shall pay Eleven Thousand Five Hundred Dollars (\$11,500.00) of the salary pool amount.

10.0 Termination

10.1 Either party may terminate this agreement without just cause prior to the expiration of its terms by giving (30) days written notice to the other party, and by fulfilling the termination obligations set forth in Section 10.3 or 10.4. Prior to the termination of COACH, UNIVERSITY will obtain approval from the President of the University of Louisiana System.

10.2 (a) COACH may be terminated by the Director at any time for misconduct, substantial and manifest incompetence, violation or gross disregard of state or federal laws constituting a felony, and deliberate, repetitive and serious violations of NCAA that rise to a Level I or Level II violation (as defined by the NCAA Rules as amended from time to time), conference, or university rules, regulations, policies, or procedures, or availability of sufficient funding as provided by the Louisiana Legislature in its annual Appropriation of funds to the Institution (“Termination For Cause”). In the event of such Termination For Cause, COACH will receive thirty (30) calendar days’ notice of termination, and such Termination For Cause shall be subject to COACH’s Right to Remedy under 10.2(b). All compensation, including salary, benefits, and other remuneration incidental to employment, cease upon termination. The judgment as to whether the conduct of COACH constitutes “Cause” under this provision shall not be exercised arbitrarily, capriciously, or in a discriminatory manner by the University, and shall be subject to COACH’s Right to Remedy under Section 10.2(b). No damages shall be due if termination is for just “Cause”.

(b) Prior to issuing a notice of termination or suspension, University shall give COACH a written notice of a violation, detailing the reasons for such termination or suspension, and provide COACH the “Right to Remedy” it within

thirty (30) days (“Cure Period”) unless the reasons for such termination or suspension are not susceptible to being cured. Notwithstanding the foregoing, COACH shall not be suspended or terminated, and pay shall not be withheld, during the Cure Period set forth in this Section 10.2(b), unless the reasons for such termination or suspension are not susceptible to being cured.

(c) COACH may be terminated with cause for failure to promptly report to the University’s Title IX Coordinator or the Athletic Department’s Senior Woman Administrator or law enforcement in the case of an emergency any illegal gender discrimination, sexual harassment, sexual assault, sexual exploitation, intimate partner violence, stalking, and/or related retaliation.

10.3 The University may at any time, and in its sole discretion, terminate the employment of COACH for any reason (“Termination Without Cause”). In the event the University terminates the Contract during any year as noted below, without cause, the COACH shall be entitled to the following payment as set forth below:

-Year 1 of the contract: \$67,000.00

-Year 2 of the contract: \$67,000.00

-Year 3 of the contract: \$67,000.00

-Year 4 of the contract: The remaining amount owed for the year, prorated to date of termination.

Amounts listed above are not cumulative and COACH shall only be entitled to the applicable amount noted above for the year in which an event of termination may occur. Amounts due as liquidated damages which come due during the University’s current fiscal year in which COACH is terminated

without cause, ending June 30 shall be paid by the University, while all other amounts due shall be paid by the CAA. The liquidated damages shall be due and payable in the same manner as outlined in Section 3.1.

Notwithstanding anything to the contrary contained in this section 10, to the extent applicable, the parties acknowledge that Code section 457(f) may require some or all of the bi-weekly payments described above to be taxable to COACH before their scheduled payment dates. Therefore, unless in the reasonable opinion of the University's counsel that Code section 457(f) does not apply, the University will pay the Applicable Portion (as defined below) of amounts due as set forth above before the scheduled payment dates to the extent permitted by Treasury Regulation Section 1.409A-3(j)(4)(iv) (a "Tax Distribution"); each subsequent payment shall be reduced by a pro-rated portion of any Tax Distribution. The "Applicable Portion" means an amount, as determined by the University, equal to the federal, state, local, and foreign income tax withholding that would have been remitted by the University if there had been a payment of wages equal to the income includible by COACH under Code Section 457(f) at the relevant time.¹

- 10.4** In the event COACH terminates this Agreement without cause during the Term to become a softball coach or staff member of any rank or standing with another institution, then, COACH or a designee of COACH shall pay to the University, in lieu of all other legal remedies, liquidated damages of Five Five Thousand Dollars (\$5,000.00). The liquidated damages shall be due and payable within forty-five (45) days from the date of termination. If COACH terminates this

¹ Language is intended to track language in 409A regulations that permits deferred compensation to be accelerated upon a Code 457(f) income inclusion event.

Agreement for health or personal reasons, then COACH shall have no responsibility, obligation, or liability to the University. Notwithstanding anything to the contrary contained in this Agreement, University agrees that COACH's obligations as contained in this Section 10.4 shall be waived by the University if the University's softball program is no longer a participating member of the Southland Conference or another Division-I conference.

10.5 COACH may be terminated at any time due to financial circumstances in which the University and/or the University of Louisiana System has declaration of financial exigency. Such a termination can be based on consideration of budgetary restrictions, and priorities for maintenance of program and services. In the event of such termination, COACH will receive six (6) months notice of termination or six (6) months regular pay in lieu of such notice. All compensation, including salary, benefits, and other remuneration incidental to employment, cease upon termination.

11.0 Fundraising

11.1 All fundraising activities by COACH must be pre-approved by the Athletic Director to ensure that such activities are in compliance with University policies.

12.0 Section 409A

12.1 The Intent of the parties is that payments and benefits under this Employment Agreement comply with or be exempt from Section 409A of the Internal Revenue Code and the regulations and guidance promulgated thereunder (collectively, "Section 409A") and, accordingly, to the maximum extent permitted, this Employment Agreement shall be interpreted to be in compliance therewith. If COACH notifies the University (with specificity as to the reason therefore) that

COACH believes that any provision of this Agreement (or any award of compensation, including benefits) would cause COACH to incur an additional tax or interest under Section 409A or the University independently makes such determination, the University shall, with consent of COACH, reform such provision to attempt to comply with or be exempt from Section 409A. To the extent that any provision hereof is modified in order to comply with Section 409A, such modification shall be made in good faith and shall, to the maximum extent reasonably possible, maintain the original intent and economic benefit to COACH and the University of the applicable provision without violating the provisions of Section 409A.

12.2 Solely to the extent necessary to comply with Section 409A, a termination of employment shall not be deemed to have occurred for purposes of the applicable provisions of this Agreement providing for the payment of amounts or benefits subject to Section 409A upon or following a termination of employment unless such termination is also a “separation from service” within the meaning of Section 409A and, for purposes of any such provision of this Agreement, references to a “termination,” “termination of employment” or like terms shall mean “separation from service.”

12.3 All expenses or other reimbursements paid under this Agreement or otherwise hereunder that are taxable income to COACH shall be paid promptly upon submission of appropriate documentation, but in no event later than the end of the calendar year next following the calendar year in which COACH incurs such expense or pays such related tax. With regard to any provision herein that provides for reimbursement of costs and expenses or in-kind benefits, except as

permitted by Section 409A, (i) the right to reimbursement or in-kind benefits shall not be subject to liquidation or exchange or another benefit, (ii) the amount of expenses eligible for reimbursement, or in-kind benefits to be provided, during any calendar year may not affect the expenses eligible for reimbursement, or in-kind benefits to be provided, in any other calendar year, provided that the foregoing clause (ii) shall not be violated with regard to expenses reimbursed under any arrangement covered by Internal Revenue Code Section 105(b) solely because such expenses are subject to a limit related to the period the arrangement is in effect and (iii) such payments shall be made on or before the last day of the calendar year following the calendar year in which the expense occurred.

- 12.4** For purposes of Section 409A, COACH's right to receive any installment payments pursuant to this Agreement shall be treated as a right to receive a series of separate and distinct payments.

13.0 Title IX and Sexual Misconduct Policy Reporting and Compliance

- 13.1** COACH shall promptly report to the University's Title IX Coordinator or Deputy Title IX Coordinator any Known Violation(s) of the University or University of Louisiana System's Sexual Misconduct Policy (including, but not limited to sexual harassment, sexual assault, sexual exploitation, domestic violence and stalking) that involve any student, faculty, or staff or that is in connection with a University sponsored activity or event. Any emergency situation shall be immediately reported to 911 and/or lawenforcement. For purposes of this paragraph, a "Known Violation" shall mean a violation or an allegation of a violation of Title IX and/or the University's or the University of

Louisiana System's Sexual Misconduct Policy that COACH is aware of or has reasonable cause to believe is taking place or may have taken place.

13.2 The University may terminate this Agreement for cause pursuant to the for-cause- termination provisions of this Agreement for any determined violation by COACH for failure to report a Known Violation of:

1. Title IX of the Education Amendments of 1972; or
2. The University's Sexual Misconduct Policy; or
3. The University of Louisiana System's Sexual Misconduct Policy

14.0 Notices

14.1 Any notice or other communication which is required to be given under this Agreement shall be in writing and shall be deemed to have been given on the earlier of the day actually received or on the close of business on the fifth business day next following the day when deposited in the U.S. Mail, postage prepaid, registered or certified, addressed to the party at the address set forth after its name below or such other address as may be given by such party in writing.

If to Coach:

With a copy to:

Attention: _____

If to the University:

Nicholls State University

P.O. Box 2070

Thibodaux, LA 70310

Attention: President

If to the Colonel Athletic Association:

Colonel Athletic Association

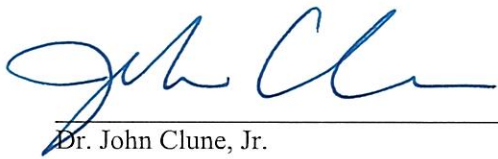
P.O. Box 2070

Thibodaux, LA 70310

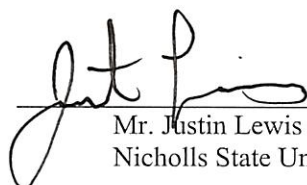
Attention: Executive Director

Thus Agreed To, by and between the herein named parties, on this 13th day of July,

2021.



Dr. John Clune, Jr.
President, Nicholls State University



Mr. Justin Lewis
Nicholls State University Head Softball Coach


Mr. Jonathan Terrell
Executive Director, Colonel Athletic Association

Approved by the Board of Supervisors of the University of Louisiana System at its meeting on the _____
day of _____, 2021.

Secretary – Board of Supervisors

**BOARD OF SUPERVISORS FOR THE
UNIVERSITY OF LOUISIANA SYSTEM**

ATHLETIC COMMITTEE

August 26, 2021

Item H.14. **Northwestern State University's** request for approval of a contract with Mr. Bobby Barbier, Head Baseball Coach, effective July 1, 2021.

EXECUTIVE SUMMARY

Under the proposed four-year agreement, effective through June 30, 2025, the Coach's salary for each year is \$85,308, payable in 26 equal installments. During the time of employment as head coach, Coach will also have the opportunity to earn salary supplements as a result of promotional activities for the Demons Unlimited Foundation. The potential supplements/incentives are as follows:

- Coach will receive a housing stipend of \$2,500 per month on an as funds available basis.
- Coach will receive use of a vehicle from a dealership for personal and business use as arranged by the Demons Unlimited Foundation and if use of the vehicle is discontinued, housing stipend will be increased by \$500 per month.
- Coach will receive use of a cell phone, including data and texting plan, with an approximate annual value of \$1,000.
- Coach will receive \$2,000 for promotional appearances in the event he wins the regular season conference championship and \$2,000 if his team is selected to play in the NCAA Regionals competition.
- Coach will receive additional payments for marketing, promotional and fundraising opportunities that result from the advancement of the baseball team in NCAA postseason competition as follows:
 - Coach will receive \$7,500 if his NSU team advances to an NCAA Super Regional;
 - Coach will receive \$10,000 should his team advance to the College World Series;
 - Coach will receive \$15,000 should his team win the NCAA national championship.
- Coach shall receive \$1,500 for promotional and/or appearances should he be selected as "Southland Conference or Louisiana Coach of the Year."

- Coach is also eligible to receive a \$1,000 marketing incentive payment for academic success as defined by University Athletic Department policy.

If the University terminates the agreement without cause, Coach shall be entitled to 50% of the combined total of the base salary and Demons Unlimited Foundation “living stipend” that he would have earned in the years remaining in the contract, less compensation received by the Coach from any other employment. The University is responsible for the current fiscal year compensation, through the end of the fiscal year (June 30). The Demons Unlimited Foundation is responsible for the remaining months in the agreement (the next July 1 through expiration).

In the event Coach terminates the contract without cause, Coach would be liable to the University for liquidated damages of \$10,000 as specified in the contract.

The University and the Demons Unlimited Foundation have combined this agreement into one joint employment agreement.

RECOMMENDATION

It is recommended that the following resolution be adopted:

NOW, THEREFORE, BE IT RESOLVED, that the Board of Supervisors for the University of Louisiana System hereby approves Northwestern State University’s request for approval of a contract with Mr. Bobby Barbier, Head Baseball Coach, effective July 1, 2021.



H.14.

August 3, 2021

Dr. James B. Henderson, President
University of Louisiana System
1201 North Third Street, 7-300
Baton Rouge, LA 70802

Re: Head Baseball Coach Contract Extension – Bobby Barbier

Dear Dr. Henderson:

Northwestern State University is submitting the attached Head Baseball Coach Contract Extension for Bobby Barbier to be placed on the agenda for approval at the August 2021 Board Meeting.

Thank you for your consideration.

Sincerely,

Dr. Marcus Jones
Interim President

Attachment

NORTHWESTERN STATE UNIVERSITY

CONTRACT OF EMPLOYMENT for BOBBY BARBIER

STATE OF LOUISIANA

PARISH OF NATCHITOCHES

THIS AGREEMENT, made and entered into as of this 26th day of August, 2021, by and between Northwestern State University (hereinafter "University") represented by Dr. Marcus Jones, Interim President, the Demons Unlimited Foundation (hereinafter "Foundation") and Bobby Barbier, Head Baseball Coach (hereinafter "Coach") of Northwestern State University. This agreement is subject to the approval of the Board of Supervisors for the University of Louisiana System, the management board for Northwestern State University and therefore the terms and conditions set forth in this agreement should not be considered a valid contract until approval is provided by the board.

WITNESSETH:

WHEREAS, the University requires the services of a Head Baseball Coach and has selected the Coach to perform those services,

NOW, THEREFORE, the parties agree as follows:

1. EMPLOYMENT

The University does hereby employ Bobby Barbier as Head Baseball Coach at Northwestern State University, and Bobby Barbier does hereby accept said employment and agrees to perform all those services pertaining to Head Baseball Coach as prescribed by the University through the President and the Director of Athletics.

- 1.1. Coach shall be responsible, and shall report, directly to Northwestern State University's Director of Athletics (the "Director") and shall confer with the Director or the Director's designee on all administrative and technical matters. Coach shall also be under the general supervision of Northwestern State University's President.
- 1.2. Coach shall manage and supervise the team and shall perform such other duties in Northwestern State University's athletic program as the Director may assign.
- 1.3. Coach agrees to represent Northwestern State University positively in public and private forums and shall not engage in conduct that reflects adversely on Northwestern State University or its athletic programs.

2. TERM

The employment under the terms of this contract shall be for the period July 1, 2021 to June 30, 2025 with an automatic rollover to the contract if the program finishes in the top one-third of the conference standings or if the team wins 30 or more games the previous season, subject to approval of the University of Louisiana System Board of Supervisors. This agreement is renewable solely upon an offer from the University and an acceptance by Coach, both of which must be in writing and signed by all the parties and approved by the Board. This agreement in no way grants the Coach a claim to tenure in employment, nor shall Coach's service pursuant to this agreement count in any way toward tenure at the University.

3. UNIVERSITY SALARY

The University shall pay the Head Coach an annual salary payable in 26 equal installments as follows:

First Year of Contract

Eighty-Five Thousand, Three-Hundred Eight (\$85,308) Dollars payable in 26 equal installments:

Second Year of Contract

Eighty-six Thousand, Eight-Hundred Eight (\$86,808) Dollars payable in 26 equal installments:

Third Year of Contract

Eighty-Eight Thousand, Three-Hundred Eight (\$88,308) Dollars payable in 26 equal installments:

Fourth Year of Contract

Eighty-nine Thousand, Eight-Hundred Eight (\$89,808) Dollars payable in 26 equal installments:

- 3.1. The University does not guarantee amounts due under this contract beyond the current year of performance. Should the contract be terminated for any reason, amounts due shall be in accordance with Section 9.
- 3.2. The Coach may be eligible for cost of living or merit pay increases in addition to the stated base salary. The Coach is also subject to pay adjustments according to economic circumstances that affect all employees in the unclassified state services.

4. EMPLOYEE BENEFITS

The Coach shall participate in the mandatory employee benefit plans and be eligible for optional employee benefit plans as would any other University unclassified employee based upon his annual University salary only.

5. CAMPS AND CLINICS

5.1 Coach Barbier may operate and receive additional compensation for camps/clinics as outlined in the athletic department's policy regulating camps and clinics.

- a. All revenues from university camps/clinics will be deposited into Coach Barbier's university camp budget. After all expenses are met, Coach Barbier may be compensated up to the amount of surplus remaining in the account, or use the profits to pay his assistant coaches, supplement his university baseball operating budget, or a combination of the three, at his discretion.
- b. Camps operated through the university camp budget will not be subject to facility fees.
- c. Conducting camps and clinics is considered a part of Coach Barbier's job description related to promoting the University and the athletic department; thus, Coach Barbier will not be required to take leave while conducting camps run through the University camp budget.
- d. Coach Barbier's camp budget will be charged for a personal injury insurance policy approved by the University for camp/clinic participants.
- e. The Director of Athletics will be the administrative officer of the University who will be advised by the coach of any problems or questions which may arise out of the operation of the camps.

5.2 Private Camps

- a. Coach may operate a camp for the teaching of athletic pursuits on University property to the end of better utilization of the facilities and with suitable compensation paid to the

University for the use of such facilities. The use of University facilities will be determined by the availability of those facilities as established by University policy.

- b. It is specifically agreed that in the operation of such camps, Coach acts for himself in his private capacity and not as an agent or employee of the University and that this agreement constitutes merely a license to use the property and facilities subject to the conditions hereafter stated.

- Special set-ups or changes in original set-up of facilities will be taken care of by the Coach with no cost to the University.
 - The Coach agrees to pay the University all out-of-pocket costs incurred by the University in making the facilities available for the camps.
 - The Coach agrees to secure a policy of insurance in a company approved by the University's Risk Management Office under which the Board of Supervisors for the University of Louisiana System, the University, and its agents and servants, are named as the insured (or as an additional insured) which provides:
 - Workers' Compensation and Employers Liability: Workers Compensation limits are required by the Labor Code of the State of Louisiana and Employers Liability coverage if Coach hires any employees to work at such camps and clinics.
 - Comprehensive General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage.
 - Annual leave must be requested to cover the dates of the camp operation for all University personnel involved.
 - Complete records will be maintained regarding income and expenditures associated with said camp and available for verification by University auditors.
 - The Coach agrees to protect, indemnify and save harmless the University from and against any and all expenses, damages, claims, suits, actions, judgments and costs whatsoever, including reasonable attorney's fees, arising out of or in any way connected with any claim or action for property loss, personal injury or death during the operation of said camp activities.
 - The Coach is an independent contractor during said camp activities and, as such, is licensed to use certain facilities of the University. The Coach, as a university employee, will undertake to observe and require campers and its staff to conform to the general rules applicable to the use of University facilities. This paragraph is designated to assure that nothing be done which is inconsistent with the maintenance of an educational campus environment and the character of a State institution which makes its facilities open to persons without discrimination.
- c. The Director of Intercollegiate Athletics will be the administrative officer of the University who will be advised by the Coach of any problems or questions which may arise out of the operation of summer camps.

6. FOUNDATION SERVICES

During the time of employment as head coach, Coach Barbier will also have the opportunity to earn salary supplements as a result of promotional activities for the Demons Unlimited Foundation. The Foundation will compensate Coach Barbier separately for his appearances and promotional activities in support of its fundraising and marketing efforts. These payments, made through the university's payroll system, are subject to all mandatory withholdings and are inclusive of retirement and Medicare payments. Supplemental payments based on incentive clauses are to be paid no later than the conclusion of the financial quarter immediately following the one in which the incentive payment was earned. The potential supplements/incentives are as follows:

- COACH will receive a living stipend of \$2,500 per month on an as funds available basis, retroactive to the date reflected in Section 2 (Term) of this contract.

- COACH will receive use of a vehicle from a dealership for personal and business use as arranged by the Demons Unlimited Foundation and if such vehicle is not secured for coach, a living stipend of \$500 per month will be provided.
- COACH will receive use of a cell phone, including data and texting plan, with an approximate annual value of \$1,000.
- COACH will receive \$2,000 for promotional appearances in the event he wins the regular season conference championship
- COACH will receive \$2,000 if his team is selected to play in NCAA Regionals competition.
- COACH will receive additional payments for marketing, promotional and fundraising opportunities that result from the advancement of the baseball team in NCAA postseason competition as follows. All additional payments are cumulative:
 - Coach will receive \$7,500 if his team advances to an NCAA Super Regional;
 - Coach will receive \$10,000 should his team advance to the College World Series;
 - COACH will receive \$15,000 should his team win the NCAA national championship.
- COACH shall receive \$1,500 for promotional and/or appearances should he be selected as "Southland Conference *or* Louisiana Coach of the Year."
- COACH is also eligible to receive a \$1,000 marketing incentive stipend for academic success as defined by University Athletic Department policy. This incentive stipend will be for use of the Coach's name and likeness in Foundation material or literature promoting the academic achievements of the team. The coach must have worked at NSU for one full academic year (July 1-June 30) to be initially eligible to receive this bonus and must be employed by NSU at the time that the final APR number is released to be eligible to receive the bonus.

7. OUTSIDE INCOME

The Coach shall be authorized to earn other revenue while employed by the University but such activities are independent of his University employment and the University shall have no

responsibility for any claims arising there from. All outside income will be subject to approval in accordance with the Board of Supervisors for the University of Louisiana System policies.

Coach shall report annually in writing to the President through the Athletic Director on July 1st of each year all athletically related income received from sources outside the University. The University shall have reasonable access to all records of Coach to verify this report (NCAA Constitution Article 11.2.2).

"Notwithstanding the above or anything else herein to the contrary, if Employee receives athletically related income or benefits totaling more than \$600 per year from any source or combination of sources other than Employer, Employee must report all such income or benefits to the [president or chancellor] in writing at least annually. Examples include, without limitation, income or benefits from (1) endorsement or consultation contracts with apparel companies, equipment manufacturers, or television or radio programs; (2) ownership, control, or management of a foundation, organization, or other entity; and (3) participation in athletic camps outside of those offered by Employer (see Bylaw 11.2.2.)."

8. **STANDARDS OF CONDUCT AND COMPLIANCE WITH NCAA AND CONFERENCE REGULATIONS**

Coach shall abide by the rules and regulations of the NCAA, Conference and University rules. If Coach is personally found to be in violation of NCAA regulations, Coach shall be subject to disciplinary or corrective action as set forth in the NCAA enforcement procedures (NCAA Constitution 11.2.1). Coach may be suspended for a period of time, without pay, or employment of Coach may be terminated if Coach is found to be personally guilty of deliberate and serious violations of NCAA, Conference and University regulations (NCAA Constitution 11.2.1).

Coach shall also abide by the State of Louisiana Code of Government Ethics, University Policy and Regulations, federal laws, other state laws and the policies and regulations of the University of Louisiana System. In public appearances he shall at all times conduct himself in a manner that befits a University official and shall always attempt to create goodwill and a good image for the University.

Employee and Employer acknowledge and agree that (1) Employee has an affirmative obligation to cooperate fully in the NCAA infractions process, including the investigation and adjudication of a case (see NCAA Bylaw 19.2.3 for examples of full cooperation), and (2) an individual who is found in violation of NCAA regulations shall be subject to disciplinary or corrective action as set forth in the provisions of the NCAA infractions process (see NCAA Bylaw 19), including suspension without pay or termination of employment."

9. **TERMINATION**

Termination Without Cause: Either party may terminate this agreement without just cause prior to the expiration of its terms by giving thirty (30) days written notice to the other party. Prior to termination of COACH, the University will obtain approval from the President of the University of Louisiana System. If the University terminates the agreement without cause, the Coach shall be entitled to 60% of the combined total of the base salary and Demons Unlimited Foundation "living stipend" that he would have earned in the years remaining in the contract, less compensation received by the Coach from any other employment. The University would be responsible for the current fiscal year compensation, through the end of the fiscal year (June 30th). The Demons Unlimited Foundation would be responsible for the remaining months in the agreement (the next July 1 through expiration). In the event Coach Barbier terminates the Contract without cause, Coach Barbier would be liable to the University for liquidated damages in the following manner:

- If after June 30, 2021 but before June 30, 2022 – Ten Thousand (\$10,000) Dollars
- If after June 30, 2022 but before June 30, 2023 – Ten Thousand (\$10,000) Dollars
- If after June 30, 2023 but before June 30, 2024 – Ten Thousand (\$10,000) Dollars
- If after June 30, 2024 but before June 30, 2025 – Ten Thousand (\$10,000) Dollars

The liquidated damages by either party shall be due and payable in a lump sum within sixty (60) days of Coach's final date of employment at Northwestern State University.

Failure to make reasonable efforts to secure employment shall be cause for termination of this agreement, and release of the University and Demons Unlimited Foundation of any obligations to make further payments.

Termination For Cause: Should Coach's contract be terminated for just cause, the University and Demons Unlimited Foundation shall not be liable for any payments or benefits specified in this agreement past the effective date of termination. Just cause for termination shall include, but not be limited to, violation or gross disregard of state or federal laws, NCAA or conference regulations or university policies or procedures.

Coach may be terminated by the University for Cause at any time for the following:

- Misconduct, including but not limited to: hostile workplace violations, documented acts of moral turpitude, acts of violence and aggression, and insubordination.

- Misconduct that: (1) violates state or university ethics laws, rules or regulations; (2) offends the ethics or traditions of the university; or (3) brings discredit or harm to the reputation of the university.
- Acts of violence or personal conduct, or condoning or encouraging employees or student athletes in such conduct, which may not warrant criminal prosecution, but result in public disrepute, contempt, scandal or ridicule that reflects unfavorably upon the reputation or mission of the university.
- Substantial and manifest incompetence.
- Gross violation or disregard of state or federal laws (excluding minor traffic offenses or non-criminal offenses).
- Deliberate and serious violations of NCAA, conference, or UNIVERSITY rules, regulations, policies or procedures.
- Failure to promote an atmosphere of compliance pursuant to NCAA Bylaw 11.1.2.1.
- Unethical conduct pursuant to NCAA 10.1.

The judgment as to whether the conduct of the Coach constitutes cause under this provision shall not be exercised arbitrarily or capriciously by the University.

Coach shall promptly report to the University's Title IX Coordinator or Deputy Title IX Coordinator any Known Violation(s) of the University or the University of Louisiana System's Sexual Misconduct Policy (including, but not limited to sexual harassment, sexual assault, sexual exploitation, domestic violence and stalking) that involve any student, faculty, or staff or that is in connection with a University sponsored activity or event. Any emergency situation shall be immediately reported to 911 and/or law enforcement. For purposes of this paragraph, a "Known Violation" shall mean a violation or an allegation of a violation of Title IX and/or the University's or the University of Louisiana System's Sexual Misconduct Policy that Coach is aware of or has reasonable cause to believe is taking place or may have taken place.

The University may terminate this Agreement for cause pursuant to the for-cause-termination provisions of this Agreement for any determined violation by Coach for failure to report a Known Violation of:

- (1) Title IX of the Education Amendments of 1972;
- (2) the University's Sexual Misconduct Policy; or
- (3) the University of Louisiana System's Sexual Misconduct Policy.

Termination for Financial Exigency: Coach may be terminated at any time due to the financial circumstances in which the University and/or the University of Louisiana System has declaration of financial exigency. Such a termination can be based on consideration of budgetary restrictions, and priorities for maintenance of program and services. In the event of such termination, COACH will receive six (6) months' notice of termination or six (6) months regular pay in lieu of such notice. All compensation, including salary, benefits, and other remuneration incidental to employment, cease upon termination.

10. **ASSOCIATE/ASSISTANT COACHES**

The Coach shall have the authority to select the associate and assistant coaches with consent of the Athletic Director, President and approval of the Board of Supervisors. Associate and assistant coaches shall be appointed as University unclassified employees.

11. **UNIVERSITY FUNDRAISING**

All fundraising activities by COACH must be pre-approved by the Athletic Director, or his designee, to ensure that such activities are in compliance with University policies.

12. **AMENDMENT EXTENSION**

This Contract may be amended and/or extended in writing by the mutual consent of the parties, and approved by the Board.

13. **SEVERABILITY**

If any provision of this Agreement shall be deemed invalid or unenforceable, either in whole or in part, this Agreement shall be deemed amended to delete or modify, as necessary, the offending provision or to alter the bounds thereof in order to render it valid and enforceable.

14. **FORCE MAJEURE**

Neither party shall be considered in default performance of her or its obligations under this Agreement if such performance is prevented or delayed by Force Majeure. "Force Majeure" shall be understood to be any cause which is beyond the reasonable control of the party affected and which is forthwith, by notice from the party affected, brought to the attention of the other party, including but not limited to war, hostilities, revolution, civil commotion, strike, lockout, epidemic, accident, fire, wind or flood or any requirements of law, or an act of God.

IN WITNESS WHEREOF, the parties have executed this act in the presence of the undersigned competent witnesses.

WITNESSES:

Peter Dubois

NORTHWESTERN STATE UNIVERSITY

BY

Bobby Barbier
BOBBY BARBIER, Head Coach

Rae Wallace

BY

Gregory S. Burke
GREGORY S. BURKE, Director of Athletics

Mike Newton

BY

Mike Newton
MIKE NEWTON, President
Demons Unlimited Foundation

Hanna O. Wainwright

BY

Dr. Marcus Jones
DR. MARCUS JONES, Interim President
Northwestern State University

BY

Dr. James Henderson
DR. JAMES HENDERSON, President
University of Louisiana Board of Supervisors

**BOARD OF SUPERVISORS FOR THE
UNIVERSITY OF LOUISIANA SYSTEM**

ATHLETIC COMMITTEE

August 26, 2021

Item H.15. **Northwestern State University's** request for approval of a contract with Mr. Stuart Gore, Head Women's Soccer Coach, effective July 6, 2021.

EXECUTIVE SUMMARY

Under the proposed agreement, effective through February 29, 2024, the Coach's salary is \$59,048 per year, payable in 26 equal installments. The Demons Unlimited Foundation may pay Coach supplemental incentive compensation as follows for promotional activities for the Foundation:

- Coach will receive use of a vehicle from a dealership for personal and business use as arranged by the Demons Unlimited Foundation and if such vehicle is not secured for coach, a monthly salary supplement of \$500 per month will be provided on an as funds available basis.
- Coach will receive use of a cell phone, including data and texting plan, with an approximate annual value of \$1,000.
- Coach will receive \$2,000 for promotional appearances in the event he wins the regular season conference championship *or* if his team is selected to play in the NCAA Tournament.
- Coach will receive additional payments for marketing, promotional and fundraising opportunities that result from the advancement of the women's soccer team in NCAA postseason competition as follows:
 - Coach will receive \$2,500 should his team win a first-round game in the NCAA Tournament;
 - Coach will receive \$5,000 should his team advance from a first-round regional to the "Sweet 16" in the NCAA Tournament;
 - Coach will receive \$7,500 should his team advance to the Elite Eight in the NCAA Tournament;
 - Coach will receive \$10,000 should his team advance to the Final Four in the NCAA Tournament;
 - Coach will receive \$15,000 for winning the NCAA Tournament/NIT.
- Coach shall receive \$1,500 for promotional and/or appearances should he be selected as "Southland Conference or Louisiana Coach of the Year."
- Coach is also eligible to receive a \$1,000 marketing incentive payment for academic success as defined by University Athletic Department policy. This payment will be for use of the Coach's name and likeness in Foundation material or literature promoting the academic achievements of the team.

If the University terminates the agreement without cause, the Coach shall be entitled to 75% of the base salary that he would have earned for the first two years of this contract extension and 50% for the third year of the contract, less compensation received by the Coach from any other employment. The University would be responsible for the current fiscal year compensation, through the end of the fiscal year (June 30). The Demons Unlimited Foundation would be responsible for the remaining months in the agreement (the next July 1 through expiration).

In the event Coach Gore terminates the Contract without cause, Coach Gore would be liable to the University for liquidated damages in the following manner:

- If after July 6, 2021 but before February 28, 2022 – \$30,000
- If after March 1, 2022 but before February 28, 2023 – \$25,000
- If after March 1, 2023 but before February 29, 2024 – \$20,000

The University and the Foundation have combined this agreement into one joint employment agreement.

RECOMMENDATION

It is recommended that the following resolution be adopted:

NOW, THEREFORE, BE IT RESOLVED, that the Board of Supervisors for the University of Louisiana System hereby approves Northwestern State University's request for approval of a contract with Mr. Stuart Gore, Head Women's Soccer Coach, effective July 6, 2021.



NORTHWESTERN STATE

Office of the President

310 Sam Sibley Drive
Caspari Hall - Suite 223
Natchitoches, LA 71497
(O) 318-357-6441
(F) 318-357-4223

H.15.

August 3, 2021

Dr. James B. Henderson, President
University of Louisiana System
1201 North Third Street, 7-300
Baton Rouge, LA 70802

Re: Head Women's Soccer Coach Contract – Stuart Gore

Dear Dr. Henderson:

Northwestern State University is submitting the attached Head Women's Soccer Coach Contract to be placed on the agenda for approval at the August 2021 Board Meeting.

Thank you for your consideration.

Sincerely,

Dr. Marcus Jones
Interim President

Attachment

DEDICATED TO ONE GOAL. **YOURS.**[™]



NORTHWESTERN STATE UNIVERSITY

**CONTRACT OF EMPLOYMENT
for STUART GORE**

STATE OF LOUISIANA

PARISH OF NATCHITOCHES

THIS AGREEMENT made and entered into as of this 26th day of August, 2021, by and between Northwestern State University (hereinafter "University") represented by Dr. Marcus Jones, Interim President, the Demons Unlimited Foundation (hereinafter "Foundation") and Stuart Gore, Head Women's Soccer Coach (hereinafter "Coach") of Northwestern State University. This agreement is subject to the approval of the Board of Supervisors for the University of Louisiana System, the management board for Northwestern State University and therefore the terms and conditions set forth in this agreement should not be considered a valid contract until approval is provided by the board.

WITNESSETH:

WHEREAS, the University requires the services of a Head Women's Soccer Coach and has selected the Coach to perform those services,

NOW, THEREFORE, the parties agree as follows:

1. EMPLOYMENT

The University does hereby employ Stuart Gore as Head Women's Soccer Coach at Northwestern State University, and Stuart Gore does hereby accept said employment and agrees to perform all those services pertaining to Head Women's Soccer Coach as prescribed by the University through the President and the Director of Athletics.

- 1.1. Coach shall be responsible, and shall report, directly to Northwestern State University's Director of Athletics (the "Director") and shall confer with the Director or the Director's designee on all administrative and technical matters. Coach shall also be under the general supervision of Northwestern State University's President.
- 1.2. Coach shall manage and supervise the team and shall perform such other duties in Northwestern State University's athletic program as the Director may assign.
- 1.3. Coach agrees to represent Northwestern State University positively in public and private forums and shall not engage in conduct that reflects adversely on Northwestern State University or its athletic programs.

2. TERM

The employment under the terms of this contract shall be for the period July 6, 2021 to February 29, 2024, subject to approval of the Board. This agreement is renewable solely upon an offer from the University and an acceptance by Coach, both of which must be in writing and signed by all the parties and approved by the Board. This agreement in no way grants the Coach a claim to tenure in employment, nor shall Coach's service pursuant to this agreement count in any way toward tenure at the University.

3. **UNIVERSITY SALARY**

The University shall pay the Head Coach an annual salary payable in 26 equal installments as follows:

First Year of Contract

Fifty-Nine Thousand, Forty-Eight (\$59,048) Dollars payable in 26 equal installments:

Second Year of Contract

Fifty-Nine Thousand, Forty-Eight (\$59,048) Dollars payable in 26 equal installments:

Third Year of Contract

Fifty-Nine Thousand, Forty-Eight (\$59,048) Dollars payable in 26 equal installments:

- 3.1. The University does not guarantee amounts due under this contract beyond the current year of performance. Should the contract be terminated for any reason, amounts due shall be in accordance with Section 9.
- 3.2. The Coach may be eligible for cost of living or merit pay increases in addition to the stated base salary. The Coach is also subject to pay adjustments according to economic circumstances that affect all employees in the unclassified state services.

4. **EMPLOYEE BENEFITS**

The Coach shall participate in the mandatory employee benefit plans and be eligible for optional employee benefit plans as would any other University unclassified employee based upon his annual University salary only.

5. **CAMPS AND CLINICS**

- 5.1 Coach Gore may operate and receive additional compensation for camps/clinics as outlined in the athletic department's policy regulating camps and clinics.
 - a. All revenues from university camps/clinics will be deposited into Coach Gore's university camp budget. After all expenses are met, Coach Gore may be compensated up to the amount of surplus remaining in the account, or use the profits to pay his assistant coaches, supplement his university women's soccer operating budget, or a combination of the three, at his discretion.
 - b. Camps operated through the university camp budget will not be subject to facility fees.
 - c. Conducting camps and clinics is considered a part of Coach Gore's job description related to promoting the University and the athletic department; thus, Coach Gore will not be required to take leave while conducting camps run through the University camp budget.
 - d. Coach Gore's camp budget will be charged for a personal injury insurance policy approved by the University for camp/clinic participants.
 - e. The Director of Athletics will be the administrative officer of the University who will be advised by the coach of any problems or questions which may arise out of the operation of the camps.

5.2 Private Camps

- a. Coach may operate a camp for the teaching of athletic pursuits on University property to the end of better utilization of the facilities and with suitable compensation paid to the University for the use of such facilities. The use of University facilities will be determined by the availability of those facilities as established by University policy.
- b. It is specifically agreed that in the operation of such camps, Coach acts for himself in his private capacity and not as an agent or employee of the University and that this agreement constitutes merely a license to use the property and facilities subject to the conditions hereafter stated.
 - Special set-ups or changes in original set-up of facilities will be taken care of by the Coach with no cost to the University.
 - The Coach agrees to pay the University all out-of-pocket costs incurred by the University in making the facilities available for the camps.
 - The Coach agrees to secure a policy of insurance in a company approved by the University's Risk Management Office under which the Board of Supervisors for the University of Louisiana System, the University, and its agents and servants, are named as the insured (or as an additional insured) which provides:
 - Workers' Compensation and Employers Liability: Workers Compensation limits are required by the Labor Code of the State of Louisiana and Employers Liability coverage if Coach hires any employees to work at such camps and clinics.
 - Comprehensive General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage.
 - Annual leave must be requested to cover the dates of the camp operation for all University personnel involved.
 - Complete records will be maintained regarding income and expenditures associated with said camp and available for verification by University auditors.
 - The Coach agrees to protect, indemnify and save harmless the University from and against any and all expenses, damages, claims, suits, actions, judgments and costs whatsoever, including reasonable attorney's fees, arising out of or in any way connected with any claim or action for property loss, personal injury or death during the operation of said camp activities.
 - The Coach is an independent contractor during said camp activities and, as such, is licensed to use certain facilities of the University. The Coach, as a university employee, will undertake to observe and require campers and its staff to conform to the general rules applicable to the use of University facilities. This paragraph is designated to assure that nothing be done which is inconsistent with the maintenance of an educational campus environment and the character of a State institution which makes its facilities open to persons without discrimination.
- c. The Director of Intercollegiate Athletics will be the administrative officer of the University who will be advised by the Coach of any problems or questions which may arise out of the operation of summer camps.

6. FOUNDATION SERVICES

During the time of employment as head coach, Coach Gore will also have the opportunity to earn salary supplements as a result of promotional activities for the Demons Unlimited Foundation. The Foundation will compensate Coach Gore separately for his appearances and

promotional activities in support of its fundraising and marketing efforts. These payments, made through the university's payroll system, are subject to all mandatory withholdings and are inclusive of retirement and Medicare payments. Supplemental payments based on incentive clauses are to be paid no later than the conclusion of the financial quarter immediately following the one in which the incentive payment was earned. The potential supplements/incentives are as follows:

- COACH will receive use of a vehicle from a dealership for personal and business use as arranged by the Demons Unlimited Foundation and if such vehicle is not secured for coach, a monthly salary supplement of \$500 per month will be provided on an as funds available basis.
- COACH will receive use of a cell phone, including data and texting plan, with an approximate annual value of \$1,000.
- COACH will receive \$2,000 for promotional appearances in the event he wins the conference regular season or tournament championship (not both) *or* if his team is selected to play in the NCAA Tournament.
- COACH will receive additional payments for marketing, promotional and fundraising opportunities that result from the advancement of the women's soccer team in NCAA Tournament competition as follows. All additional payments are cumulative:
 - Coach will receive \$2,500 should his team win a first-round match in the NCAA Tournament;
 - Coach will receive \$5,000 should his team advance from a first-round regional to the "Sweet 16" in the NCAA Tournament;
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 - Coach will receive \$10,000 should his team advance to the Final four of the NCAA Tournament;
 - COACH will receive \$15,000 for winning the NCAA Tournament.
- COACH shall receive \$1,500 for promotional and/or appearances should he be selected as "Southland Conference or Louisiana Coach of the Year (not both)."
- COACH is also eligible to receive a \$1,000 marketing incentive payment for academic success as defined by University Athletic Department policy. This payment will be for use of the Coach's name and likeness in Foundation material or literature promoting the academic achievements of the team.

7. OUTSIDE INCOME

The Coach shall be authorized to earn other revenue while employed by the University but such activities are independent of his University employment and the University shall have no

responsibility for any claims arising there from. All outside income will be subject to approval in accordance with the Board of Supervisors for the University of Louisiana System policies.

Coach shall report annually in writing to the President through the Athletic Director on July 1st of each year all athletically related income received from sources outside the University. The University shall have reasonable access to all records of Coach to verify this report (NCAA Constitution Article 11.2.2).

"Notwithstanding the above or anything else herein to the contrary, if Employee receives athletically related income or benefits totaling more than \$600 per year from any source or combination of sources other than Employer, Employee must report all such income or benefits to the [president or chancellor] in writing at least annually. Examples include, without limitation, income or benefits from (1) endorsement or consultation contracts with apparel companies, equipment manufacturers, or television or radio programs; (2) ownership, control, or management of a foundation, organization, or other entity; and (3) participation in athletic camps outside of those offered by Employer (see Bylaw 11.2.2.)."

8. **STANDARDS OF CONDUCT AND COMPLIANCE WITH NCAA AND CONFERENCE REGULATIONS**

Coach shall abide by the rules and regulations of the NCAA, Conference and University rules. If Coach is personally found to be in violation of NCAA regulations, Coach shall be subject to disciplinary or corrective action as set forth in the NCAA enforcement procedures (NCAA Constitution 11.2.1). Coach may be suspended for a period of time, without pay, or employment of Coach may be terminated if Coach is found to be personally guilty of deliberate and serious violations of NCAA, Conference and University regulations (NCAA Constitution 11.2.1).

Coach shall also abide by the State of Louisiana Code of Government Ethics, University Policy and Regulations, federal laws, other state laws and the policies and regulations of the University of Louisiana System. In public appearances he shall at all times conduct himself in a manner that befits a University official and shall always attempt to create goodwill and a good image for the University.

Employee and Employer acknowledge and agree that (1) Employee has an affirmative obligation to cooperate fully in the NCAA infractions process, including the investigation and adjudication of a case (see NCAA Bylaw 19.2.3 for examples of full cooperation), and (2) an individual who is found in violation of NCAA regulations shall be subject to disciplinary or corrective action as set forth in the provisions of the NCAA infractions process (see NCAA Bylaw 19), including suspension without pay or termination of employment."

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NSU Women's Soccer Coach Contract

Stuart Gore

Page 6

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Failure to make reasonable efforts to secure employment shall be cause for termination of this agreement, and release of the University and Demons Unlimited Foundation of any obligations to make further payments.

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