

**AGENDA ITEM BRIEFING**

**Submitted by:** Eddie J. Davis, Interim President  
Texas A&M University

**Subject:** Authorization for President to Execute Employment Contract

**Proposed Board Action:**

Authorize the President of Texas A&M University to execute the employment contract, upon review for legal form and sufficiency by the Office of General Counsel, with the following person:

Michael F. Sherman – Head Football Coach

**Background Information:**

System Policy 25.07, *Contract Administration*, states “employment contracts having a primary term longer than 5 years or contracts having a total salary consideration greater than \$300,000” must be submitted to the Board of Regents for approval.

The employment contract for Coach Sherman provides for an annual salary of \$500,000 and a supplemental payment of \$1,300,000. The employment contract covers the period from February 4, 2008 (or such earlier date as the parties mutually agree) through March 31, 2015. Coach Sherman shall receive incentives as follows:

- (a) Big 12 Championship Game – If the football team plays in the Big 12 Championship Game, \$37,500; and if the football team wins the Big 12 Championship, an additional \$37,500.
- (b) Post-Season Bowl Game – Appearance in a post-season bowl game that is not a Bowl Championship Series (BCS), \$37,500; appearance in a post-season bowl BCS football game, \$75,000; appearance in the post-season bowl designated as the National Championship Game, \$100,000.
- (c) Big 12 Conference Coach of the Year – Voted Big 12 Conference Coach of the Year by the head football coaches in the Big 12 Conference, \$25,000.
- (d) National Coach of the Year – Awarded the Paul “Bear” Bryant Coach of the Year Award by the National Sportscasters and Sportswriters Association and/or other national football coach of the year award by national organizations, \$50,000.
- (e) Winning Football National Championship – If the football team is named National Football Champion by the Associated Press, \$100,000.

Agenda Item No. 49  
Agenda Item Briefing

In the event of early termination by Coach Sherman, Sherman is obligated to pay liquidated damages in the amount of \$1.8 million to the University.

In the event of early termination without cause by the University, the University is obligated to pay Sherman \$150,000 per month for each month or portion thereof from the effective date of termination until the expiration of the contract. The payments are subject to a duty to mitigate by seeking employment as described in the agreement, with a reduction in the amount to be paid by any compensation received through such employment.

**A&M System Funding or Other Financial Implications:**

All amounts agreed upon will be fully funded from revenues generated through Athletic Department activities, including payments from adidas America.

Agenda Item No.

**TEXAS A&M UNIVERSITY**

Office of the President

November 29, 2007

Members, Board of Regents  
The Texas A&M University System

Subject: Authorization for President to Execute Employment Contract

I recommend adoption of the following minute order:

**“Authority is hereby granted, upon review for legal form and sufficiency by the Office of General Counsel, to the President of Texas A&M University to execute an employment contract with the following person:**

**Michael F. Sherman – Head Football Coach.”**

Respectfully submitted,

Eddie J. Davis,  
Interim President

**Approval Recommended:**

**Approved for Legal Sufficiency:**

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Michael D. McKinney  
Chancellor

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Jay Kimbrough  
Deputy Chancellor and General Counsel

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B. J. Crain  
Associate Vice Chancellor for  
Budgets and Accounting

## COACH'S EMPLOYMENT CONTRACT

THIS AGREEMENT (this "Agreement") is made effective February 4, 2008, or such earlier date as the Parties mutually agree (the "Effective Date"), by and between TEXAS A&M UNIVERSITY, a part of The Texas A&M University System, as the Employer ("UNIVERSITY"), and MICHAEL F. SHERMAN, as the Employee ("SHERMAN"), for and in consideration of the promises, mutual covenants and agreements of the Parties to be by them respectively kept and performed as hereinafter set forth, it is agreed as follows:

UNIVERSITY and SHERMAN recognize the value of competitive intercollegiate athletics for student athletes, the student body, former students and the national image of the UNIVERSITY. For many years, UNIVERSITY has sought to maintain a program of intercollegiate athletics that would bring pride to the above-mentioned constituencies and to do so as a member of the Athletic Conference with which the UNIVERSITY is affiliated ("CONFERENCE"), and the National Collegiate Athletic Association ("NCAA"). To this extent such organizations have applicable governing constitutions, by-laws, rules and regulations, UNIVERSITY and SHERMAN have committed themselves to complete compliance thereto.

SHERMAN shall comply with the above-mentioned organizations' rules and regulations, and shall educate and monitor any and all assistant coaches, graduate assistants or any other staff member under the supervision of SHERMAN for compliance with those rules and regulations.

The UNIVERSITY and SHERMAN hereby acknowledge that compliance shall consist of and with any written legislation of the above-described organizations, as well as with the spirit and intent of such laws and regulations.

### **TERMS OF EMPLOYMENT AND EVALUATIONS OF PERFORMANCE**

1. The UNIVERSITY hereby employs and SHERMAN hereby accepts employment with the Athletic Department in the capacity of Head Football Coach of the UNIVERSITY for the period beginning on \_\_\_\_\_ (hereafter the "Employment Date") and ending on March 31, 2015; (the "Term") subject, however, to prior termination as hereinafter provided. SHERMAN shall be evaluated each year by the Athletics Director who will report to the President as to the performance of SHERMAN and make such other recommendations as the Athletics Director shall deem appropriate as to contract terms. Such annual evaluations shall occur in the month of February of each year.

## DUTIES

2.1 The duties of SHERMAN shall include those duties customarily performed by a head football coach at a major university as well as related tasks which may be mutually agreed to between SHERMAN and the Athletics Director of the UNIVERSITY (hereinafter the "Director"). SHERMAN shall perform all prescribed duties subject to the provisions and pursuant to the orders, advice, and direction of the Director. SHERMAN shall be able to hire and terminate assistant football coaches assigned to him; with all salaries approved by the Director in advance.

2.2 SHERMAN shall at all times faithfully and to the best of SHERMAN's ability, experience, and talent, perform all of the duties that may be required of or from SHERMAN, pursuant to the express or implied terms hereof, to the reasonable satisfaction of the Director and in such manner as to bring credit to the UNIVERSITY. SHERMAN shall perform the duties herein imposed in College Station, Texas, at such other place or places as the UNIVERSITY or Director shall in good faith recommend and advise, or as the interests, needs, and opportunities of the UNIVERSITY shall necessitate.

2.3 SHERMAN will not:

- (a) publicly endorse any political figure or cause, whether on the national, state, or local level; or
  
- (b) engage in any business transactions or commerce, or personal action or appear on any radio or television programs, that may cause discredit to the UNIVERSITY.

2.4 SHERMAN recognizes that if he is found to be in violation of NCAA regulations, after an opportunity for a hearing before an NCAA committee, he shall be subject to disciplinary or corrective action as set forth in the provisions of the NCAA enforcement procedures.

2.5 SHERMAN agrees to comply with the terms and conditions of the Texas A&M University All-Sport Agreement with adidas America dated June 2, 2007, or any other contract entered into by the UNIVERSITY with a shoe, apparel or equipment manufacturer or seller which requires the UNIVERSITY's football team to wear its shoes, apparel or equipment during competition or requires SHERMAN to wear, promote, endorse or consult with the manufacturer or seller concerning the design and/or marketing of such shoes, apparel or equipment.

### **ATHLETIC DEPARTMENT INVESTIGATIONS**

3. SHERMAN will cooperate fully and completely, and will assure that his staff members cooperate fully and completely, with any investigation of any alleged violation of any of the covenants enumerated herein, conducted by the UNIVERSITY, including any questions raised by the CONFERENCE or the NCAA.

### **PAYMENT FOR SERVICES AND BENEFITS**

4.1 Annual Compensation. The UNIVERSITY agrees to pay, and SHERMAN agrees to accept from the UNIVERSITY, in full payment for the services herein described, compensation at the rate of FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$500,000.00) annually payable in monthly installments beginning with the Employment Date. In addition, the UNIVERSITY agrees that SHERMAN shall be entitled to other benefits including vacation time, disability insurance, worker's compensation, sick leave, and like privileges, excluding tenure, which are customarily afforded to employees of the UNIVERSITY of commensurate rank and length of service, and of like term of appointment.

4.2 Supplemental Payment. UNIVERSITY shall pay to SHERMAN a Supplemental Payment of ONE MILLION THREE HUNDRED THOUSAND AND NO/100 DOLLARS (\$1,300,000.00) annually beginning on the Effective Date, during the period SHERMAN serves as Head Football Coach for efforts expended in personal appearances, interviews, and overall relationships with national and local media, including television, radio and newspapers, in a manner that reflects positively on the football program and on the University. The Supplemental Payment shall be earned compensation for the computation of retirement benefits under plan(s) provided by UNIVERSITY. The Parties will review the amount and terms of the Supplemental Payment annually, including potential increases in the amount, based upon prior experience and projections for each successive year. In no event shall the Supplemental Payment provided for in this Section 4.2 be reduced during the Term of this Agreement.

4.3 Tax Withholding. As an employee, SHERMAN shall be subject to the same requirements for withholding taxes by the UNIVERSITY on payments made to him under Sections 4.1 4.2, 4.4, and 4.5. In addition, the UNIVERSITY will be responsible for issuing the required Internal Revenue forms annually to SHERMAN.

4.4 Additional Benefits. UNIVERSITY agrees to the following additional benefits for SHERMAN throughout the Term of this Agreement:

(a) SHERMAN shall have, at all times, the use of two vehicles through the car program of the Athletic Department; and

(b) SHERMAN shall be provided a club membership at one country club located in Brazos County, Texas.

#### 4.5 Incentives

(a) Big 12 Championship Game. If the football team plays in the Big 12 Championship Football Game, the UNIVERSITY shall pay to SHERMAN the sum of \$37,500.00; and if the football team wins the Big 12 Championship Football Game, the UNIVERSITY shall pay to SHERMAN an additional sum of \$37,500.00. The payment shall be made within thirty (30) days after the conclusion of the football game.

(b) Post-Season Bowl Game. For the football team's appearance in one of the post-season bowl games identified below, within thirty (30) days after the conclusion of the post-season football game, the UNIVERSITY shall pay to SHERMAN one of the following incentive payments:

(1) Appearance in an NCAA sanctioned post-season bowl game that is not a Bowl Championship Series ("BCS") football game, \$37,500.00; or

(2) Appearance in a post-season BCS football game, \$75,000.00; or

(3) Appearance in the post-season football game that is designated the National Championship Game, \$100,000.00.

(d) Big 12 Conference Coach of the Year. If SHERMAN is voted the Big 12 Conference Coach of the Year by the head football coaches in the Big 12 Conference, then within thirty (30) days after the official announcement of that honor, the UNIVERSITY shall pay SHERMAN the sum of Twenty Five Thousand and No/100 Dollars (\$25,000.00).

(e) National Coach of the Year. If SHERMAN is awarded one, or more of the following (i) the Paul "Bear" Bryant Coach of the Year Award by the National Sportscasters and Sportswriters Association, or (ii) such other national football coach of the year awarded by any national organizations such as the Bobby Dodd Foundation, Football News, American Football Coaches Association, Walter Camp Foundation, The Sporting News, Associated Press, ESPN, Sports Illustrated or by Liberty Mutual Insurance Company, then within thirty (30) days following the official announcement of such honor(s), the UNIVERSITY shall pay SHERMAN the sum of Fifty Thousand and No/100 Dollars (\$50,000.00).

(f) Winning Football National Championship. If the football team is named National Football Champion by the Associated Press, then within thirty (30) days of the official announcement of such designation, the UNIVERSITY shall pay SHERMAN One Hundred Thousand and No/100 Dollars (\$100,000.00).

4.6 Reimbursement for Spouse's Official Activities. It is understood by the parties that from time to time SHERMAN's spouse may be called upon to travel to and/or attend various functions on behalf of the UNIVERSITY. When engaged in such activities SHERMAN's spouse shall be entitled to payment for travel and other expenses incurred in such official activities. Spouse's official activities include, but are not limited to, travel to all away football and bowl games, and special events at the invitation of the Director.

4.7 Reimbursement for Coach's Official Activities. SHERMAN shall be entitled to be reimbursed by UNIVERSITY for customary expenditures incurred by SHERMAN in the discharge of his duties under this Agreement afforded to employees of the UNIVERSITY of commensurate rank and length of service, and of like term of appointment, including, but not limited to, cellular phone service and charges with respect thereto.

4.8 Reimbursements and Third Party Payment Invoices. Any invoices for payments and/or requests for reimbursements provided for in Sections 4.4(b), 4.6, and 4.7 must be submitted no later than thirty (30) days following the end of the applicable tax year. UNIVERSITY will exercise due diligence in paying items submitted for payment or reimbursement in accordance with this Section 4.8; however, in no event will payments for any item be payable to SHERMAN after sixty (60) days following the close of SHERMAN's applicable tax year.

4.10 Additional Fringe Benefits. SHERMAN shall be entitled to the following supplemental, or fringe benefits:

(a) Use of other University athletic facilities generally available to faculty and staff at the same reduced, or no cost generally available to faculty and staff;

(b) Ten (10) complimentary season football tickets located in sections 104-108 or 206-211 of Kyle Field, or some other mutually agreeable seating location of SHERMAN's selection;

(c) Four (4) complimentary men's season basket ball tickets located in sections 120 or 121 of the Reed Arena or some other mutually agreeable seating location of SHERMAN's selection, subject to SHERMAN's payment of any applicable seat license fee; and

(d) The head football coach's box at Kyle Field.

#### **TERMINATION AND SUSPENSION**

5.1 Termination by University for Cause.

(a) The UNIVERSITY shall have the right to suspend SHERMAN for a period of time without pay or terminate this Agreement prior to the end of the

Original Term or any Renewal Term if there is "Cause". For purposes of this Agreement, "Cause" shall mean:

- (1) conviction of, or plea of guilty or nolo contendere to, a criminal act that constitutes either a felony or engages in conduct bringing the UNIVERSITY into disrepute;
- (2) engaging in, knowingly supporting or tolerating, a major violation of any governing constitution, bylaw, rule, or regulation of the Big Twelve Athletic Conference (Big 12) or the National Collegiate Athletic Association (NCAA) while at the UNIVERSITY, or committing a series or pattern of secondary violations of any governing constitution, bylaw, rule or regulation of the Big 12 or NCAA;
- (3) continued substantial failure to perform any of the duties assigned to SHERMAN under this Agreement by his immediate supervisory personnel;
- (4) willful and continued breach of any express term of this Agreement by SHERMAN;
- (5) substantial physical or mental incapacity lasting in excess of one hundred eighty (180) days which cannot reasonably be accommodated by the UNIVERSITY and which interferes with SHERMAN's ability to perform essential functions of the duties and responsibilities set forth herein.

(b) "Cause" sufficient to satisfy the provisions of this Agreement shall be determined by the Director. The football team's win/loss record during the Term shall not be sufficient Cause for termination of this Agreement. SHERMAN will be provided written notice of reasons for the termination of SHERMAN's employment with the UNIVERSITY. Within ten (10) business days of his receipt of the notice, SHERMAN may request an opportunity for a hearing with the Director; and shall have a reasonable opportunity to cure any breach alleged under 5.1(a)(3), or 5.1(a)(4), Failure to request an opportunity for a hearing or cure within the ten (10) business day period shall result in SHERMAN's abandonment of any further right to an opportunity for a hearing, or right to cure. SHERMAN's failure to appear at any hearing scheduled based upon SHERMAN's request for an opportunity for a hearing shall also constitute abandonment of any further right to an opportunity for a hearing.

(c) In the event this Agreement is terminated for Cause, the UNIVERSITY's sole obligation to EMPLOYEE shall be to pay his Base Salary until the effective date of the termination.

5.2 Termination Without Cause. The UNIVERSITY shall have the right to terminate this Employment Agreement before the expiration of its stated Term or any extension thereof, without cause. Termination without cause shall mean termination of this Agreement on

any basis other than those set forth in Section 5.1 above. Termination without cause shall be effected by delivering to SHERMAN written notice of the UNIVERSITY's intent to terminate this Agreement without cause effective on a date set forth in such notice, such date shall not be earlier than forty-five (45) days from the posted date of such written notice or from the date of delivery to SHERMAN if the UNIVERSITY personally delivers such notice. If the UNIVERSITY exercises its right under this section to terminate without cause, SHERMAN shall be entitled to damages as provided for in Section 5.3 below.

5.3 Damages Upon Termination by UNIVERSITY Without Cause. If the UNIVERSITY terminates this Agreement without cause prior to its expiration, or any extension thereof, in accordance with Section 5.2 above, the UNIVERSITY shall pay to SHERMAN, and SHERMAN agrees to accept as liquidated damages, the sum of One Hundred Fifty Thousand and No/100 Dollars (\$150,000.00) per month for each month or portion thereof (pro-rata) from the effective date of termination until the expiration of the Term of this Agreement. The liquidated damages amount shall be paid monthly commencing on the first day of the month in which the termination date occurs and continuing on the first day of each succeeding month until the date the Term would have ended as specified in Section 1.1 above. The UNIVERSITY's obligation to pay such liquidated damages shall be subject to SHERMAN's duty to mitigate the UNIVERSITY's obligation as specified in Section 5.3 hereof. SHERMAN will be entitled to continue such insurance benefits at SHERMAN's own expense as required or permitted by law, but SHERMAN will not otherwise be entitled to any employment or other benefit described in Article 4 hereof.

(a) While the UNIVERSITY's obligation to pay liquidated damages remains in effect, SHERMAN agrees to mitigate the UNIVERSITY's obligation to pay liquidated damages under Section 5.3 hereof and to make reasonable and diligent efforts to obtain employment as soon as possible after termination of this Agreement by the UNIVERSITY pursuant to Section 5.2 hereof. Employment will mean, without limitation, working as an employee for another employer, as a consultant, as a self-employed person, or as an independent contractor. It is agreed that the liquidated damages paid by the UNIVERSITY pursuant to Section 5.3 hereof shall be offset or reduced on a quarterly basis by the compensation earned by SHERMAN by the expenditure of his personal skill and efforts, either directly or through business entities owned or controlled by SHERMAN, from such employment. For purposes of this subsection, compensation shall mean, without limitation, gross income from base salary or wages paid by an employer, consulting fees, honoraria, or fees received by SHERMAN as an independent contractor, but shall not include diminutive compensation of less than \$10,000 per contract or event earned from product endorsements, book publication contracts, or individual speaking engagements by SHERMAN. While the UNIVERSITY's obligation to pay liquidated damages remains in effect, within fourteen (14)

calendar days after accepting any employment SHERMAN shall provide the UNIVERSITY with complete details of SHERMAN's new compensation package. Should SHERMAN fail or refuse to notify the UNIVERSITY of SHERMAN's employment and the details of SHERMAN's compensation, then after giving SHERMAN fourteen (14) calendar days written notice, the UNIVERSITY's obligation to continue paying liquidated damages to SHERMAN shall cease

The Parties have bargained for and agreed to the foregoing liquidated damages provision, giving consideration to the fact that termination of this Agreement by the UNIVERSITY without cause prior to its natural expiration may cause SHERMAN to lose certain benefits, supplemental compensation, on going retirement benefit accruals or outside compensation relating to his employment at the UNIVERSITY.

5.4 Termination by SHERMAN. SHERMAN recognizes that his promise to work for the UNIVERSITY for the entire term of this Agreement or as it may be extended is of the essence of this Agreement to the UNIVERSITY. SHERMAN also recognizes that the UNIVERSITY is making a valuable investment in his continued employment by entering into this employment Agreement and that its investment would be lost were SHERMAN to resign or otherwise terminate his employment with the UNIVERSITY prior to the expiration of the Term of this Agreement. While recognizing these agreements and this entire Agreement, the parties agree that SHERMAN may nevertheless, terminate this employment Agreement prior to its normal expiration but only upon the following terms and conditions:

(a) Written Notice by SHERMAN. SHERMAN may terminate this employment Agreement during its term by giving the UNIVERSITY forty-five (45) days advance written notice of the termination of his employment with the UNIVERSITY.

(b) Payment upon Termination by SHERMAN. Should SHERMAN terminate this Employment Agreement prior to the end of the Term as provided in Section 1.1, SHERMAN shall pay to the UNIVERSITY as liquidated damages the sum of One Million Eight Hundred Thousand and No/100 Dollars (\$1,800,000.00). Such liquidated damages shall be due and payable within sixty (60) days after the effective date of termination of this Agreement. Failure to pay such liquidated damages shall constitute a breach of this Agreement. The parties have bargained for and agreed to the foregoing liquidated damages provision, giving consideration to the fact termination by SHERMAN will cause the UNIVERSITY administrative, recruiting, and resettlement costs in obtaining a replacement for SHERMAN, in addition to potentially increased compensation costs and loss of ticket revenues.

Upon termination of this employment Agreement by SHERMAN, the UNIVERSITY's obligation to pay to SHERMAN the consideration described herein shall terminate and cease as of the effective date of the termination.

### **RELOCATION**

6.1 **Moving Expenses.** UNIVERSITY agrees to pay for or to reimburse SHERMAN for actual and reasonable household relocation costs incurred by SHERMAN in moving household goods and personal effects from his current residence to either permanent housing or storage in the College Station area including temporary storage not to exceed three (3) months from commencement of the Term.

6.2 **Temporary Housing.** UNIVERSITY shall provide at its expense temporary housing for SHERMAN and his family for a duration not to exceed three (3) months from commencement of the Term.

### **ENTIRE AGREEMENT**

7. This Agreement constitutes the entire and only agreement between the Parties hereto and supersedes any prior understanding or written or oral agreements between the Parties. This Agreement may be altered only by a subsequent written Agreement signed by both Parties. No waiver by the Parties hereto of any default or breach of any covenant, term or condition of this Agreement shall be deemed to be a waiver of any other breach of the same or any other covenant, term or condition contained herein. Nothing in this Agreement shall be construed as a waiver or relinquishment by the UNIVERSITY of its right to claim such privileges and immunities as may be provided by law.

### **UNENFORCEABILITY OF PROVISIONS**

8. In case any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions hereof, and this Agreement shall be construed as if such invalid, illegal, and unenforceable provision had never been contained herein.

### **GOVERNANCE UNDER THE LAWS OF TEXAS**

9. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

### **ANNUAL REPORT OF OUTSIDE INCOME**

10. SHERMAN shall report annually in writing to the President of the UNIVERSITY through the DIRECTOR, on or before October 31 of each year, all athletically-

related income from sources outside the UNIVERSITY, including but not limited to, income from annuities, sports camps or clinics, housing benefits, complimentary ticket sales, Internet web sites, speaking engagements, public appearances, country club memberships, personal services contracts, television and radio programs and endorsement or consultation contracts with athletic shoe or apparel or equipment manufacturers or sellers, and the UNIVERSITY shall have reasonable access to all records of SHERMAN necessary to verify such report. (As of the effective date of this Agreement SHERMAN's outside sources and amounts of athletically-related income are set forth in Exhibit A, attached hereto, which list shall be updated promptly to reflect any changes and in no event less frequently than annually.) This disclosure of outside income is required by Article 11.2, of the NCAA Bylaws.

**PROHIBITED OUTSIDE INCOME**

11. SHERMAN may not be compensated by an individual or commercial business outside the UNIVERSITY for employment or assistance in any manner or from any source where such outside or third party compensation would be in violation of NCAA Rules or the rules of the conference with which the UNIVERSITY is affiliated.

EXECUTED in triplicate originals this \_\_\_\_\_.

APPROVED:

TEXAS A&M UNIVERSITY  
ATHLETIC DEPARTMENT

EMPLOYER:  
TEXAS A&M UNIVERSITY

\_\_\_\_\_  
Bill Byrne  
Athletic Director

\_\_\_\_\_  
Ed J. Davis  
Interim President

FORM AND LEGAL SUFFICIENCY

EMPLOYEE:

\_\_\_\_\_  
Scott A. Kelly  
Deputy General Counsel

\_\_\_\_\_  
Michael F. Sherman  
Head Football Coach

EMPLOYEE REPRESENTATIVE

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Robert LaMonte  
Employee Representative