

# CONTRACT

This agreement made by and between Southern Utah University (hereafter referred to as "SUU" or the "University") and Claude Lamb (hereafter referred to as "Lamb").

In consideration of the mutual covenants and conditions herein contained, SUU and Lamb agree as follows:

## 1.0 Employment

- 1.1 As head football coach, Lamb is an employee of the University and shall be under the immediate supervision of SUU's Athletic Director, Ken Beazer (or his successor, hereinafter referred to as "Athletic Director"). Lamb shall perform such duties as are set forth in Section 4 of this document. In addition, Lamb shall perform such duties as may be assigned to him by the Athletic Director, or by Michael T. Benson, President of SUU (or by his successor, hereinafter, the "President"), in connection with the supervision and administration of the football program, and such other duties as may be similarly assigned in other areas of SUU's intercollegiate athletic program. Lamb shall confer with the Athletic Director or athletic staff on all matters requiring administrative, financial and technical decisions. If necessary, the Athletic Director and Lamb may confer with the President if a problem cannot otherwise be resolved. (The President, and Athletic Director may be otherwise collectively referred to below as "supervisors".)
- 1.2 The employment described herein in no way grants Lamb a claim to, or guarantee of, tenure in employment, or any accountable years of employment attributable to the attainment of tenure as may otherwise be defined or provided for by SUU policy.

## 2.0 Term

- 2.1 The term of this contract shall extend from January 18, 2011 until the end of the 2015 football season, at which time (or prior thereto), this agreement may be renewed or modified by mutual agreement of the parties. In order to become binding and effective, any such renewal or modification shall be in a written memorandum.
- 2.2 Lamb's performance and compliance with the terms and requirements stated herein shall be reviewed annually by those supervisors named in Section 1.0 above, and if considered satisfactory, SUU reserves the right to extend the contract period together with such additional compensation, benefits and coverage's as may be appropriate by virtue of said performance. Any such extension will be made by written memorandum as required in Section 2.1, above.

### 3.0 Compensation/External Income

3.1 In consideration for services actually rendered and satisfactory performance of the terms of this contract by Lamb, SUU promises to pay Lamb:

3.1.1 A gross annual base salary of \$103,600 per contract year for the duration of the contract. Withholdings as required by law will be deducted by SUU from the gross annual salary and the net shall be paid to Lamb on SUU's regular pay cycle, after services are actually rendered. The base salary shall be augmented periodically by raises that are extended to SUU professional employees generally, such as authorized cost of living adjustments. Any raise or salary adjustment based on "merit" will be awarded or denied on the basis of such merit criteria as may be otherwise utilized in evaluating other professional staff employees at the University and/or within the athletics department. Such raises, if applicable, shall take effect at the beginning of the University's fiscal year.

3.1.1.1 Lamb shall receive a donor-provided vehicle or car stipend. Insurance for the donor car shall be the responsibility of Lamb as per SUU Risk Management policy. Car allowances are deemed to be for business purposes and are a taxable benefit.

3.1.1.2 Lamb will be paid cash incentive bonuses on the second pay period following the end of each football season as follows:

\$3,000 for NCAA (FCS) playoff appearance (not per game)

\$2,000 for conference championship

\$1,000 for conference Coach of the Year

\$1,000 for eight (8) NCAA Division I (FCS) wins

\$1,000 for each victory over in-state NCAA Division I institution

\$1,000 for annual APR score of 1,000

\$900 for annual APR score of 990

\$800 for annual APR score of 980

\$700 for annual APR score of 970

\$600 for annual APR score of 960

\$500 for annual APR score of 950

3.1.2 Lamb shall also receive the standard University fringe benefits provided to professional staff employees, including (among other things) group medical, dental, life, long-term disability, sick leave benefits and retirement contributions. The base salary set forth in Section 3.1.1 above, and as modified each fiscal year, is the basis for calculating benefits.

The availability of these to all employees, including Lamb, shall be subject to available funding and University discretion with no recourse to Lamb, whatsoever.

- 3.2 As Head Football Coach, Lamb may sponsor and direct summer youth football camps as set out in Section 4.2 below. These will be conducted in compliance with NCAA rules, SUU policy, and this agreement.
- 3.3 Before Lamb agrees to or accepts any athletically related income and/or benefits from sources outside the University, Lamb must have the President's prior written approval pursuant to NCAA Bylaws 11.2.2. There shall be no endorsements, ownerships or lending of Lamb's personal name to products or services without specific prior written approval from the President, which shall not be unreasonably withheld. Also subject to prior written approval from the President are opportunities for compensation to Lamb which may become available from television, radio or speaking engagements.

#### 4.0 Coach's Duties

- 4.1 In consideration of the compensation and other benefits available to Lamb under the provisions of this contract, Lamb promises and agrees as follows:
  - 4.1.1 To faithfully and conscientiously perform the duties assigned by the supervisors as specified in Section 1.0 above;
  - 4.1.2 To oversee all facets of the SUU Football Program; including, but not limited to: recruiting high caliber student-athletes, scouting and breakdown of opponent's films, game planning, practice plans, player development, hiring and supervision of assistant coaches;
  - 4.1.3 To work closely with department and University academic coordinators to assist with the academic advancement of the student-athletes in the football program;
  - 4.1.4 To devote his full time, attention, and energy to the duties of Head Football Coach (except as otherwise permitted herein), and to the promotion of SUU's intercollegiate athletic programs in accordance with department procedures, and under the supervision defined herein. With written prior disclosure to supervisors, Lamb may engage in activities or businesses which are consistent with State law and/or SUU policy, and/or NCAA regulations, and those which would not be or become a conflict of interest with his duties as Head Football Coach;

4.1.5 To recognize, understand, and comply with the laws, policies, rules and regulations of SUU, and to recognize, understand and comply with the rules of the NCAA and any athletic conference to which SUU may belong, as now constituted or as may be created or revised during the term hereof. Lamb shall also ensure that all assistant coaches and any other employees he supervises comply with these same policies, procedures, rules and regulations.

4.2 In addition to Lamb's duties as Head Football Coach, Lamb may organize and oversee summer youth football camps as follows:

4.2.1 The camp(s) shall be organized and conducted in accordance with NCAA rules and SUU policies and procedures.

4.2.2 The location, duration, staff, participation fees, and other aspects of the camp(s) shall be determined by Lamb, subject to the reasonable approval of the Athletic Director.

4.2.3 SUU agrees to make available to Lamb typical facilities, including athletic facilities, dorm rooms and meeting rooms needed for camps, for the minimum charge permissible under applicable University policy, NCAA rules and Utah law.

4.2.4 Lamb will obtain and personally pay for appropriate liability insurance in an amount acceptable under the University's policy with the Utah Office of Risk Management, which insurance will name the University as an "additional insured." Proof of coverage will be provided to the Athletic Director prior to the start of the camp.

4.2.4 The proceeds from any such camps shall be received, accounted for and disbursed by Lamb for all expenses, salaries, insurance, campus facility fees, and related costs, and shall be reported within thirty (30) days of the conclusion of the camp to the Athletic Director. Lamb may retain such net income as may result, but he shall be solely and personally liable and responsible for the payments of all taxes, assessments and penalties arising from that income.

## 5.0 Travel

5.1 Lamb shall travel as necessary and feasible within existing budgetary constraints to carry out duties as head football coach, and he shall be entitled to reimbursement for transportation

and per diem expenses at the rate established for SUU travel generally.

## 6.0 Termination by the University

Lamb recognizes that his promise to remain as a University employee through the entire term of this Agreement is “of the essence” to the University. It is also recognized, however, that certain circumstances may make it appropriate for the University to terminate this Agreement prior to the completion of its term.

6.1 *Termination by University for Cause.* The University shall have the right to terminate this Agreement for cause prior to its normal expiration under paragraph 2.1, above. The term “cause” shall include, in addition to and as examples of its normally understood meaning in employment contracts, any of, but not limited to or by the following:

- 6.1.1 Unwillingness or refusal to perform the duties outlined in this agreement or failure to perform such duties in good faith and to the best of Lamb’s abilities;
- 6.1.2 Violations by Lamb of any of the other terms and conditions of this Agreement not remedied after ten (10) days’ written notice thereof to Lamb;
- 6.1.3 Any conduct in violation of any criminal statute involving moral turpitude, or conviction of any felony as defined under Utah law;
- 6.1.4 An intentional or negligent violation of any law, rule, regulation, constitutional provision, bylaw or interpretation of the University, any current or future conference or the NCAA, which violation, in the sole judgment of the supervisors named in Section 1.0 above, reflects adversely upon the University or its athletic program, including any violation which may result in the University being sanctioned, penalized, or placed on probation by its athletic conference or the NCAA;
- 6.1.5 An intentional or negligent violation of any law, rule, regulation, constitutional provision, bylaw or interpretation of the University, any current or future conference or the NCAA by a member of the SUU Football Staff (or any other person under Lamb’s supervision or direction, including student – athletes in the football program), which violation is not immediately or timely reported to the Athletic Director and which is not immediately or timely

dealt with by Lamb in disciplining or dismissing the offending staff member(s) or student-athlete(s), and which violation may, in the sole judgment of the supervisors named in Section 1.0 above, reflect adversely upon the University or its athletic program, including any violation which may result in the University being sanctioned, penalized, or placed on probation by its conference or the NCAA;

6.1.6 Prolonged absence from duty without the prior consent of the Athletic Director; or,

6.1.7 Any cause adequate to sustain the termination of any other staff member or professional employee of the University.

6.2 *Determination of Cause and Employee's Right to Due Process.* "Cause" shall be determined by the Athletic Director. Once such determination is made, the Athletic Director shall have the administrative authority to recommend disciplinary measures up to and including termination. Pending final decision, the Athletic Director may place Lamb on administrative leave, and if expedient in the Athletic Director's sole judgment, may name a temporary replacement by giving written notice to Lamb detailing the reasons for such recommendation(s) and setting forth a ten (10) day period within which Lamb may grieve any such determination in writing to the supervising Vice President who will make a final determination thereon. If Lamb fails to file a grievance within ten (10) days after receipt of notice, the recommendation(s) will become final and this Agreement shall be terminated for the cause(s) cited in the notice. Lamb's grievance and due process rights shall thereby be exhausted as other grievance procedures under University policy are superseded by this Agreement

In the event this Agreement is terminated for cause, all obligations of the University to make further payments and/or provide any other consideration or benefits hereunder shall cease one month (two pay periods) following the date on which such termination becomes final. In no case shall the University be liable to Lamb for the loss of any collateral business opportunity or any other benefits, perquisites or income resulting from activities such as, but not limited to, campus camps, media appearances, apparel or shoe contracts, consulting relationships, or from any other source. However, the University shall have the right, without recourse, to notify such individuals or entities known to its supervisors, as may have such relationships with Lamb, to advise them of any change in Lamb's employment relationship with the University.

6.3 *Termination by University without Cause.* The University shall have the right to terminate this Employment Agreement prior to its normal expiration, as provided in paragraph 2.1 above, without cause. Termination “without cause” shall mean termination of this Agreement on any basis other than those set forth in paragraphs 6.1 and 6.2, above. Termination by the University shall be effective upon delivering to Lamb written notice of the University’s intent to terminate this Agreement thirty (30) days after Lamb’s receipt of such notice. If the University exercises its right to terminate this Agreement without cause, Lamb agrees that he shall be entitled to damages only as provided below:

6.3.1 If the University terminates this Agreement without cause prior to its expiration, the University shall pay to Lamb, as liquidated damages, a sum representing the unpaid balance of base salary and benefits due under Section 3.1 of this Agreement. The University’s obligation shall be paid by continuing the regular periodic payroll schedule over the remaining term of this Agreement and shall be subject to Lamb’s duty to mitigate the University’s obligation. In no case shall the University be liable for the loss of any elective or external collateral business opportunities or any other benefits, perquisites or income resulting from activities that may ensue as a result of the University’s termination of this Agreement without cause.

6.3.2 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 Lamb to lose certain elective or external compensation relating to his employment at the University, which damages are extremely difficult to determine fairly, adequately, or with certainty. The parties further agree that the payment of such liquidated damages by the University and acceptance thereof by Lamb shall constitute adequate and reasonable compensation to Lamb for the damages and injury suffered by Lamb because of such termination. The foregoing is not intended or understood to be, nor should it be construed to be, a penalty.

6.3.3 *Mitigation of Damages by Lamb if University Terminates Without Cause.* Notwithstanding the provisions of the above paragraph, Lamb specifically agrees to mitigate the University’s obligations to pay liquidated damages under the above section and to make reasonable and diligent efforts to obtain reasonably comparable employment, as soon as possible

after notice of intent to terminate, or notice of reassignment of this agreement. Once Lamb obtains new employment he shall be immediately obligated to notify the University of such as soon as possible, in writing, with the University's financial obligations under this Agreement, including the above section, to be reduced thereby, and if reduced to zero (\$-0- ), then to cease upon the starting date of Lamb's new employment or upon the expiration of the contract, whichever occurs first.

In any event, upon Lamb obtaining subsequent reemployment, the benefits portion of the liquidated damages shall cease entirely and Lamb's duty to mitigate that portion of the liquidated damages shall cease as well.

## 7.0 Termination by Lamb

This contract may be terminated by Lamb upon written notice to the Athletic Director or another supervisor prior to its stated expiration date, but only on the following terms and conditions:

- 7.1 By Lamb providing notice of termination thirty (30) days prior to the training and playing dates of the upcoming football season, as defined by the NCAA, so as to minimize the impact of such termination upon the football program. As provided below, should Lamb wish to terminate this Agreement he agrees to "buy out" his interest from the University within three (3) months following the effective date of his termination as follows:
  - 7.1.1 If Lamb elects to terminate this contract prior to the completion of the **2011** football season in order to accept another coaching or athletics-related position, Lamb agrees to pay SUU forty percent (40%) of his annual base salary for that year. If Lamb gives notice or leaves during this season, the buy-out will be fifty percent (50%).
  - 7.1.2 If Lamb elects to terminate this contract prior to the completion of the **2012** football season in order to accept another coaching or athletics-related position, Lamb agrees to pay SUU thirty-five percent (35%) of his annual base salary for that year. If Lamb gives notice or leaves during this season, the buy-out will be forty-five percent (45%).
  - 7.1.3 If Lamb elects to terminate this contract prior to the completion of the **2013** football season in order to accept another coaching or athletics-related position, Lamb agrees to pay SUU twenty-five percent (25%) of his annual base salary for that year. If Lamb gives notice or leaves during this season, the buy-out will be thirty-five percent (35%).

- 7.1.4 Upon completion of the **2013** season, Lamb may terminate with no buy-out requirement.
- 7.1.5 It is expressly understood that this buy-out requirement reflects the value of Lamb's reputation and experience upon commencement of this Agreement and the University's expectations to benefit there from. Recognizing that the damage to the University being deprived of this value is extremely difficult to determine fairly, adequately, or with certainty, the parties have agreed to these buy-out provisions as liquidated damages. The parties further agree that the payment of liquidated damages by Lamb and acceptance by the University shall constitute adequate and reasonable compensation to the University for the damages and injury suffered by Lamb's early termination. The parties further agree that payment of these liquidated damages is not intended as a penalty, but rather a reasonable approximation of liquidated damages.
- 7.2 Should Lamb terminate this Agreement by his voluntary resignation, Lamb thereby waives any claim to further compensation thirty (30) days there after. Lamb further agrees in good faith, that such voluntary resignation will not be for the purpose of accepting a coaching or athletic-related position.
- 7.3 As of the date Lamb's termination or resignation is submitted to the University, Lamb will continue to receive his base salary and shall continue to fulfill all duties by this Agreement for a period of thirty (30) days thereafter.
- 7.4 Simultaneous with the notice required in Section 7.1 or any voluntary resignation, Lamb shall inform any sponsors or external employees or endorsers in writing of his imminent disaffiliation with the University, providing copies of such writings to the Athletic Director. Lamb shall also supply to the University a written summary of the new coaching or athletic-related employment he has secured, or otherwise of any professional plans he will pursue following the termination of employment with the University;

## 8.0 Support Staff

Lamb shall have the right to select, retain, and employ (and similarly to discharge and terminate) assistant football coaches, subject to approval of their credentials, salaries, and benefits (or termination) by the Athletic Director, which approval shall not be unreasonably withheld. Following his approval, the Athletic Director shall make specific recommendations to

the President as to all final decisions regarding such employment or termination. Lamb understands that all assistant coaches are to be employed “at will” pursuant to applicable SUU policies and procedures, and he understands that he is not authorized to make any promise, assertion, or other guarantee which may legally contradict this policy.

9.0 Scheduling

In consultation with the athletic director, Lamb is to schedule football teams for the benefit of university exposure and guaranteed monies. Lamb recognizes that a portion of the amount of new guarantee revenue for such games will be allocated to the general athletic budget.

10.0 Relationship between the Parties

The relationship between Lamb and SUU shall be determined solely by the terms and conditions of this contract as the same may be understood by both parties or as it may be defined by or have incorporated by reference by Southern Utah University Policies and Procedures. It is further recognized by both parties that this contract and any subsequent written modifications hereto constitute and memorialize any and all prior discussions, negotiations and agreements between them and that any and all such interactions are merged herein.

11.0 Governing Law

This Agreement shall be governed by and construed pursuant to the laws of the State of Utah.

12.0 Severability

If any provision of this Agreement shall at any time become or be determined to be void, invalid, unenforceable or illegal for any reason, it shall be ineffective only to the extent of such prohibition and the validity and enforceability of all the remaining provisions shall not be affected thereby.

13.0 Disclosure

The terms of this contract shall not be disclosed by either party to the general public, news media, other persons or entities, etc., except as may be required by Utah law.

14.0 Incorporation by Reference

To the extent the same are referred to herein either generally or specifically, the applicable provisions of the Southern Utah University

Policies and Procedures as presently constituted, or hereafter amended, are hereby incorporated by this reference.

IN WITNESS WHEREOF, Lamb and the authorized representative(s) of Southern Utah University executed this Agreement on this 18<sup>th</sup> day of January, 2011.

BY \_\_\_\_\_  
Ken Beazer  
Director of Athletics

BY \_\_\_\_\_  
Claude Lamb  
Head Football Coach

Approved by:

\_\_\_\_\_  
Michael T. Benson  
President