

STATE OF TEXAS
§COUNTY OF TRAVIS §

MEMORANDUM OF UNDERSTANDING FOR
STATE FINANCIAL AID PROGRAMS

Section 1.0 Parties

This agreement ("Agreement") is entered into by and between the TEXAS HIGHER EDUCATION COORDINATING BOARD (THECB), an agency of the State of Texas, hereinafter designated "THECB" and Stephen F. Austin State University, hereinafter designated the "Performing Agent." At times, the THECB and the Performing Agent are referred to singularly as "Party" and jointly as "Parties".

Funding Agency: Texas Higher Education Coordinating Board
1200 East Anderson Lane
Austin, Texas 78752

Grantee: Stephen F. Austin State University
P.O. Box 13052 SFA Station
Nacogdoches,
TX, 75962

Authority:

Section 2.0 Term of Agreement

The term of Agreement begins on September 1, 2017 and ends on August 31, 2021 ("Agreement Term"). At the sole discretion of THECB, the resulting Agreement may be renewed for a single, two-year renewal period beyond the original Agreement.

Section 3.0 Purpose and Agreement

Pursuant to 19 Texas Administrative Code Chapters 21 and 22 (and the statutory authority under which such THECB rules were promulgated), THECB is authorized by the State of Texas and/or the federal government to administer certain grants, loans, scholarships, service obligations, work study programs and exemption programs. The purpose of this Agreement is to establish the rights, duties, obligations and interests of the Performing Agent which has applied to THECB to participate in programs named under 19 Texas Administrative Code Chapters 21 and 22 or programs otherwise authorized by the State of Texas and federal government and assigned to THECB for administration (hereinafter referred to collectively as the "Financial Aid Program(s)").

In consideration of the mutual promises set forth in this Agreement and other consideration received, the Parties agree as follows:

- A. The Performing Agent shall abide by THECB's rules for the administration of the Financial Aid Program(s) on behalf of its students, who are receiving the funds, as such rules are adopted by THECB and any amendments thereto.

- B. The Performing Agent shall appoint a Program Officer for each Financial Aid Program being administered by the Performing Agent on behalf of the Performing Agent's students who are the recipients of the Financial Aid Funds. The Program Officer will exercise reasonable and diligent care and employ accepted business practices in the administration of the Financial Aid Program(s) and notify the THECB in writing via U.S. Mail or via electronic mail as soon as practicable if there is any change in assigned personnel. The Performing Agent shall immediately report to THECB any breach of this Agreement by the Performing Agent.
- C. The Performing Agent shall submit such reports and information as THECB may require in connection with the administration or evaluation of the Financial Aid Programs and submit these materials to THECB within the time allotted by THECB for each such report. The Performing Agent agrees that all reports provided to THECB or its representative shall reflect properly the facts and those reports may be relied upon as being complete and accurate.
- D. The Performing Agent shall comply with such procedures as THECB may find necessary to ensure the full utilization of Funds offered to the Performing Agent's students through the Financial Aid Program(s). The procedures shall include any applicable state or federal laws, THECB rules or instructions, and any additional terms and conditions identified in any award of Funds THECB issues to the Performing Agent. Unless otherwise provided in such procedures, to the extent the Performing Agent's students receive any over-payments for any reason, such overpayments must be reimbursed to THECB by the Performing Agent within 30 calendar days of receipt of THECB's written notice of overpayment thereto.
- E. The Performing Agent shall timely provide copies of all forms required by THECB in administration of the Financial Aid Program(s).
- F. The Performing Agent, when functioning as the financial aid awarding Party for a student concurrently enrolled in more than one institution in the State of Texas, is responsible for: (a) determining student eligibility, (b) determining correct award amounts; and (c) providing timely and accurate reports to THECB.
- G. The Performing Agent must submit, in the form and manner requested by THECB, to one or more reviews of the Financial Aid Programs, if selected for such, by THECB.
- H. THECB shall make current rules for the Financial Aid Programs in which THECB participates and makes available to the Performing Agent by posting the rules on THECB's website.
- I. Both Parties shall comply with Title VI of the Civil Rights Act of 1964, with regard to all transactions, which states, in part: "No person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subject to discrimination" under any provisions of these programs. The Performing Agent shall not disclose any personal nonpublic information unless required or permitted by applicable law.
- J. The Performing Agent shall maintain eligibility to receive Title IV funds from the United States Department of Education. The Performing Agent has an ongoing and continuing obligation to notify THECB in the event that Performing Agent loses Title IV eligibility, loses accreditation, is notified of any changes to its accreditation, or is placed on any financial restrictions by the United States Department of Education, including, but not limited to heightened cash monitoring.

Section 4.0 Terms and Conditions

- 4.1 **Termination for Cause:** THECB may, by written notice to the Performing Agent, immediately terminate this Agreement for cause if: (a) THECB is not reasonably satisfied with the

Performing Agent's administration of the Financial Aid Programs or (b) the Performing Agent fails to substantially comply with any term or condition of this Agreement, through no material fault of THECB. Unless the THECB has reasonable suspicion of criminal activity in the Performing Agent's administration of the Financial Aid Programs, THECB will provide a seven (7) calendar day advance written notice of intent to terminate to the Performing Agent, and THECB will provide the Performing Agent with an opportunity for consultation with THECB prior to termination.

If the Performing Agent fails or refuses to perform its obligations under this Agreement, THECB may exercise any and all rights as may be available to it by law or in equity.

- 4.1.1 Interpretation:** THECB may terminate this Agreement immediately upon written notice to the Performing Agent in the event federal or state law is enacted, amended, or judicially interpreted so as to render continued fulfillment of the Agreement, on the part of THECB, wholly unreasonable or impossible. THECB reserves the right, at its sole discretion, to unilaterally amend this Agreement throughout the Term of Agreement to incorporate any modifications necessary for THECB's compliance, as an agency of the state of Texas, with all applicable state and federal laws, rules, regulations, requirements, and guidelines. Performing Agent may immediately terminate this Agreement.
- 4.1.2 Non-Appropriation:** This Agreement may be terminated immediately if funds allocated to THECB should become reduced, depleted, or otherwise unavailable during the Term of Agreement and to the extent that THECB is unable to obtain additional funds for such purpose.
- 4.1.3 Effect of Termination:** Upon any termination, all indemnities, including without limitation those set forth in this Agreement, as well as Agreement provisions regarding confidentiality, records retention, right to audit, and dispute resolution, shall survive the termination of this Agreement for any reason whatsoever and shall remain in full force and effect.
- 4.2 Amendment:** Except as otherwise provided in this Agreement, this Agreement may be modified only by written amendment executed by the Parties hereto.
- 4.3 Indemnification:** To the extent allowed by law, the Performing Agent shall defend, indemnify, and hold harmless the State of Texas, its officers, and employees, and THECB, its officers, and employees and contractors, from and against all claims, actions, suits, demands, proceedings, costs, damages, and liabilities, including without limitation attorneys' fees and court costs, arising out of, connected with, or resulting from any negligent acts or omissions of the Performing Agent or any agent, employee, subcontractor, or supplier of the Performing Agent in the execution or performance of this Agreement to administer the Financial Aid Programs. The Performing Agent shall coordinate its defense with the Texas Attorney General as requested by THECB. Notwithstanding the foregoing, under no circumstances may the Performing Agent be held liable for any claims or liabilities resulting solely from the intentional acts of misconduct or negligent acts or omissions of the State of Texas, its officers, and employees, and THECB, its officers, and employees. Notwithstanding any provision of this contract, nothing herein shall be construed as a waiver by either party of its constitutional, statutory or common law rights, privileges, immunities or defenses as noted also in Section D.
- 4.4 Intellectual Property Indemnification:** Additionally, if in administering the Financial Aid Programs the Performing Agent requires or desires to use any design, trademark, device, material, software, or process covered by letters of patent or copyright and which is selected by the Performing Agent, to the extent allowed by law, the Performing Agent shall, to the extent allowed by law, indemnify, defend and hold harmless the State of Texas, THECB, as well as officers, agents, and employees of THECB, from any liability, for any and all claims, demands, suits or actions brought by any third party, including any subcontractors of the Performing Agent, and related fees based on any claims for infringement by reason of the use of any such

trademark, copyrighted material, or patented design, device, material, software, or process in connection with the Services agreed to be performed and shall indemnify and/or reimburse the State of Texas, THECB, as well as officers, agents, and employees of THECB, from any costs, fees, expenses, royalty/ies or damages which the State of Texas, THECB, as well as officers, agents, and employees of THECB may be obligated to pay by reason of such infringement at any time during the performance of or after completion of this Agreement. The Performing Agent represents and warrants that it has determined what licenses, patents and permits are required under this Agreement and has lawfully acquired all such licenses, patents, and permits. If THECB's use of the software becomes subject to a claim, or is likely to become subject to a claim in the sole opinion of THECB, The Performing Agent shall, at its sole expense (1) procure for THECB the right to continue using such software under the terms of this Agreement or (2) replace or modify the software so that it is non-infringing.

4.5 Sovereign Immunity: The Parties stipulate and agree that no provision of, or any part of this Agreement between THECB and the Performing Agent, or any subsequent amendment, or other Agreement modification shall be construed: (1) as a waiver of the doctrine of sovereign immunity or immunity from suit as provided for in the Texas Constitution and the Laws of the State of Texas; (2) to extend liability to the Parties beyond such liability provided for in the Texas Constitution and the Laws of the State of Texas; or (3) as a waiver of any immunity provided by the 11th Amendment or any other provision of the United States Constitution or any immunity recognized by the Courts and the laws of the United States.

4.6 Assignment, Delegation, or Subcontracting: No contractual rights, interest, or obligation relating to the Performing Agent's administration of the Financial Aid Programs shall be assigned, delegated, or subcontracted by the Performing Agent without prior written approval of THECB. No assignment, delegation, or subcontract approved by THECB shall relieve the Performing Agent of any obligation or responsibility under this Agreement. It is THECB's intent that to the extent subcontracting is approved by THECB, the Performing Agent make a good faith effort to subcontract with Historically Underutilized Business(es) (HUB) during the performance of this Agreement. The goal of the HUB program is to promote full and equal business opportunities for all businesses contracting with the State of Texas.

4.7 Dispute Resolution: For Texas state agencies, the dispute resolution process provided for in Texas Government Code, Chapter 771 (Interagency Cooperation Act) shall be used. Otherwise, the dispute resolution process provided for in Texas Government Code, Chapter 2260 shall be used by THECB and Performing Agent to attempt to resolve any claim for breach of Agreement.

4.8 Public Information Act and FERPA: Notwithstanding any provisions of this Agreement to the contrary, the Parties understand that as Texas state agencies, the Parties are subject to and will comply with the Texas Public Information Act, Government Code, Chapter 552 as interpreted by judicial opinions and opinions of the Attorney General of the State of Texas. Without waiving any of its rights to privacy of its records, the Parties will cooperate with each other in the production of documents to which the requesting party is entitled and that are responsive to any such requests under the Public Information Act. The party that received the records request will make a determination whether to submit a Public Information Act request to the Attorney General. This Agreement and all data and other information subject to disclosure under the Public Information Act and generated pursuant to the terms of this Agreement or otherwise obtained by the Performing Agent from the State of Texas or the THECB in its performance may be subject to the Texas Public Information Act.

4.8.1.1 Both Parties agree to comply with the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. Section 1232g, and the implementing federal regulations, 34

CFR Part 99. Both Parties agree to protect any confidential student information it receives or accesses that could make a student's identity traceable.

4.9 Felony Criminal Convictions: The Performing Agent represents that the Performing Agent's employees working in connection with the Performing Agent's administration of the Financial Aid Programs have not been convicted of a felony criminal offense, or that, if such a conviction has occurred, the Performing Agent has fully advised THECB as to the facts and circumstances surrounding the conviction and has received THECB's prior written consent to proceed.

4.10 Applicable Law and Venue: This Agreement and any incorporated documents shall be governed by and construed in accordance with the laws of the State of Texas. Except as otherwise required by statute, the exclusive venue of any suit brought concerning the Agreement and any incorporated documents is fixed in any court of competent jurisdiction in Travis County, Texas.

4.11 The Performing Agent's Responsibilities: The Performing Agent shall comply with all federal, state and local laws, statutes, ordinances, rules and regulations and the orders and decrees of any court or administrative bodies or tribunals in any matter affecting the performance of this Agreement.

4.12 Key Personnel: The Performing Agent shall assign qualified personnel to administer Financial Aid Programs under this Agreement under which the Performing Agent has vetted and authorized employment. The Performing Agent, in its sole discretion, reserves the right to substitute appropriate key personnel to accomplish its duties so long as the substituted personnel are equally qualified to administer the Financial Aid Programs. Any subcontractors administering any Financial Aid Programs under the Agreement shall meet the same requirements and level of experience as required of the Performing Agent. No subcontract under this Agreement shall relieve the Performing Agent of responsibility for ensuring the required administration of the Financial Aid Programs is provided.

4.13 Right to Audit; Records Retention:

Performing Agent understands that acceptance of funds under this Agreement, or indirectly through a subcontract under this Agreement, acts as acceptance of the authority of the State Auditor's office, THECB or any successor agency, as well as any external auditors selected by the State Auditor's office, THECB or any auditors selected by the United States (collectively referred to as "Audit Entities"), to conduct an audit or investigation in connection with those funds. Performing Agent further agrees to cooperate fully with the above parties in the conduct of the audit or investigation, including promptly providing all records requested. Performing Agent will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Performing Agent and the requirements to cooperate is included in any subcontract it awards.

Performing Agent shall maintain its records and accounts of all transactions related to state and federal student financial aid according to applicable state and federal law and Performing Agent's records retention schedule in a manner which shall assure a full accounting for all funds received, disbursed, and expended by Performing Agent in this Agreement. These records and accounts (which includes all receipts of expenses incurred by Performing Agent) shall be retained by Performing Agent and made available for inspecting, monitoring, programmatic or financial auditing, or evaluation by THECB and by other authorized by law or regulation to do so for a period of not less than seven (7) years from the date of the completion of the Contract Period or the date of the receipt by THECB of Performing Agent's final claim for payment of final expenditure report or until a resolution of all billing questions in connection with the Contract, whichever is later. These records and accounts shall include, but are not limited to, general Performing Agent and program-specific record-keeping requirements in accordance with Federal Student Aid Title IV regulations (USOE, 34 CFR 668.24).

If an audit has been announced, the records shall be retained until such audit has been Completed or not less than 7 years from the date of completion of the agreement, whichever is later. Performing Agent shall make available at reasonable times and upon reasonable notice, and for reasonable periods, all documents and other information related to the Financial Aid Programs provided in this Agreement. Performing Agent and any subcontractors shall provide any Audit Entities with any information the entity deems relevant to any monitoring, investigation, evaluation, or audit.

Performing Agent's failure to comply with this subsection, known as subsection K Right to Audit; Records Retention shall constitute a material breach of this Agreement and shall authorize THECB and the State of Texas to immediately request appropriate damages for such failure. THECB reserves the right to require the reimbursement of any over-payments determined as a result of any audit or inspection of records on work performed under this Agreement unless Performing Agent disputes the result of such audit or inspection of records. To the extent such disputes arise, such disputes will be handled in conformity with subsection E.. "Performing Agent shall make available at reasonable times and upon reasonable notice, and for reasonable periods, all documents and other information related to the Financial Aid programs provided in this Agreement. Performing Agent and any subcontractors shall provide any Audit Entities with any information the entity deems relevant to any monitoring, investigation, evaluation, or audit.

- 4.14 Conflict of Interest:** The Performing Agent represents and warrants that to the best of its knowledge and belief the Performing Agent, its principals, employees, or subcontractors have no potential conflict of interest in administering the Financial Aid Programs under this Agreement. Failure to disclose a conflict of interest may be cause for termination of this Agreement. It is not a conflict of interest in and of itself for the family member of an employee of the Performing Agent to be a recipient of the Financial Aid Programs disbursed under the terms of this Agreement.
- 4.15 Financial Interests; Gifts:** Performing Agent represents and warrants that neither Performing Agent nor any person or entity that will participate financially in this Agreement has received compensation from THECB or any agency of the State of Texas for participation in preparation of specifications for this Agreement. Performing Agent represents and warrants that it has not given, offered to give, and does not intend to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, travel, favor or service to any public servant or employee in connection with this Agreement.
- 4.16 The Performing Agent's Representations:** The Performing Agent hereby covenants, represents and warrants to the best of its knowledge and belief that the Performing Agent (including, for purposes of this section, its employees, consultants, subcontractors, and agents) has the technical expertise and general skills necessary to perform the administration of the Financial Aid Programs in accordance with this Agreement and has the necessary equipment, facilities and workers to perform the Performing Agent's obligations under this Agreement. The Performing Agent represents and warrants that it shall not unlawfully discriminate against any person on the basis of race, color, national origin, religion, political belief, sex, age, sexual orientation, or disability in the performance of this Agreement. Additionally, in execution of this agreement, the Performing Agent, their respective employees, and other acting by or through them, shall comply with all federal and state policies and laws prohibiting discrimination, harassment and sexual misconduct. Any breach of this covenant may result in termination of this agreement.
- 4.17 Antitrust:** The Performing Agent represents and warrants that to the best of its knowledge and belief the Performing Agent has not violated the antitrust laws of the State of Texas under Tex. Bus. & Com. Code, Chapter 15, or the federal antitrust laws.

- 4.18 Deceptive Trade Practices; Unfair Business Practices:** The Performing Agent represents and warrants that to the best of its knowledge and belief it has not been found to be liable in an administrative hearing or by a court of competent jurisdiction of a violation of the Deceptive Trade Practices Act under Tex. Bus. & Com. Code, chapter 17, or any unfair business practice.
- 4.19 Independent Contractor:** Performing Agent shall be an independent contractor in all matters relating to this Agreement. Performing Agent agrees that it shall have complete responsibility in the area of employment law and relations regarding its own employees, contractors, and agents, including but not limited to: wrongful discharge lawsuits, unemployment issues, workers' compensation, employment taxes, and reimbursement due to losses in these areas. Consistent therewith, Performing Agent agrees that it shall make its own arrangements to provide its employees with all necessary employee benefits, including unemployment and workers' compensation benefits, and THECB is, in no way, a party to such arrangements. Regarding its employees, Performing Agent shall have the sole authority to hire, fire, transfer, train, evaluate, discipline, pay and assign work.
- 4.20 Excluded Parties List System:** The THECB is federally mandated to adhere to the directions provided in the President's Executive Order 13224, Executive Order on Terrorist Financing – Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism and any subsequent changes made to it. Performing Agent certifies that it is in compliance with the State of Texas statutes and rules relating to procurement and that Performing Agent is not listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at <http://www.epls.gov>.
- 4.21 Suspension and Debarment:** The Performing Agent certifies that to the best of its knowledge and belief it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from administering the Financial Aid Programs by any federal, state or local government entity.
- 4.22 Eligibility/Authorization to Work in the United States:** The Performing Agent shall ensure that all personnel engaged in administering the Financial Aid Programs under this Agreement possess proof of eligibility/authorization to work in the United States in compliance with the Immigration Reform and Control Act of 1986, the Immigration Act of 1990, and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. The Performing Agent shall maintain written records on all personnel administering the Financial Aid Programs provided under the Agreement and shall provide such records to THECB upon request. Failure to maintain and provide records upon request shall represent a material breach of this Agreement and THECB shall have the right to terminate the Agreement for cause.
- 4.23 Contacts:** Unless otherwise designated by the Parties in writing, primary contacts for routine communications related to the performance of Services under this Agreement are as follows:

Program Manager:
Charles W. Puls, Ed. D.
Charles.Puls@THECB.state.tx.us
Deputy Assistant Commissioner
Texas Higher Education Coordinating Board

Stephen F. Austin State University
Baker Pattillo

- 4.24 **Force Majeure:** THECB may grant relief from performance of this Agreement if the Performing Agent is prevented from performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributable to the fault or negligence of the Performing Agent. The burden of proof for the need of such relief shall rest upon the Performing Agent. The Performing Agent shall notify THECB in writing if it believes that a force majeure may have occurred.
- 4.25 **Notice:** Unless otherwise provided in this Agreement or unless otherwise designated by the Parties in writing, all notices required to be given hereunder shall be in writing and shall be given by personal delivery thereof or by overnight courier or by certified or registered mail, postage prepaid, return receipt requested, to the office shown below. Any notice served shall be deemed given on the date of hardcopy original document delivery.

Texas Higher Education Coordinating Board
Office of Contract Management Services
P.O. Box 12788
Austin, Texas 78711-2788
Fax: (512) 427-6472

Stephen F. Austin State University
P.O. Box 13052 SFA Station
Nacogdoches, TX 75962

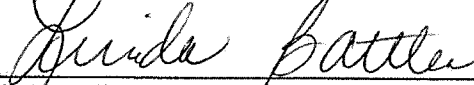
- 4.26 **False Statements; Breach of Representations:** By signature to this Agreement, the Performing Agent makes all the representations, warranties, guarantees, certifications and affirmations included in this Agreement. If the Performing Agent signs this Agreement with a false statement or it is subsequently determined that the Performing Agent has violated any of the representations, warranties, guarantees, certifications or affirmations included in this Agreement, the Performing Agent shall be in default under this Agreement and THECB may terminate or void this Agreement for cause and pursue other remedies available to THECB under this Agreement and applicable law.
- 4.27 **Severability and Waiver:** The invalidity, illegality, or unenforceability of any provisions of this Agreement shall in no way affect the validity, legality, or enforceability of any other provisions.
- Each and every right granted to the Parties hereunder or under any other document delivered hereunder or in connection herewith, or allowed them by law or equity, shall be cumulative and may be exercised from time to time. Failure by THECB or the Performing Agent at any time to require strict performance of any contractual provision or obligation contained herein shall not constitute a waiver or diminish the rights of either Party thereafter to demand strict compliance. Neither THECB's review, approval, nor acceptance of any of the Performing Agent's administration of Financial Aid Programs provided in this Agreement shall be construed to operate as a waiver of any rights under the Agreement, or of any cause of action arising out of the administration of the Financial Aid Programs required by the Agreement.
- 4.28 **Federal Laws:** If federal monies are funding or otherwise governing the Financial Aid Programs, the Performing Agent must comply with all applicable federal laws, rules, and regulations pertaining to the Financial Aid Programs, including but not limited to those regarding Debarment, Anti-Lobbying, and Applicable Federal Laws.
- 4.29 **Drug Free Work Place:** The Performing Agent shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.) and maintain a drug-free work environment; and the final rule, government-wide requirements for drug-free work place (grants), issued by the Office of Management and

Budget and the Department of Defense (32 CFR Part 280, Subpart F) to implement the provisions of the Drug- Free Work Place Act of 1988 is incorporated by reference and the Performing Agent shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.

- 4.30 Entire Agreement: This Agreement (including its Exhibits, if any) contains the final, complete and exclusive understanding of the Parties, and supersedes all prior contemporaneous, oral or written understandings, representations, and negotiations between Parties relating to the subject matter of this Agreement. The Parties further agree that this Agreement may not in any way be explained or supplemented by a prior or existing course of dealings between the Parties, by usage of trade or custom, or by any prior performance between the Parties pursuant to this Agreement or otherwise.

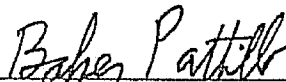
Section 5.0 Signatures:

By signature hereon, the individual(s) below represent and warrant that they are duly authorized representative(s) of the Parties and have the authority to bind the Parties in this Agreement.



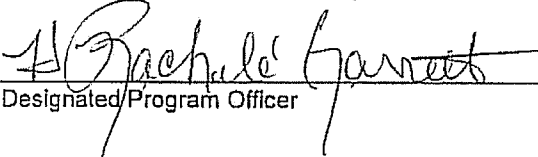
7/19/17
Date

Linda Battles
Deputy Commissioner, Agency Operations and Communications
Chief Operating Officer
Texas Higher Education Coordinating Board



6-23-17
Date

Baker Pattillo
President
Stephen F. Austin State University



7-7-17
Date

Rachelle Garrett
Designated Program Officer