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University of South Carolina

BOARD OF TRUSTEES

Executive Committee

February 11, 2010

The Executive Committee of the University of South Carolina Board of Trustees met on Thursday, February 11, 2010, at 11:30 a.m. in the 1600 Hampton Street Board Room.

Members present were: Mr. Miles Loadholt, Chairman; Mr. Herbert C. Adams; Dr. C. Edward Floyd; Mr. Toney J. Lister; Mr. Michael J. Mungo; and Mr. Eugene P. Warr, Jr.

Other Trustees present were: Mr. Chuck Allen; Mr. J. Egerton Burroughs; Mr. Mark W. Buyck, Jr.; Mr. Greg Gregory; Mr. William C. Hubbard; Mr. William W. Jones, Jr.; Ms. Leah B. Moody; Mrs. Amy E. Stone; and Mr. John C. von Lehe, Jr.

Others present were: President Harris Pastides; Secretary Thomas L. Stepp; Vice President for Academic Affairs and Provost Michael D. Amiridis; Vice President for Finance and Planning William T. Moore; Vice President for Human Resources Jane M. Jameson; Vice President for Student Affairs and Vice Provost for Academic Support Dennis Pruitt; Interim Vice President for Communications and Public Affairs and Dean of the College of Mass Communications and Information Studies Charles Bierbauer; Vice Provost and Executive Dean for System Affairs and Extended University Chris P. Plyler; General Counsel Walter (Terry) H. Parham; University Treasurer Susan D. Hanna; Special Assistant to the President J. Cantey Heath; Dean of USC Sumter C. Leslie Carpenter; Associate Vice President for Finance and Budget Director, Division of Finance and Planning, Leslie Brunelli; Associate Vice President for Facilities and Campus Management, Division of Finance and Planning, Tom Quasney; Associate Dean of USC Union Stephen Lowe; Director of Athletics Eric C. Hyman; Director of Capital Budgets and Financing Charlie Fitzsimons; Deputy Athletics Director Marcy Girton; Chief Financial Officer, Department of Athletics, Jeff Tallant; Associate Dean for Research and Academics, Darla Moore School of Business, Greg Niehaus; Chair of the Faculty Senate Patrick D. Nolan; Special Assistant to the President and Athletics Director John D. Gregory; Director of Governmental and Community Relations and Legislative Liaison Shirley D. Mills; Associate Director of Governmental Affairs and Legislative Liaison Casey Martin; Director of Media Relations, Office of Communications, Margaret Lamb; University Graduate Student Association President Alan Tauber; President of the Student Government Association Meredith Ross; University Bond Counsels Alan Lipsitz, Nexsen Pruet, LLC and Wayne Corley, McNair Law Firm, LLC; University Technology Services Production Manager, Matt Warthen; and Board staff members Terri Saxon, Vera Stone, and Karen Tweedy.

Chairman Loadholt called the meeting to order and invited those present to introduce themselves. Ms. Lamb introduced members of the press who were present.

Chairman Loadholt stated that notice of the meeting had been posted and the press notified as required by the Freedom of Information Act; the agenda and supporting materials had been circulated; and a quorum was present to conduct business.

Chairman Loadholt stated that there were personnel matters relative to athletics contracts which were appropriate for discussion in Executive Session.

Mr. Warr moved to enter Executive Session. Mr. Lister seconded the motion. The vote was taken, and the motion carried.

Chairman Loadholt invited the following persons to remain: President Pastides, Secretary Stepp, Dr. Moore, Dr. Amiridis, Mrs. Jameson, Dr. Pruitt, Dr. Bierbauer, Mr. Parham, Mr. Heath, Mr. Walton, Ms. Brunelli, Mr. Hyman, Ms. Girton, Mr. Tallant, Mr. Gregory, Mrs. Martin, Ms. Mills, and Mrs. Lamb.

Return to Open Session

Chairman Loadholt called on Mr. Parham to present the Athletics Coaches' contracts.

I. Contracts Valued in Excess of $250,000: Athletics Coaches' Contracts

A. Employment Agreement Coach Shawn Elliott: The term of the contract for Running Game Coordinator/Offensive Line Coach Shawn Elliott was two years, beginning on January 4, 2010 and ending on January 3, 2012. Coach Elliott's annual salary for year one would be $150,000 and for year two would be $165,000. He would be reimbursed for reasonable and customary moving expenses in accordance with University policy and procedure; and would be provided the use of one vehicle.

The three termination clauses in the contract were standard language. If he was terminated for cause, he would receive no compensation beyond the effective date of termination. If USC terminated him without cause upon ten days notice, the University would be required to pay his base salary for the remainder of the contract. However, the contract included a mitigation provision which obligated Coach Elliott to find other employment. Once he did, the University's obligation to pay liquidated damages would be reduced by an amount equal to the compensation he would receive from his new employer.

The final termination clause was in the event Coach Elliott terminated his contract upon 10 days notice. If he did, he would have to pay the University $25,000 per year for the remaining term of the contract.

Chairman Loadholt called for a motion to approve the contract as presented in the meeting materials. Mr. Adams so moved and Mr. Warr seconded the motion. A vote was taken, and the motion carried.

B. Employment Agreement Coach Ellis Johnson: Included in the proposed modifications to the employment agreement for assistant football Coach Ellis Johnson was the extension of his contract for two years, beginning February 1, 2012 and ending December 31, 2013.

Coach Johnson's total annual compensation would increase from $350,000 to $700,000. The base salary of $200,000 and the supplemental compensation of $150,000 would remain the same. The $350,000 increase was the addition of personal services compensation (television, radio, commercial endorsements). This increase was negotiated by Mr. Hyman, and the entire amount would be paid by an outside source, the University's broadcast rights holder, ISP.

There would be no change in the "Termination for Cause" clause. There were three proposed modifications to the "Termination Without Cause." The first was USC's obligation to offer Coach Johnson employment with the Athletics Department for the remainder of the contract. The second was USC's obligation to pay him his base salary, supplemental compensation, and guaranteed personal services compensation for the remainder of the contract, provided however, Coach Johnson would have to find other comparable employment within three months after the effective date of termination, in which case USC's obligation to pay liquidated damages would be reduced by an amount equal to the compensation he would received from such new employment. The third provision stated that should Coach Johnson fail to find other comparable employment, USC would only be obligated to pay him his base salary and supplemental compensation for the remainder of his contract.

Under the “Termination by Coach Johnson” clause modification, Coach Johnson would be obligated to pay USC his base salary, supplemental compensation and guaranteed personal services compensation for the remainder of the contract, provided however, if Coach Johnson terminated the contract to accept an intercollegiate head coaching position, he would not be obligated to pay liquidated damages.

Chairman Loadholt called for a motion to approve the contract as presented in the meeting materials. Mr. Lister moved so moved and Mr. Adams seconded the motion. A vote was taken, and the motion carried.

II. Revenue Bond – Patterson Hall:

Chairman Loadholt called on Dr. Moore to present the two Bonds. Dr. Moore began by reviewing the University’s current debt situation. He stressed that a debt issue should never be examined in isolation, but in conjunction with the University’s overall debt structure and debt capacity.

Dr. Moore reported that, to date, the University’s Bond Indebtedness by campus was as follows: USC Columbia, $293,345,000; USC Aiken, $42,635,000; USC Upstate, $47,835,000; USC Beaufort, $85,000; and USC Sumter, $300,000; totaled $384,200,000. The Bond Indebtedness by category was as follows: State Institution Bonds, $116,370,000; Revenue Bonds, $195,300,000; Athletic Facilities Revenue Bonds, $48,130,000; Athletic BANs, $17,600,000; and School of Medicine Educational Trust Revenue Bonds and Notes, $6,800,000. University debt issued, to date, in FY 2009 and FY 2010, was $55,070,000. Potential University Debt financing issues were estimated at $300,000,000. Projects included in this listing were done as a planning tool, since the actual projects had not been before the Buildings and Grounds Committee, nor the full Board for consideration.

Dr. Moore stated that in July 2009, they had asked the University’s investment banker, Barclays Capital, to help examine the University’s debt capacity. USC was rated “Aa3” by Moody’s. A comparable rating from Fitch was “AA.” He said that the fundamental question they asked Barclays was whether borrowing for the projects in various stages of planning would threaten these ratings. Barclays’ opinion was that the “Aa3” rating “should be safe.”

Dr. Moore stated that the University was seeking approval to issue Higher Education Revenue Bonds in the amount of $43 million to renovate Patterson Hall dormitory on the Columbia Campus to a suite style units and renovation of the cafeteria. Although the bond resolution was higher than the actual project estimate of $38.1 million to allow for issuance costs and any needed debt service reserve, the amount of Bonds issued would only be the amount needed when the final structure of issuance was determined.

The source for the bonds would be from housing revenue. The anticipated bond rating was Aa3, with no insurance issued on the Bond. Bond Counsel for this bond was Nexsen Pruet, and the Underwriter was Barclays Capital.

The project is scheduled to begin this summer, with anticipated completion prior to the start of the Fall 2011 semester.

The current outstanding Housing Debt was $113.8 million. After issuance of this Bond it would be $156.8 million.

Chairman Loadholt called for a motion to approve the Revenue Bond as presented. Dr. Floyd so moved and Mr. Adams seconded the motion.

Mr. Hubbard stated that in the past there was interest from the Board to build into the University’s bond issuances, for certain facilities, some reserve for deferred maintenance needs over the life of the structure. He asked if that request was included in this specific bond issue, and Dr. Moore responded no. Dr. Moore added however, that it was part of the University’s Capital Planning process.

Dr. Pruitt noted that when the Strom Thurmond Wellness Center was constructed and each of the residence halls they included in the pro forma a minimum of one and one-half percent for deferred maintenance and upgrades of each facility.

Mr. Hubbard stressed the importance of setting aside funds for deferred maintenance anytime the University built a new facility or renovated one.

The vote was taken and the motion carried.

III. Athletic Facility Revenue Bonds:

The University was seeking approval of a proposed resolution to issue Athletic Facility Revenue Bonds in the amount of $71 million to include up-fitting of the Farmer’s Market, construction of the coaches support building and a garage and maintenance facility, facilities infrastructure, and construction of the new Tennis Courts. The Board had previously approved the projects which were scheduled to begin Fall 2010, with completion anticipated prior to Spring 2012. The anticipated cost for all projects was $65.2 million. The Bond Counsel was McNair Firm, and the Underwriter was Barclays Capital.

The current outstanding Athletics Debt was $65.7 million. After issuance of this Bond it would be $136.7 million.

Chairman Loadholt called for a motion to approve the resolution to issue Athletic Facility Revenue Bonds in the amount of $71 million as described in the meeting materials. Mr. Lister so moved and Mr. Warr seconded the motion.

Mr. Mungo asked when they anticipated issuing the bonds and the projected interest rate at the time of issuance. Mr. Fitzsimons responded that the plan was to issue the bonds late this summer and were hopeful for a five percent rate.

Dr. Floyd expressed his reluctance to issue the additional debt as proposed and hoped the project list could be reevaluated and cut in light of the current debt and economic climate.

Mr. Lister said, that even though he was not on the Board at that time, he heard that Mr. Mungo had stated numerous times when the University joined the SEC that one of the concessions on the part of USC was that they had to continue to upgrade the athletic facilities. Mr. Lister stated that with all respect to Dr. Floyd, if USC was going to continue to compete and recruit well in the SEC, they had to upgrade the athletics facilities and to take the advice of USC’s Athletics Director and University President.

Dr. Floyd once more stressed his concern about incurring additional debt especially in light of the fact that the State Legislature planned to cut the University’s budget allocations again. He anticipated the University would receive a lot of criticism from the Legislature regarding this request.

Dr. Moore responded to Dr. Floyd’s concern that this athletics debt request would be “it” for athletics for a very long time. If additional athletics projects were proposed they would be funded largely with philanthropy, not additional borrowing.

Ms. Moore asked where the revenue would come from to repay the bond. Mr. Adams responded it would come from athletic ticket sales, and the Garnet Way and seat tax revenues. He noted that when the Garnet Way and seat tax programs were presented to the Gamecock Club it was understood that the new revenue generated would go toward upgrading the athletic facilities.

Mr. Mungo suggested that in presenting future debt requests, they should be done so in light of the Athletics Department income that was not already committed and therefore would be available to pay the new debt.

Following much discussion of Athletics Department funds, Mr. Adams requested a summary be prepared for the Board to compare potential ISP Contract revenues to current commitments related to those revenues.

Mr. Warr asked how recent the projected projects’ cost of $65.2 million was, since he understood that construction costs were now lower than they had been in the past. Mr. Hyman responded that according to Contract Construction Project Manager Greg Hughes, who built the University’s new Baseball Stadium, within the next four to five months construct prices would as low as they ever would be; and that every job they had bid on in the last fourteen months had averaged twenty to thirty percent below what the owner had estimated.

Ms. Moore expressed her concern that the Athletics Department revenues could actually come in twenty to thirty percent lower than projected. Mr. Hyman clarified contract revenue versus projected revenue sources. He said that he was confident that through the University’s ISP and ESPN contracts and the SEC revenue, their total revenue projects would hold. The revenue volatility would come from the YES Program and season ticket sales. She asked how this bond request would affect the University’s overall bond capacity with respect to other non-athletic potential bond projects. Dr. Moore responded that they were revenue bonds and would not affect the University’s overall bond rating.

Mr. Allen echoed Mr. Lister’s comments and added that the proposed projects would make a substantial difference to the University’s athletics program that he considered a commitment to excellence.

Mr. Mungo said that he was Chairman of the Board of Trustees when the University joined the SEC, and at that time the University committed itself to try to stay current with other SEC schools' facilities.

Chairman Loadholt, Mr. Warr, Mr. Adams, Mr. Lister, and Mr. Mungo voted in favor of the motion. Dr. Floyd voted no. The motion carried.

IV. Authority to Sign Contracts Policy Amendments:

Chairman Loadholt called on Mr. Parham, who stated that the last amendment to the Authority to Sign Contracts policy was approved by the Board in April 2008. Currently, the University was seeking approval to update this Board policy as stated in the University's "Policies and Procedures" Manual, in particular two administrative title changes and the authority to sign contracts and agreements regarding intercollegiate athletics contests at the four-year campuses.

Mr. Parham explained that some titles in the policy were inaccurate due to recent hires, such as: Executive Vice President for Academic Affairs and Provost to Vice President of Academic Affairs and Provost; the Vice President for Research and Health Sciences to Vice President for Research and Graduate Education; and the Vice Provost and Executive Dean for System Affairs and Extended University to Vice Provost for System Affairs and Executive Dean for Extended University.

Mr. Parham stated that the second amendment was more substantive in that it dealt with the authority to sign intercollegiate game contracts. Under the current policy the USC Columbia Athletics Director or his designee has the authority to sign those contracts regardless of the value. The inequity with the current policy was that the three USC Chancellors and the Executive Dean for Extended University only have the authority to sign contracts which did not exceed $25,000. The amendment would provide them the same authority to sign intercollegiate game contracts as the USC Columbia Athletics Director. USC Upstate had requested this amendment, since it had become a Division A school, which resulted in an increased cost for their game contracts.

Chairman Loadholt called for a motion to approve the changes to this policy as described in the meeting materials. Mr. Warr so moved and Mr. Adams seconded the motion.

Mr. Jones stated that the Authority to Sign Contracts Policy gave him cause for concern. He said that all Board of Trustee members had a fiduciary responsibility to use their good judgment and to try to make decisions in the collective best interest of the University. As the policy was currently written, Board members who were not on the Executive Committee did not have the right to vote on contracts in excess of $250,000; nor Athletics employment contracts. He noted that he said this with the greatest respect for the members of the Executive Committee. Therefore, he respectfully requested that the Executive Committee consider amending the Authority to Sign Contracts Policy to allow those Board members not on the Executive Committee to at least have the opportunity to vote on and approve any contracts in excess of $500,000. When the media reported on contract approvals it typically referred to approvals by the Board of Trustees, when in truth only the Executive Committee had the authority to vote. Mr. Jones concluded that he made the request given that circumstance and the fact that the full Board had a fiduciary responsibility.

Mr. Mungo explained that the policy was first approved when he was Chairman of the Board, in response to the “exorbitant way” in which a previous USC President spent University funds. The policy was not put on place to preclude the full Board from voting on contracts, but as a stop gap measure to put an end to the “foolish spending.” At that time, the Executive Committee was delegated that approval authority and it made sense to extend that authority to the full Board.

Mr. Adams stated that he felt that Mr. Jones made a very reasonable request, but felt that the full Board, not just the Executive Committee, should consider the request. He said that he would like to see an ad hoc committee appointed to study, not only this issue, but other issues and report their recommendations for amendments to the full Board. He clarified that he always felt the Executive Committee was charged with making “emergency decisions” in the absence of the full Board; and that maybe that decision had gone too far.

Chairman Loadholt appointed a three member Ad Hoc Committee to Review the Authority to Sign Contracts Policy, with Mr. Warr as Chair, Mr. Jones and Mr. Burroughs.

The vote was taken and the motion carried.

V. <u>Off Cycle Fees – Moore School of Business</u>:

The Moore School of Business was requesting approval of off-cycle fees for two current graduate programs: a two percent increase in the rates associated with MBA programs; and a fee of $45,000 for the new Executive Master of Human Resources (EMHR) program. These fees were requested off-cycle, since they would be implemented effective July 1, 2010.

The Executive MHR track of the MHR degree program was designed to meet the needs of senior professionals in career paths where formal education and development in managing human capital was a strategic priority. The resident and non-resident fee requested was $1,000 per credit hour. Since the degree program required successful completion of 45 credit hours, the total fee would be $45,000. This fee was consistent with the part-time version of the MHR program and was consistent with other Moore School of Business graduate programs.

The International Master of Business Administration (IMBA) and the Professional Master of Business Administration (PMBA) programs requested was a conservative increase of 2 percent in the rates associated with their programs. The College had undertaken a significant effort over the last three years to align their graduate program fees with peer and competitor business schools.

The IMBA Resident Program Fee requested was $40,229 and the Non-Resident fee was $68,805. The Resident per Credit Hour Fee requested was $592 and the Non-Resident fee was $1,012.

The PMBA Resident and Non-Resident Program Fee requested was $28,379. The Resident and Non-Resident per Credit Hour Fee would be $592.

Revenue from the program fee increases were intended to cover inflationary increases as well as continued enhancement of student career services. The additional revenue would also improve distance education and professional development opportunities for students.

Chairman Loadholt called for a motion to approve the Moore School of Business off cycle fees as presented. Mr. Warr so moved and Mr. Adams seconded the motion. The vote was taken and the motion carried.

Since there were no other matters to come before the Executive Committee, Chairman Loadholt declared the meeting adjourned at 1:05 p.m.

Respectfully submitted,

Thomas L. Stepp
Secretary