OREGON STATE BOARD OF HIGHER EDUCATION
MINUTES OF THE TELEPHONIC MEETING
DECEMBER 10, 2004

Table of Contents

ACTION ITEMS

a. OSU, Request for Additional Expenditure Limitation (Nash Chiller) ......................... 595
b. PSU, Request for Additional Expenditure Limitation (Ondine Student Housing Remodel) ................................................................................................................ 597
c. Proposed Rule to Establish Eligibility Guidelines for the Receipt of Funds from the Higher Education Technology Transfer Fund (OAR 580-043-0100 through 0110) ........................................................................................................................................................................... 599
d. Resolution for the Sale of Article XI-G and Article XI-F(1) Bonds .......................... 602
e. UO, Request for Additional Expenditure Limitation (Arena Land Acquisition) ...... 610
1. CALL TO ORDER/ROLL CALL/WELCOME

Chair Lorenzen called the telephonic meeting of the Oregon State Board of Higher Education to order at 2:35 pm.

On roll call, the following Board members were present: Don Blair, Bridget Burns, Kirby Dyess, Adriana Mendoza, Tim Nesbitt, Geri Richmond, Gretchen Schuette, Howard Sohn, Tony Van Vliet, and John von Schlegell.

OUS staff present included: George Pernsteiner, Ryan Hagemann, Nancy Heiligman, Ben Rawlins, and Bob Simonton.

Meeting attendees also included OUS staff, faculty, institution representatives, the press, and interested observers.

Due to time constraints and the substance of the five action items, Chair Lorenzen considered the action items in a different order than on the agenda. He started with the OSU Request for Additional Expenditure Limitation (Nash Chiller).

2. ACTION ITEMS

a. OSU, Request for Additional Expenditure Limitation (Nash Chiller)

DOCKET:

Purpose:
Oregon State University (OSU) seeks Board approval to authorize the Chancellor, or designee, to seek $2.6 million of Expenditure Limitation Authority from the Legislative Emergency Board for the Nash Chiller Replacement Project. The project was completed using existing 2001-2003 Systemwide Capital Repair limitations; however, it has been recent OUS practice to seek Legislative or Emergency Board approval for all projects that exceed $1 million and are not listed in the Capital Construction Bill.

Background:
The Nash Hall cooling systems were originally installed at a time when cooling technology was less efficient and the demand for reliable service was not as great. Over the years, greater demands were put on these original systems than they were designed to accommodate.
The final solution required not only the replacement of the chiller at Nash Hall, but replacement of the piping to each of the science buildings, which include: Agriculture and Life Sciences (ALS), Cordley, Burt I, Burt II, and Wilkinson Halls. The result of these measures has provided increased reliability, efficiency, and energy savings.

**Staff Recommendation:**
Staff recommends that the Board approve Oregon State University’s request to authorize the Chancellor, or designee, to seek Emergency Board expenditure limitation authority for $2.6 million for expenditure of existing General Fund monies and SELP (State Energy Loan Program) dollars allocated to the Nash Chiller Project.

*(Board action required.)*

**FURTHER DETAIL:**

**Staff Report to the Board**

**Background:**
The Nash Hall cooling systems were originally installed at a time when cooling technology was less efficient and the demand for reliable service was not as great. Over the years, greater demands were put on these original systems than they were designed to accommodate.

As additional research efforts were undertaken, increased demands were put on these systems to supply cooling. Recently, it became apparent that the Nash Hall chiller had become overburdened and was showing signs of unreliability. Thus, it was proposed for replacement.

**Statement of Need:**
The remediation of the problem ultimately became a larger project than originally envisioned. The final solution required not only the replacement of the chiller at Nash Hall, but replacement of the piping to each of the science buildings, which include: Agriculture and Life Sciences (ALS), Cordley, Burt I, Burt II, and Wilkinson Halls. The result of these measures has provided increased reliability, efficiency, and energy savings.

**Schedule:**
Construction was completed in July 2004.

**Financial Considerations:**
This project has been awarded $1.7 million of funds through the Oregon Department of Energy’s SELP program, which will be re-paid with energy savings from this project. 2001-2003 Capital Repair General Fund dollars funded the remaining $900,000.
BOARD DISCUSSION AND ACTION:

Chair Lorenzen asked for an explanation of why the additional expenditure limitation was before the Board, as opposed to a detailed explanation of the project. OUS Director of Capital Construction Bob Simonton offered that OUS, the Legislative Fiscal Office, and the Oregon Department of Administrative Services agreed in 1997 that OUS would bring projects greater than $1 million to the Legislative Emergency Board, regardless if OUS had existing Systemwide limitation to cover the project.

Chair Lorenzen noted that the funds had already been spent and observed that the docket item was essentially a reporting item due to procedural requirements in place. He asked, with no further questions, for a motion to approve the additional expenditure limitation for the OSU Nash Chiller as recommended by staff. Director Blair moved for approval and Director Van Vliet seconded the motion. Board members in favor: Blair, Burns, Dyess, Mendoza, Nesbitt, Richmond, Schuette, Sohn, Van Vliet, von Schlegell, and Lorenzen. Those opposed: None. Motion passed.

b. PSU, Request for Additional Expenditure Limitation (Ondine Student Housing Remodel)

DOCKET:

Purpose:
Portland State University (PSU) seeks Board approval to authorize the Chancellor, or designee, to obtain approval from the Legislative Emergency Board for an additional $4 million of expenditure limitation including $1.8 million of Other Funds and $2.2 million of additional Article XI-F(1) bonds for seismic mitigation work added to the Ondine Student Housing Remodel Project. If this request is approved, the total expenditure limitation will be increased to $10 million. The additional Article XI-F(1) bond debt service will be re-paid by student housing fees.

Background:
To modernize and provide tenant improvement to attract today’s students, the Board previously approved this project as part of the 2003-2005 Capital Construction Budget request.

However, the city of Portland is requiring that the entire building be seismically upgraded. For this proposal, PSU determined that it is not cost effective to completely rehabilitate the structure in one phase and is working with the City to develop a ten-year plan for seismic improvements to all areas of this structure. Working through professional consultants, PSU determined that the best way to conduct a partial rehabilitation to significantly improve life safety is to make improvements from the basement to the 4th floor.
Staff recommendation:
Staff recommends that the Board approve Portland State University’s request to authorize the Chancellor, or designee, to obtain approval from the Legislative Emergency Board for an additional $4 million of expenditure limitation including $1.8 million of Other Funds and $2.2 million of additional of Article XI-F(1) bonds for seismic mitigation work added to the Ondine Student Housing Remodel Project.

(Board action required.)

FURTHER DETAIL:

Staff Report to the Board

Background:
The Ondine Residence Hall was constructed in 1966 and purchased by PSU in 1976. The facility serves PSU as a 15-story student residential building. The structure includes two levels of parking attached to the sub-basement, basement, and first floor of the main tower. Two movie theaters located in the basement level on the north end also serve as well-utilized classrooms. College Housing Northwest manages the student residential tower, which contains 192 studio apartments with shared baths and kitchenettes (two studios per kitchen and bath), and 96 sleepers.

To modernize and provide tenant improvement to attract today’s students, the Board previously approved this project as part of the 2003-2005 Capital Construction Budget request. Under the initial $6 million limitation, PSU intends to upgrade the entry lobby, add a dining area with cafeteria seating and a kitchen on the first floor, and create additional classrooms and conference areas on the second floor. Corridors and rooms in the Ondine are to be rehabilitated to create a more appropriate and welcoming living environment for incoming freshmen and sophomore students in a structured environment. The project will be constructed in phases to maintain operational and residential egress requirements, as the building will be occupied at all times during construction.

After approval of the project, PSU received a $1.8 million grant from FEMA for seismic upgrades. Planned work includes reinforcing the shear walls, adding drag struts, reinforcing the weak story, floor diaphragms and perhaps enlarging the footings. However, Portland City Building officials have determined that additional seismic mitigation work is required.

Statement of Need:
This building was constructed in 1966 as a 15-story plus basement concrete shear wall structure. The 214,000 sq ft structure, which is on a sloped site, includes a tall, rectangular tower and houses 422 students year round. This structure was constructed before adoption of the first seismic code for the State of Oregon and the City of Portland. Original assumptions for the facility assumed that wind loads had been

A FEMA 178 report identified serious structural deficiencies exist in the 15-story tower, but do not exist in the attached three-story parking structure. A complete seismic rehabilitation would be extensive and costly. Consequently, PSU pursued a partial rehabilitation approach to increase life-safety in a cost-effective manner.

However, the City of Portland is requiring that the entire building be seismically upgraded. For this proposal, PSU determined that it is not cost effective to completely rehabilitate the structure in one phase and is working with the City to develop a ten-year plan for seismic improvements to all areas of this structure. Working through professional consultants, PSU determined that the best way to conduct a partial rehabilitation to significantly improve life safety is to improve the basement to the 4th floor. Estimates for future phases that include floors 3 through 15 are currently being developed and will require each floor to be vacated while the seismic bracing and asbestos abatement work are being performed. It is anticipated that a capital project (in the range of $10 to $15 million), for the 2007-2009 biennium, will be requested to mitigate the remaining floors.

The current phase of the project will greatly increase the seismic performance of the lower floors and will be considered a substantial improvement. If we strengthen the basement to the 4th floor, much higher ground shaking will be needed to cause an initial failure. Planned work includes reinforcing the shear walls, adding drag struts, reinforcing the weak story, floor diaphragms, and perhaps enlarging the footings.

BOARD DISCUSSION AND ACTION:

Chair Lorenzen turned to the PSU Request for Additional Expenditure Limitation (Ondine Student Housing Remodel) next, observing it was very close to a consent item. With no comments or questions from the written docket materials, Chair Lorenzen asked for a motion to approve the PSU additional expenditure limitation as recommended by staff. Director Dyess moved approval and Director Van Vliet seconded the motion. Board members in favor: Blair, Burns, Dyess, Mendoza, Nesbitt, Richmond, Schuette, Sohn, Van Vliet, von Schlegell, and Lorenzen. Those opposed: None. Motion passed.

c. Proposed Rule to Establish Eligibility Guidelines for the Receipt of Funds from the Higher Education Technology Transfer Fund (OAR 580-043-0100 through 0110)

DOCKET:

Staff Report to the Board:
The Higher Education Technology Transfer Fund (HTTF) Board adopted recently (by unanimous vote) a formula to distribute funds for university patent-related activities.
These funds came to the HTTF from the Oregon Economic and Community Development Department (OECDD) as specified in contract. Changes proposed by the Office of the Governor for the 2005 Oregon Legislative Session, including the elimination of the Higher Education Technology Transfer Fund, necessitate the distribution of these funds for their original intended purpose. It is not possible to fulfill HTTF obligations before anticipated statutory changes under the permanent rulemaking process.

**Recommendation to the Board:**
Staff recommended the Board adopt OAR 580-043-0100 by temporary rule as follows:

**580-043-0100**

**Purpose**
To implement the requirement of ORS 351.683(4) that the Higher Education Technology Transfer Fund Board establish criteria by which it will determine whether a higher education institution is eligible to receive a share of monies disbursed from the Higher Education Technology Transfer Fund.

**580-043-0105**

**Definitions**
As used in OAR 580-043-0100 to 580-043-0110, the following terms have the following meaning:

(1) “Association of University Technology Managers” or “AUTM” means the nonprofit association of technology and intellectual property managers whose mission is to promote, support, and enhance the global academic technology transfer profession through internal and external education, training and communication.

(2) “Board” means the Higher Education Technology Transfer Fund Board established by ORS 351.680.

(3) “Fund” means the Higher Education Technology Transfer Fund established by ORS 351.691.

(4) “Higher education institution” means:
   (a) A community college as defined in ORS 341.005;
   (b) A private higher education institution;
   (c) The Oregon Health and Science University;
   (d) A state institution of higher education listed in ORS 352.002;
   (e) The Department of Higher Education.

(5) “Eligible higher education institution” means a higher education institution that the Board determines meets the criteria set forth in OAR 580-043-0110.
(6) “Allowable patent activities” mean any activities performed in the pursuit of a U.S. or non-U.S. patent, including, but not limited to: preliminary coordination to file patent application, securing the preliminary opinion on patentability, attorney service to draft patent application, execution of confidentiality agreements, negotiation of license agreements, and invention evaluation.

OAR 580-043-0110
Criteria for Determination of Eligible Higher Education Institution

(1) The Board will make the determination whether a higher education institution is an eligible higher education institution by application of the following criteria:

(a) The institution must actively promote technology transfer activities. An institution actively promotes technology transfer activities if it has a technology transfer office or an equivalent institutional process to administer invention disclosures, patent applications, and licensing or equity agreements; and

(b) The institution’s total research expenditures must account for at least 2 percent of the total research expenditures of Oregon higher education institutions.

(2) For the purpose of this rule, a higher education institution’s total research expenditures shall be the total research expenditures for the institution that are compiled and published annually by the AUTM. For a given year's Fund allocation, a higher education institution’s total research expenditures shall be the average of the most recent three years of data published by the AUTM for that higher education institution.

(3) For the purpose of this rule, the total research expenditures of Oregon higher education institutions shall be the average of the most recent three years of research expenditure data compiled and published annually by the AUTM for all the higher education institutions in Oregon.

(4) Any higher education institution may ask the Board to adjust the three year moving average described in paragraph 2 or 3 of this rule if the institution believes the AUTM data is deficient and the deficiency impacts the institution’s eligibility for a disbursement or the level of disbursement from the Fund. Any such challenge shall be made, in writing, not more than 10 calendar days after the Board determines and publishes the allocations to eligible higher education institutions as defined. Revised allocations and disbursements based on the challenged AUTM data must be ratified by unanimous consent of the Board.

(Board action required.)
BOARD DISCUSSION AND ACTION:

After the OSU and PSU expenditure limitation requests, Chair Lorenzen asked OUS General Counsel Ben Rawlins to explain the proposed rule concerning the Higher Education Technology Transfer Fund. Rawlins noted the state created the Higher Education Technology Transfer Fund in 2001 and observed the fund was within the State Department of Higher Education. He explained that the fund was supposed to attract large sums of money to support technology transfer, but had not done so. Rawlins continued that the Higher Education Technology Transfer Fund was set to sunset and is to be replaced by Governor Kulongoski's Oregon Innovation Council proposal. Rawlins noted the docket item was a temporary rule that established criteria to distribute the remaining funds before the Higher Education Technology Transfer Fund sunset.

Director Blair asked questions about the temporary nature of the rule and confirmed with Rawlins that the rule was simply designed to distribute remaining funds. Director Van Vliet confirmed that the remaining funds were not substantial and Rawlins concurred by noting $77,000 was left in the Fund. Rawlins explained four institutions—Oregon Health & Science University, Oregon State University, University of Oregon, and Portland State University—would receive distributions based on the percentage of external research each had secured over the last biennium. He also answered Director Van Vliet's question that none of the institutions receiving distributions were private. Chair Lorenzen asked for motion to approve the rule as recommended by staff. Director Dyess moved for approval, and Director Nesbitt seconded the motion. On roll call vote, the following Board members voted in favor: Blair, Burns, Dyess, Mendoza, Nesbitt, Richmond, Schuette, Sohn, Van Vliet, von Schlegell, and Lorenzen. Those opposed: None. Motion passed.

d. Resolution for the Sale of Article XI-G and Article XI-F(1) Bonds

DOCKET:

<table>
<thead>
<tr>
<th>2005 Spring Bond Sale for Capital Projects</th>
</tr>
</thead>
<tbody>
<tr>
<td>Six campuses served with 16 Individual projects; one Systemwide allocation program</td>
</tr>
<tr>
<td>A total of $153,254,000 recommended for sale, plus issuance costs for Article XI-F(1) Bonds</td>
</tr>
</tbody>
</table>

Summary:
The staff recommends the Board approve a request to the State Treasurer to issue $24,000,000 of bonds for construction projects under authority of Article XI-G of the Oregon Constitution and $129,254,000 of bonds under authority of Article XI-F(1) of the Oregon Constitution. This sale is currently scheduled to be held in February 2005. The
total sale requested is for $153,254,000, plus estimated issuance costs of $2,587,000 for Article XI-F(1) bonds. All projects included in this sale have received both Board and Legislative approval.

Staff Report to the Board

Background:
The 2003 Legislative Assembly has authorized the State Board of Higher Education to issue general obligation bonds, with the proceeds to be used to finance capital construction and facilities repair and renovation projects in higher education. These bonds were authorized under two sections of the Oregon Constitution, Article XI-G and Article XI-F(1).

Article XI-G bonds are issued to construct and repair facilities classified as Education and General (E&G) use, including classroom facilities, libraries, teaching laboratories, and general administrative space. These bonds are matched by an appropriation from the state General Fund and are general obligations of the state; the debt service is paid from the General Fund. The Legislature established a mechanism whereby the General Fund match may be generated through gifts and/or federal and local governmental funds. These are first deposited to special project accounts in the Treasury and then treated as General Fund moneys for purpose of the match.

Article XI-F(1) bonds are issued to construct and repair facilities that are self-financing and self-supporting as determined by the Board, in accordance with Article XI-F(1) of the Oregon Constitution. Bonds of this type have been issued to cover projects for the construction and renovation of auxiliary enterprises space (such as parking facilities or student housing) where the source of debt service is from auxiliary funds. Bonds have also been approved for projects in student facilities (such as student unions, student health facilities, or student recreation facilities) where the debt service is repaid from the student building fee. The preponderance of bonds sold for capital construction in higher education has been under Article XI-F(1).

2003-2005 Higher Education Bond Bill Authorization:
As approved, House Bill 3446 authorizes a maximum issuance of $56,700,000 of Article XI-G bonds and a maximum issuance of $345,000,000 of Article XI-F(1) bonds in 2003-2005.

Request for Board Authorization to Issue:
Institutions are now seeking authorization from the Board to issue a total of $153,254,000 in bonds, plus estimated issuance costs of $2,587,000 for Article XI-F(1) bonds as part of a sale currently planned by the State Treasurer for February 2005.

Of this amount, a total of $24,000,000 is requested in Article XI-G bond authorization and a total of $129,254,000 in Article XI-F(1) bond authorization, plus Article XI-F(1) bond issuance costs.
Bond issuance costs estimated at 2 percent ($2,585,000) will be charged against each project for which bonds are sold under this sale. Prior to sale, the Board’s bond counsel may designate a portion of the sale as taxable due to space utilization by private entities in the projects to be financed under this sale.

Several tables are provided herein:

- Table A, included in the resolution, identifies the Article XI-F(1) projects recommended for the February 2005 Bond Sale.
- Table B, also included in the resolution, identifies the Article XI-G projects recommended for the February 2005 Bond Sale.

Four tables are provided after the resolution to display information on debt service issues:

- Table C displays the amount of Article XI-F(1) bonds to be sold, as well as the estimated annual debt service requirements associated with the projects proposed to be included in the February 2005 Bond Sale by campus and Systemwide.
- Table D displays information on Article XI-G bonded debt, beginning with 1991-1993 through 2003-2005. It compares the amount of the debt service paid with the total biennial budget for E&G all sources and General Fund E&G.
- Table E projects annual Article XI-G bonded debt outstanding and annual debt service, beginning with the 1997-1999 biennium through 2004-05, assuming approval of the proposed February 2005 Bond Sale.

In addition, summary information on each of the projects included in the proposed sale is provided in a supplement to this item.

Resolution for the Sale of Bonds for Capital Projects:
The resolution now before the Board authorizes staff to pursue the sale of bonds for all projects currently identified by the campuses as needing bond financing consistent with the overall bond limitation imposed by the Legislature for the period 2003-2005.

Staff Recommendation to the Board:
Staff recommends the Board: 1) find that the projects for which Article XI-F(1) bonds are proposed meet the self-liquidating and self-supporting requirements of Article XI-F(1), Section 2 of the Oregon Constitution; and 2) adopt the following resolution for authorizing the sale of Article XI-G and Article XI-F(1) bonds for capital projects.

(Board action required.)
FURTHER DETAIL:

RESOLUTION FOR THE SALE OF BONDS FOR CAPITAL PROJECTS

WHEREAS, ORS 286.031 states, in part, that the State Treasurer shall issue all general obligation bonds of this state after consultation with the state agency responsible for administering the bonds proceeds; and

WHEREAS, ORS 286.033 states, in part, that the state agency shall authorize issuance of bonds subject to ORS 286.031 by resolution; and

WHEREAS, ORS Chapters 351, 288, and 286 provide further direction as to how bonds are sold and proceeds administered; and

WHEREAS, Chapter 725, Oregon Laws 2003 and Chapter 845, Oregon Laws 2001 lists those projects that may be financed pursuant to Articles XI-G and XI-F(1) of the Oregon Constitution; and

WHEREAS, it is appropriate for this Board to authorize the State Treasurer to issue bonds for projects authorized by previous Legislation and pending bills, once adopted by the Legislature and signed into law by the Governor, and in amounts not greater than authorized by the bond bill and for other projects as may be provided by law and as otherwise required by law for the 2003-2005 biennium without requiring further action of this Board;

NOW, THEREFORE, be it resolved by the State Board of Higher Education of the State of Oregon as follows:

Section 1. Issue. The State of Oregon is authorized to issue general obligation bonds (the "Bonds"), in such series and principal amounts as the State Treasurer, after consultation with the Chancellor, or designee, of the Department of Higher Education, shall determine are required to fund projects authorized by Oregon law. The Bonds shall be designated, dated, authenticated, registered, shall mature, shall be in such denomination, shall bear such interest, be payable, be subject to redemption, and otherwise contain such terms as the State Treasurer determines, including the designations as Oregon Baccalaureate Bonds, after consultation with the Chancellor. The maximum net effective interest rate for the Bonds shall not exceed 10 percent per annum.

Section 2. Article XI-F(1) Projects. Bonds are authorized to be sold to provide funds to pay the cost of issuance of the bonds and for projects as may be authorized by the Oregon Legislature and as may be revised by the Chancellor, or designee, as authorized by Oregon law.
Table A - Article XI-F(1) Projects Recommended for February 2005 Bond Sale

<table>
<thead>
<tr>
<th>Article XI-F(1) Projects</th>
<th>Estimated Bond Cost, excluding issuance costs</th>
<th>Maximum Term</th>
</tr>
</thead>
<tbody>
<tr>
<td>Systemwide: Academic Modernization and Repair</td>
<td>$10,000,000</td>
<td>20 years</td>
</tr>
<tr>
<td>EOU: Residence Hall</td>
<td>10,800,000</td>
<td>30 years</td>
</tr>
<tr>
<td>OSU: Arnold Dining Hall</td>
<td>7,000,000</td>
<td>20 years</td>
</tr>
<tr>
<td>OSU: Reser Stadium</td>
<td>36,000,000</td>
<td>30 years</td>
</tr>
<tr>
<td>SOU: Stevenson Union Addition</td>
<td>5,500,000</td>
<td>30 years</td>
</tr>
<tr>
<td>SOU: Student Housing</td>
<td>6,700,000</td>
<td>30 years</td>
</tr>
<tr>
<td>UO: EMU HVAC System</td>
<td>1,350,000</td>
<td>20 years</td>
</tr>
<tr>
<td>UO: Land Acquisition*</td>
<td>27,400,000</td>
<td>30 years</td>
</tr>
<tr>
<td>UO: Living Learning Center</td>
<td>14,424,000</td>
<td>30 years</td>
</tr>
<tr>
<td>UO: University Health &amp; Counseling Center</td>
<td>9,080,000</td>
<td>30 years</td>
</tr>
<tr>
<td>WOU: Student Housing</td>
<td>1,000,000</td>
<td>30 years</td>
</tr>
<tr>
<td><strong>TOTAL XI-F(1) Projects</strong></td>
<td><strong>$129,254,000</strong></td>
<td>NA</td>
</tr>
</tbody>
</table>

*Pending Emergency Board Approval-January 2005

In accordance with past practice, approximately 2 percent issuance cost for Article XI-F(1) bonds will be added to the total project cost at the time of issuance to cover underwriting and other costs associated with the sale.

Section 3. Article XI-G Projects. Bonds are authorized to be sold to provide funds for projects previously authorized or as may be authorized by the Oregon Legislature and as may be revised by the Chancellor, or designee, as authorized by Oregon law.

Table B - Article XI-G Projects Recommended for February 2005 Bond Sale

<table>
<thead>
<tr>
<th>Article XI-G Projects</th>
<th>Estimated Bond Cost, excluding issuance costs</th>
<th>Maximum Term</th>
</tr>
</thead>
<tbody>
<tr>
<td>OSU: Graf Hall*</td>
<td>$4,750,000</td>
<td>30 years</td>
</tr>
<tr>
<td>PSU: Center for Nanoscience &amp; Nanotechnology*</td>
<td>500,000</td>
<td>30 years</td>
</tr>
<tr>
<td>PSU: NW Engineering Center</td>
<td>14,000,000</td>
<td>30 years</td>
</tr>
<tr>
<td>UO: Integrative Science Complex*</td>
<td>4,750,000</td>
<td>30 years</td>
</tr>
<tr>
<td><strong>TOTAL XI-G Projects</strong></td>
<td><strong>$24,000,000</strong></td>
<td>NA</td>
</tr>
</tbody>
</table>

*Taxable Bonds
Section 4. Maintenance of Tax-Exempt Status. The Board covenants for the benefit of the owners of the Bonds to comply with all provisions of the Internal Revenue Code of 1986, as amended (the "Code"), that are required for bond interest to be excluded from gross income for federal income taxation purposes (except for taxes on corporations), unless the Board obtains an opinion of nationally recognized bond counsel that such compliance is not required in order for the interest to be paid on the bonds to be so excluded. The Board makes the following specific covenants with respect to the Code:

(a) The Board shall not take or omit any action if the taking or omission would cause the bonds to become "arbitrage bonds" under Section 148 of the Code and shall assist in calculations necessary to determine amounts, if any, to allow the State to pay to the United States all "rebates" on "gross proceeds" of the bonds that are required under Section 148 of the Code.

(b) Covenants of the Board or its designee in its tax certificate for the bonds shall be enforceable to the same extent as if contained herein.

Section 5. Sale of Bonds. The State Treasurer, with the concurrence of the Chancellor, or designee, shall sell the bonds as the State Treasurer deems advantageous.

Section 6. Other Action. The State Treasurer, the Chancellor, or designee, or the Controller of the Department of Higher Education is hereby authorized, on behalf of the Board, to take any action that may be required to issue, sell, and deliver the bonds in accordance with this resolution.

ADDITIONAL INFORMATION ON DEBT AND DEBT SERVICE

**Table C - February 2005 Bond Sale for Article XI-F(1) Bonds: Magnitude of Bonds to be Sold and Associated Annual Debt Service**

<table>
<thead>
<tr>
<th>Campus</th>
<th>Bonds outstanding as of 6/30/04*</th>
<th>Annual Debt Svc as of 6/30/04*</th>
<th>February 2005 Bond Sale</th>
<th>February 2005 Bond Sale Increment of Debt Svc**</th>
<th>Repayment Sources</th>
</tr>
</thead>
<tbody>
<tr>
<td>Systemwide</td>
<td>$73.9</td>
<td>$5.3</td>
<td>$10.0</td>
<td>$0.8</td>
<td>Various</td>
</tr>
<tr>
<td>EOU</td>
<td>16.4</td>
<td>1.3</td>
<td>10.8</td>
<td>0.8</td>
<td>Housing</td>
</tr>
<tr>
<td>OIT</td>
<td>10.1</td>
<td>1.0</td>
<td>0</td>
<td>0.0</td>
<td></td>
</tr>
<tr>
<td>OSU</td>
<td>83.0</td>
<td>7.1</td>
<td>43.0</td>
<td>3.1</td>
<td>Athletics/Dining</td>
</tr>
<tr>
<td>PSU</td>
<td>129.0</td>
<td>9.8</td>
<td>0</td>
<td>0.0</td>
<td>Housing/SBF</td>
</tr>
<tr>
<td>SOU</td>
<td>16.4</td>
<td>1.6</td>
<td>12.2</td>
<td>0.9</td>
<td></td>
</tr>
<tr>
<td>Campus</td>
<td>Bonds outstanding as of 6/30/04*</td>
<td>Annual Debt Svc as of 6/30/04*</td>
<td>February 2005 Bond Sale</td>
<td>February 2005 Bond Sale Increment of Debt Svc**</td>
<td>Repayment Sources</td>
</tr>
<tr>
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<td>-------------------------</td>
<td>-------------------------------------------------</td>
<td>-------------------</td>
</tr>
<tr>
<td>UO</td>
<td>113.4</td>
<td>9.5</td>
<td>52.2</td>
<td>3.6</td>
<td>Housing/SBF/Athletics</td>
</tr>
<tr>
<td>WOU</td>
<td>28.4</td>
<td>2.3</td>
<td>1.0</td>
<td>0.1</td>
<td>Housing</td>
</tr>
<tr>
<td>Total Debt Outstanding</td>
<td><strong>470.6</strong></td>
<td><strong>37.9</strong></td>
<td><strong>129.2</strong></td>
<td><strong>9.3</strong></td>
<td></td>
</tr>
</tbody>
</table>

* Excludes OHSU debt outstanding, which is paid by OHSU per OUS/OHSU Debt Service Agreement.

** The majority of the projects to be included in the February 2005 bond sale would generate additional revenue necessary to make the projects self-liquidating and self supporting. Building fee debt service would be covered under existing revenue streams.

### Table D - Article XI-G Bonded Debt Historical Trends

<table>
<thead>
<tr>
<th>Biennial E&amp;G All Sources*</th>
<th>Debt Service Percent of E&amp;G Total</th>
<th>General Fund E&amp;G</th>
<th>Debt Service General Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>1991-1993</td>
<td>$ 818</td>
<td>1.55%</td>
<td>$515</td>
</tr>
<tr>
<td>1993-1995</td>
<td>866</td>
<td>1.47%</td>
<td>482</td>
</tr>
<tr>
<td>1995-1997</td>
<td>991</td>
<td>1.67%</td>
<td>422</td>
</tr>
<tr>
<td>1997-1999</td>
<td>1,062</td>
<td>1.73%</td>
<td>496</td>
</tr>
<tr>
<td>1999-2001</td>
<td>1,115</td>
<td>1.67%</td>
<td>530</td>
</tr>
<tr>
<td>2001-2003</td>
<td>1,353</td>
<td>1.58%</td>
<td>617</td>
</tr>
</tbody>
</table>

* Excludes non-limited funds (such as sponsored programs).

### Table E - Article XI-G Bonded Debt Outstanding Actual and Projected

<table>
<thead>
<tr>
<th>Biennial E&amp;G All Sources*</th>
<th>Debt Service Percent of E&amp;G Total</th>
<th>General Fund E&amp;G</th>
<th>Debt Service General Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>1991-1993</td>
<td>$ 818</td>
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</tr>
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<td>1999-2001</td>
<td>1,115</td>
<td>1.67%</td>
<td>530</td>
</tr>
<tr>
<td>2001-2003</td>
<td>1,353</td>
<td>1.58%</td>
<td>617</td>
</tr>
<tr>
<td></td>
<td>Beginning Bonds Outstanding</td>
<td>Annual Debt Service</td>
<td>Biennial Debt Service</td>
</tr>
<tr>
<td>---------------</td>
<td>----------------------------</td>
<td>---------------------</td>
<td>----------------------</td>
</tr>
<tr>
<td>2001-2002</td>
<td>89.3</td>
<td>9.7</td>
<td>21.4</td>
</tr>
<tr>
<td>2002-2003</td>
<td>123.2</td>
<td>11.7</td>
<td></td>
</tr>
<tr>
<td>2003-2004</td>
<td>147.8</td>
<td>12.5</td>
<td>24.4</td>
</tr>
<tr>
<td>2004-2005</td>
<td>155.6</td>
<td>11.9</td>
<td></td>
</tr>
</tbody>
</table>

**BOARD DISCUSSION AND ACTION:**

Chair Lorenzen asked Acting Chancellor George Pernsteiner to explain the resolution for the sale of Article XI-G and XI-F(1) bonds. Pernsteiner explained the difference between Article XI-G and XI-F(1) bonds and turned the Board's attention to the docket materials for an enumeration of the projects of which the monies would fund. He noted the XI-G projects had the required matching funds and the XI-F(1) projects had revenue sources sufficient to meet constitutional requirements. Pernsteiner added that all of the projects had been approved or were slated for Emergency Board approval in January 2005. Pernsteiner advised the Board to move forward with the bond sale, anticipated for February 2005.

Chair Lorenzen asked about the relationship between the enumerated projects and prior Board action and Pernsteiner observed, with the exception of the UO land acquisition request on this meeting's docket, all of the projects had been approved by the Board and, in many cases, the Legislature or the Emergency Board. Director Nesbitt noted the Board has much greater authority to issue XI-F(1) and XI-G bonds and asked, as he read the docket materials, why the Board would, in effect, be borrowing to move forward with the UO land acquisition. He offered, "I'm just trying to reconcile this with the later item and with the fact that it appears that we have a lot more authority for XI-F(1) bonds that we are using."

Pernsteiner stated that due to timing, the potential closing of the UO land acquisition, and the bond sale, it would be necessary to move monies from other projects to cover the UO land acquisition and restore those monies after the February 2005 bond sale. Pernsteiner also answered Director Van Vliet's question about expenditure limitation and Emergency Board requirements for the proposed UO land acquisition. Pernsteiner continued his response to Director Nesbitt's question, observing that OUS' substantial bonding authority is for all of the projects in the current capital budget and those from previous capital budgets yet to be completed. He noted there might be various reasons why projects are delayed, but bonding authority corresponds with projects included in various budgets. Director Nesbitt confirmed the accuracy of the project list after the February 2005 bond sale and restoration of funds.
Director Blair asked Pernsteiner if OUS was confident that the XI-F(1) projects had adequate revenue for debt service and Pernsteiner observed that OUS could not bring the projects to the Board unless it was confident the revenue was there. Chair Lorenzen asked for a motion to approve the proposed facts and resolution recommended by staff. Director Nesbitt moved approval, with the observation that the UO land acquisition would be considered next, and Director von Schlegell seconded the motion. Board members in favor: Burns, Dyess, Mendoza, Nesbitt, Richmond, Schuette, Sohn, Van Vliet, von Schlegell, and Lorenzen. Those opposed: None. Motion passed. Director Blair abstained.

e. UO, Request for Additional Expenditure Limitation (Arena Land Acquisition)

DOCKET:

Introduction:
Over the last 12 to 18 months, the University of Oregon (UO) has explored various potential sites for a new basketball arena. The preferred site is one adjacent to campus where United States Bakery currently operates Williams' Bakery. The UO has an opportunity to purchase the site but must act immediately. If the UO successfully concludes an agreement in the next month or so with United States Bakery, United States Bakery will, by constructing a new plant in the Eugene-Springfield area, ensure its presence in Oregon for many years and the UO will acquire a piece of property at a fair price that is key to its long-term growth. The UO has developed two funding models to support the purchase of the property: one based on use of the property for an arena and the other based on other uses of the property. UO seeks Board approval to proceed and requests the Board seek Emergency Board approval for redirection of already approved Article XI-F(1) bonding capacity to purchase the property.

Background:
McArthur Court, the UO’s current basketball facility, was constructed in the 1920s entirely with student fees. Over the decades, the UO has remodeled and upgraded McArthur Court to the extent financially and structurally feasible. It is no longer reasonable to make major investments in McArthur Court other than for routine maintenance. The UO began discussions regarding sites and methods to construct a new facility. Based on extensive review including the work of consultants, the preferred site is the site on Franklin Boulevard immediately east and north of the east campus, currently occupied by United States Bakery's Williams' Bakery.

That site has many advantages: its proximity to campus, its location on a major thoroughfare, its ability to serve as a gateway to the east side of campus, and the buffers between it and the local neighborhood. The enclosed overhead photograph demonstrates the advantages of this site. Last year, as part of the exploration of this project with a donor group, the site was considered. However, purchase at that time was not possible and attention switched to a site adjacent to McArthur Court. When the project on that site could not proceed, UO began again considering the potential of the Williams' Bakery site.
The UO has now done extensive review of the site and entered into negotiations with United States Bakery, as authorized by the Board at its November 2004 meeting. However, the need to move quickly has become especially apparent. By concluding negotiations promptly, the UO will be able to provide a means to ensure the long-term presence of an important business in the local community and will secure a piece of property that is key to the UO’s future development.

The UO continues to work with the University of Oregon Foundation (UOF) in hopes that an arena can be built on the property. UOF has created a non-profit entity that, if adequate funding becomes available, would construct the arena, using contributions and other funding it secures to finance construction. Under this scenario, The UO would purchase and lease the ground to the entity for construction and, thereafter, the UO and the entity would enter into a lease plus a development agreement regarding the operation of the arena. However, because at this time the UO cannot be certain the arena will be built, the UO has developed an alternative scenario that would allow the UO to support the purchase until a decision is reached regarding the arena and would support the purchase using other UO funds if an arena is not constructed on the site.

At its November 2004 meeting, the Board authorized the acquisition of the property. The University now anticipates expending up to $27.4 million for the acquisition of the Williams’ Bakery property and adjacent parcels.

Chancellor’s Office staff has identified previously approved bonding capacity that may be directed to this use, with Board and Emergency Board approval. We are currently reviewing the project with bond counsel regarding use of proceeds from bonds already sold or, if necessary, sale of other Article XI-F(1) bonds.

**Financial Terms of Acquisition:**
The financial terms differ somewhat depending whether the site is used for an arena or other purpose. The direct cost to the UO will vary somewhat as well. For example, if the property is not used for an arena, the UO will not acquire other small adjacent properties reducing acquisition costs by approximately $2.5 million dollars.
### Scenario #1
Acquisition Pro Forma
Use of Property for Arena

<table>
<thead>
<tr>
<th>Land Acquisition</th>
<th>(In millions)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Expenses</strong></td>
<td></td>
</tr>
<tr>
<td>Bakery and other property</td>
<td>$27.5</td>
</tr>
<tr>
<td><strong>Cost Reductions</strong></td>
<td></td>
</tr>
<tr>
<td>Land, construction, and in-kind contributions and economic incentives to reduce relocation cost to United States Bakery to be credited against land acquisition costs ($2-$4 million)</td>
<td>($2.0)</td>
</tr>
<tr>
<td>Net cost</td>
<td>$25.5</td>
</tr>
<tr>
<td>Bond escrow requirements</td>
<td>$1.9</td>
</tr>
<tr>
<td><strong>Total Bonded Indebtedness</strong></td>
<td>$27.4</td>
</tr>
</tbody>
</table>

**Debt Payment**

- **Annual Debt Service requirement (based on 30 year bonds)**: $1.9

**Revenue Sources**
- Commitment of gift funds: $0.90
- Auxiliary administrative assessments: $0.55
- Arena ground lease, parking revenues, etc.: $0.45

- **Total Annual Revenue dedicated to Debt Service**: $1.9

**Annual Debt Payment**: $1.9
### Scenario #2

**Acquisition Pro Forma**

**Use of Property for Other Uses**

<table>
<thead>
<tr>
<th>Land Acquisition</th>
<th>(In millions)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Expenses</strong></td>
<td></td>
</tr>
<tr>
<td>Bakery and other property</td>
<td>$25.0</td>
</tr>
<tr>
<td><strong>Total Maximum Cost</strong></td>
<td>$25.0</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Cost Reductions</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Land, construction, and in-kind contributions and economic incentives to reduce relocation cost to United States Bakery to be credited against land acquisition costs ($2-$4 million)</td>
<td>($2.0)</td>
</tr>
<tr>
<td><strong>Total reductions and credits</strong></td>
<td>($2.0)</td>
</tr>
</tbody>
</table>

| Net cost | $23.0 |
| Bond escrow requirements | $1.7 |
| **Total Bonded Indebtedness** | $24.7 |

| Debt Payment | $1.7 |

**Annual Debt Service requirement (based on 30 year bonds)**

<table>
<thead>
<tr>
<th>Revenue Sources</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Lease Income</td>
<td>$0.27</td>
</tr>
<tr>
<td>Auxiliary administrative assessments</td>
<td>$1.00</td>
</tr>
<tr>
<td>Specialized parking revenues</td>
<td>$0.43</td>
</tr>
<tr>
<td><strong>Total Annual Revenue dedicated to Debt Service</strong></td>
<td>$1.7</td>
</tr>
</tbody>
</table>

| Annual Debt Payment | $1.7 |

In all cases, and under both scenarios, operating costs, if any, would be paid from the same sources as the debt service.

**Acquisition Funding:**

The Chancellor’s Office has identified existing legislatively authorized bond capacity in an amount adequate to support the acquisition of the property. An additional $5.4 million would be sought in the bond resolution for sale in February 2005. The Board and the Legislative Emergency Board must approve the redirection of funds to this project. The UO requests the Board to approve the use and to request the Legislative Emergency Board to authorize use of Article XI-F(1) bonds for acquisition of this site. The UO will seek further Board approval on this project if the arena project proceeds when the UO requests authority to acquire the other properties and when the UO requests approval of the ground lease.
**Staff Recommendation to the Board:**
Staff recommends that the Board approve the request of the University of Oregon to acquire the Williams’ Bakery property and such adjacent properties as would be necessary to construct the arena. Staff also recommends that the Board authorize the use of $22 million of existing Article XI-F(1) bond proceeds and the sale of $5.4 million of Article XI-F(1) bonds to effect the acquisition. Staff recommends further that the Board authorize the Chancellor, or designee, to request approval from the Emergency Board for establishment of an Other Funds Limitation of $27.4 million and authorization to expend that amount from the proceeds of Article XI-F(1) bonds for the acquisition of the property.

**Attachment A**

![Image of Williams' Bakery Site](image)

(Board action required.)

**BOARD DISCUSSION AND ACTION:**

Chair Lorenzen turned to the final item on the agenda and asked Acting Chancellor Pernsteiner for an explanation of the UO land acquisition docket item. Pernsteiner discussed the request to acquire the US Bakery land adjacent to the UO, including the
negotiations and the maximum price for the property outlined in a letter of intent. He noted the use of the property would either be for an arena or other campus uses and, as such, two different proposed revenue streams had been included in the docket materials for consideration. Pernsteiner observed that the revenues committed by the University appeared sufficient to ensure the repayment of debt, but if there were not sufficient funds to defeat the debt of any operating expenses, the University had pledged to use gift funds and auxiliary assessments. Pernsteiner asked President Dave Frohnmayer to offer additional explanation of the request and answer any questions that Board members might have.

President Frohnmayer noted this proposal was the next step in the land acquisition process started with the condemnation resolution approved at the November Board meeting. He noted the productive negotiations with US Bakery and the current request seeking permission to secure Article XI-F(1) bonding. Frohnmayer added the seller's timeline makes the acquisition process more urgent, that if the seller put more work into the current site, condemnation would be more expensive, and that the property is adjacent to current campus properties and is a highly desirable parcel. Frohnmayer also observed, "The amount that we are requesting as fund authorization is the maximum, as the Chancellor's report to you has pointed out. It is our hope that through set-asides, through the action by other local governments and in-kind donations made available to the seller, that the actual ultimate purchase price can be reduced." Frohnmayer concluded that the University has conducted several evaluations of the property, including geotechnical, pollution, and planning assessments.

Director Nesbitt noted that he was pleased to hear that the acquisition was not moving forward as a condemnation. He confirmed that if identified revenue did not materialize, the exposure to cost would be covered by unrestricted gifts, as opposed to operating funds. President Frohnmayer noted that cost mitigation was built into the proposal, observing that if the UO did not go forward with the arena, additional properties would not be acquired and the cost would reduce by $2 million. He observed the UO had thoughtfully considered various uses of the property and potential revenue streams.

Director Nesbitt asked if the UO contemplated the second scenario, with an eventual shift to an arena. President Frohnmayer stated the UO did not foresee occupying the property until Spring 2006. Director Nesbitt asked if the proposed gift funds in the arena scenario might be higher and Frohnmayer replied it was possible, but the UO was trying to be conservative in the gift estimates. Nesbitt turned to the second scenario and Frohnmayer observed that the same gift generating capacity would not be the available. Pernsteiner added the payment revenue sources would be closer to those that would be in a typical auxiliary project.

Chair Lorenzen noted the value of the strategically placed property and that US Bakery had committed itself to obtaining an appraisal and estimate of cost consistent with applicable state and federal law. He stressed the fairness of the proposal as presented by the UO. Director Nesbitt asked if there were any problems with the possibility that the University of Oregon Foundation would create a non-profit entity to construct the arena. President Frohnmayer turned to the UO General Counsel Melinda Grier to reply and
she noted consultation with Bond counsel revealed the project would still be appropriate for an XI-F(1) bond, even if the non-profit entity were created to construct an arena.

Director von Schlegell asked OUS General Counsel Ben Rawlins if, due to potential business discussions, he would need to abstain from the vote. After brief discussion, Rawlins explained that the safest course of action would be to abstain. Chair Lorenzen called for a motion to approve the additional expenditure limitation for the US Bakery property as presented in the docket materials. Director Burns moved to approve the additional expenditure limitation as proposed and Director Dyess seconded the motion. Board members in favor: Burns, Dyess, Mendoza, Nesbitt, Richmond, Schuette, Sohn, Van Vliet, and Lorenzen. Those opposed: None. Motion passed. Directors Blair and von Schlegell abstained.

3. **DELEGATION OF AUTHORITY TO BOARD’S EXECUTIVE COMMITTEE**

“Pursuant to Article II, Section 5 of the Bylaws of the Board of Higher Education, the Board delegates to the Executive Committee authority to take final action as here designated or deemed by the committee to be necessary, subsequent to the adjournment of this meeting and prior to the Board’s next meeting. The Executive Committee shall act for the Board in minor matters and in any matter where a timely response is required prior to the next Board meeting.”

Chair Lorenzen called for a motion to accept the delegation of authority to the Board's Executive Committee as included in the docket. Director Van Vliet moved to accept the delegation and Director von Schlegell seconded the motion. Board members in favor: Blair, Burns, Dyess, Mendoza, Nesbitt, Richmond, Schuette, Sohn, Van Vliet, von Schlegell, and Lorenzen. Those opposed: None. Motion passed.

4. **ADJOURNMENT**

Chair Lorenzen adjourned the telephonic meeting at 3:18 p.m.

Henry C. Lorenzen  
President of the Board

Ryan J. Hagemann  
Secretary of the Board