

BOARD OF REGENTS BRIEFING PAPER

1. Agenda Item Title: Three-year contract extension for UNLV Athletic Director, Jim Livengood

2. BACKGROUND & POLICY CONTEXT OF ISSUE:

This is a three-year employment extension (December 17, 2012 through December 16 2015) for UNLV Athletic Director, Jim Livengood.

3. SPECIFIC ACTIONS BEING RECOMMENDED OR REQUESTED:

The base salary will be \$350,000 per year beginning on December 17, 2012 through December 15, 2015. Compensation to the employee over the three-year term will remain the same as the previous contract, except that the previous contract provided for a base annual salary of \$295,000 with a one-time payment of \$165,000 at the end of the three-year term. The employee is not eligible for future cost of living ("COLA") increases or merit increases.

4. IMPETUS (WHY NOW?):

The original contract will expire on December 17, 2012. To maintain the continuity of the success in the Department of Athletics, it is imperative this contract be extended at this time.

5. BULLET POINTS TO SUPPORT REQUEST/RECOMMENDATION:

- Has improved student-athlete performance in the classroom by continually graduating student-athletes at a higher rate than the traditional student body at UNLV
- In 2010 68% of student-athletes graduated/ 41% of Student body graduate.
- In 2011 57% of the student-athlete population graduated while 39% of the Student Body Graduated
- Hired new Head Men's Basketball Coach who took the program to the NCAA Tournament in his first season.
- Has improved community relations by accepting requests and appearing as head and or guest speaker for various, groups, organizations, clubs and foundations around the Las Vegas and Henderson communities.
- Balanced budget in 2011 despite State budget cuts
- Increased fundraising
- Oversaw the completion of the \$10 million dollar Men's Basketball Practice facility in 2012
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6. POTENTIAL ARGUMENTS AGAINST THE REQUEST/RECOMMENDATION

7. ALTERNATIVE(S) TO WHAT IS BEING REQUESTED/RECOMMENDED:

8. COMPLIANCE WITH BOARD POLICY:

X Consistent With Current Board Policy: Title # 2 Chapter # 5 Section # 5.4.2(a) and (e)

☐ Amends Current Board Policy: Title # _____ Chapter # _____ Section # _____

☐ Amends Current Procedures & Guidelines Manual: Chapter # _____ Section # _____

☐ Other: _____

☐ Fiscal Impact: Yes ___ No x

Explain: Total compensation over the three-year term will remain the same as the previous contract.
The bonus structure remains the same.

University of Nevada, Las Vegas

Name: Don J. Livengood

Athletic Director

Summary of Terms

Term: December 17, 2012 through December 16, 2015 Pg 2

Funding: Employee's salary is paid through self-supporting accounts and budgeted annually.

Compensation: \$ 350,000.00 total per fiscal year

\$ 350,000.00 Base Salary per fiscal year Pg 11

Pg 13 **Country Club Membership:** The University will arrange membership privileges, at no cost to Employee, at a local golf or country club for as long as Employee serves as the Director of Athletics and for no longer.

Pg 13 **Automobile allowance:** The University shall make arrangements for and provide to the Employee, on a loan basis, two (2) automobile(s) for the use of the Employee for so long as the Employee serves as the Director of Athletics.

Pg 13 **Tickets:** The University shall make available to the Employee twelve (12) tickets for each regular season contest for all sports, and post season tickets as approved by the President, for as long as Employee serves as the Director of Athletics.

Pg 13 **Academic Success:** The President may annually award Employee an additional one-time bonus consisting of no more than one month's base salary for the overall success of the academic program and progress of student-athletes toward graduation. Criteria for such success shall be set by the President annually using measures including (but not be limited to) comparisons of GPAs to other Division I institutions (by sport and as a whole) and graduation rates compared to University's student body as a whole.

Pg 13 **Athletic Success:**

- (i) Should the University football team participate in any "BCS" bowl game- an amount equal to six (6) months' base salary;
- (ii) Should the University football team win the Conference championship- an amount equal to one month's salary;
- (iii) Participation by the University's men's basketball team in the "Sweet Sixteen" of the NCAA tournament- an amount equal to one month's salary.

Fringe Benefits: The employee will be entitled to standard fringe benefits provided to University employees, including insurance, sick leave and retirement contributions. Pg 12

Employee:

_____ will X will not earn annual leave. Pg 13

_____ will X will not be eligible for cost of living (COLA). Pg 11

_____ will X will not be eligible for merit pay adjustments to his/her base salary. Pg 12

X will _____ will not be entitled to a reasonable amount of compensated personal leave upon written approval of the President. Pg 13

Reassignment: Employee X may _____ may not be reassigned. Pg 3

Termination: Pg 16 **University Payment if Terminate Without Cause:** The University shall pay to the Employee, as liquidated damages, an amount equal to the Employee's Guaranteed Base (BOARD OF REGENTS' AGENDA 05.31.12 & 06.01.12) Ref. BOR-18, Page 2 of 30

Salary for the period remaining in the Term of this Agreement, to be paid on a monthly basis prorated over the remainder of the Term of this Agreement.

Pg 20 **Employee's Payment if Terminate Without Cause:** Employee will not incur any liability to University for damages.

This Summary of Terms is not part of the Employment Agreement. In the event of any discrepancy between this Summary of Terms and the Employment Agreement, the Employment Agreement controls.

DIRECTOR OF ATHLETICS EMPLOYMENT AGREEMENT

Between

**The BOARD OF REGENTS OF THE NEVADA SYSTEM OF HIGHER,
EDUCATION**

On behalf of

University of Nevada, Las Vegas,

And

Don J. Livengood

This Director of Athletics Employment Agreement (this “**Agreement**”) is effective this day of _____, 20____, contingent upon the approval of the Board of Regents of the Nevada System of Higher Education, by and between the Board of Regents of the Nevada System of Higher Education, on behalf of the University of Nevada, Las Vegas (the “**University**”), and Don J. Livengood (the “**Director of Athletics**” “**Athletic Director**” or the “**Employee**”). As further set forth in Article 8.03, this Agreement cancels and replaces, as of this effective date of this Agreement, any and all prior employment understandings and agreements between these two parties, including but not limited to the prior Employment Agreement for the period December 17, 2009, through December 16, 2012. Concurrent with this Agreement, the parties shall also execute, on an annual basis for each academic year, a “Terms of Employment for Faculty,” or successor document, which said document shall incorporate this Agreement, together with its accompanying document called the University Personnel/Payroll Action Form (PAF), or successor document, along with all other documents or forms reasonably required by the University to effectuate the terms of this Agreement.

ARTICLE I - PURPOSE

The University and the Director of Athletics have entered into this Agreement because the University desires to contract the Employee for the period set forth in Article III with the Employee's assurance that he/she will serve the entire term of this Agreement, a long-term commitment by the Employee being critical to the University's desire to run a stable athletic department. The University and the Employee agree that the director of intercollegiate athletics at the University conducts his/her professional activities under circumstances unique in the University community and among University employees, including evaluation and scrutiny of department performance by the public and the news media and control by external rules and regulations, including without limitation the rules and regulations of the National Collegiate Athletic Association ("**NCAA**") and the athletic conference of which the University is a member (the "**Conference**"). These circumstances justify job security and commitment by the Employee longer than one year but less than a continuous appointment. The Employee desires to obtain the opportunities of employment with the University which are set forth in this Agreement. For these reasons, the University has agreed to employ the Employee and the Employee has promised to be employed by the University upon the terms and conditions set out in this Agreement.

ARTICLE II – PUBLIC DOCUMENT

The parties agree that this Agreement is a public document and that the University may release copies of this Agreement to persons requesting the same.

ARTICLE III – TERM OF EMPLOYMENT AND NOTICE OF NON-RENEWAL

The Employee's employment hereunder shall commence December 17, 2012, subject to the approval of the Board of Regents of the Nevada System of Higher Education, and shall continue until this Agreement terminates upon the close of business at the University on December 16, 2015, (the "**Term**"), provided, that this provision is subject to the terms and

conditions of Article VI hereof concerning termination and Article VII hereof concerning restrictions on competition, and neither party shall have any right to terminate this Agreement prior to the close of business at the University on December 16, 2015, except as provided therein.

THE PARTIES TO THIS EMPLOYMENT AGREEMENT EXPRESSLY UNDERSTAND AND AGREE THAT THE PROVISIONS OF THIS ARTICLE CONSTITUTE THE NOTICE TO THE EMPLOYEE OF THE NONRENEWAL OF HIS/HER EMPLOYMENT AT THE UNIVERSITY AND THAT HIS/HER EMPLOYMENT WILL TERMINATE UPON THE CLOSE OF BUSINESS AT THE UNIVERSITY ON THE DATE SET FORTH IN THIS ARTICLE III, AND THAT, NOTWITHSTANDING ANY PROVISION OF THE NEVADA SYSTEM OF HIGHER EDUCATION CODE TO THE CONTRARY, NO OTHER NOTICE OF NONRENEWAL OF EMPLOYMENT SHALL BE REQUIRED.

ARTICLE IV – POSITION

4.01. Employment As Director of Athletics.

The Employee is hereby employed by the University and will serve in the position of the Director of Athletics. Throughout the Term of this Agreement, the Employee shall use his/her best full-time energies and abilities for the exclusive benefit of the University. The Employee shall serve as the primary and responsible administrator of the athletic department of the University (“**Athletic Department**”). As such, the Employee is an “administrator” as that term is defined by the policies, rules and regulations of the Board of Regents of the Nevada System of Higher Education and University may reassign Employee in accordance with Nevada System of Higher Education Code (hereinafter “**Code**”), Title 2, Chapter 5, Section 5.4.8, as such section may be amended from time to time.

4.02. Description Of Employee's Responsibilities.

a. Recognition Of Duties. The Employee agrees to be a loyal employee of the University. The Employee agrees to devote his best/her efforts full time to the performance of his/her duties for the University, to give proper time and attention to furthering his/her responsibilities to the University and to comply with all rules, regulations, policies, and decisions established or issued by the BOR, the University, the NCAA, and the Conference and to comply with all rules, regulations, policies, and decisions applicable to, or established or issued by the Athletic Department. The Employee agrees that, except as permitted by Article V herein, during the Term of this Agreement, he/she will not engage, directly or indirectly, in any business which would detract from his/her ability to apply his/her best efforts to the performance of his/her duties hereunder. Employee also agrees not to usurp any corporate or competitive opportunities of the University.

b. General Duties And Responsibilities Of Employee. During the Term, the Employee agrees to undertake and perform properly, efficiently, to the best of his/her ability and consonant with the standards of the University all duties and responsibilities attendant to the position of Director of Athletics as set forth in Article 4.02(c.) below. The Employee further agrees to abide by and comply with the constitution, bylaws and interpretations of the NCAA and all NCAA and University rules and regulations relating to his/her conduct and administration of the Athletic Department, as now constituted or as any of the same may be amended during the Term, as well as the applicable constitution, bylaws, rules and regulations of the Conference. In the event that the Employee becomes aware of, or has reasonable cause to believe that major violations of any NCAA constitution, bylaws, rules or regulations, or official interpretations thereof, may have taken place, he/she shall report the same promptly to the President or designee. It is further understood that Employee is

individually responsible for compliance with the policies of NSHE and the University, including, but not limited to, those of its Athletic Department, and with the rules and regulations of the NCAA and the Conference and the constitution, bylaws, rules, regulations and official interpretations of each of those, as may be in effect from time to time, and for reporting violations and potential major violations thereof to the President. The Employee agrees to adhere to, respect and follow the academic standards and requirements of the University in regard to the recruiting and eligibility of prospective and current student athletes for the programs of the Athletic Department. All academic standards, requirements and policies of the NSHE and University shall also be observed by the Employee and members of his/her staff, including coaches and assistant coaches, at all times and shall not be compromised or violated at any time. It is the goal and desire of both the University and Employee that student athletes in the programs of the Athletic Department perform at the highest possible academic level. Employee shall not exhibit any behavior that brings Employee or University into public disrepute, contempt, scandal or ridicule or in any behavior that is unfavorable to the reputation or ethical standards of NSHE or University. In his/her position as Athletic Director, the Employee is held directly accountable for these general responsibilities relating to the Athletic Department: implementation of the budget for the Athletic Department and the recruiting, mentoring, supervision, evaluation and performance of coaching staff. As Athletic Director, Employee shall be positive in supporting the programs of the Athletic Department, the President and the University.

c. Duties And Responsibilities While Employed As Director of Athletics. The duties and responsibilities assigned to the Employee in connection with this position as Director of Athletics are as set forth below. The Employee's specific job duties and responsibilities shall be reviewed, assigned and revised from time to time, after consultation with the Employee, by the Employee's reporting supervisor, the President. The duties and responsibilities are not

exclusive of the other general duties and responsibilities provided for elsewhere in this Agreement.

i) Academic Responsibilities

The parties agree that, although this Agreement is sports administrative related, the primary purpose of University and, accordingly, of all its legal arrangements, including this Agreement, is educational. Thus, the educational purposes of University shall have priority in the various provisions of this Agreement. It is recognized by the parties that a student-athlete may be declared not eligible for competition for academic reasons, because University believes the individual would not be an appropriate representative of University, as a disciplinary sanction under the NSHE Code, or because University believes that the individual is not eligible according to the rules for practice or competition specified by the NCAA, the Conference or Athletic Department policies. In no event shall such action by University be considered a breach of this Agreement. In furtherance of its educational purpose, the Employee will be responsible for providing necessary academic support services to its student-athletes that will enhance the educational experience and will increase retention of student-athletes, academic progress and graduation rates.

ii) Sports Program Employees

Except as limited by the anti-nepotism provisions of NRS 281.210 and the NSHE Board of Regents Handbook Title 4, Chapter 3, Section 5, Employee shall have the authority to recommend the hiring and termination of head coaches and all Athletic Department staff, subject to the review and approval of the President, as University's appointing authority, or the President's designee.

It is understood that all Athletic Department employees are immediately responsible to the Athletic Director, who will assign the duties of each.

iii) Media Cooperation

The Athletic Director will serve as the official spokesperson for the Athletic Department and be reasonably available to and cooperate with the media and fulfill all contractual obligations relating to media requests, either print or electronic, or both.

iv) Support Academic Mission

Employee shall work towards integration of intercollegiate athletics into the whole spectrum of academic life and to complement the University and its mission in the community. Employee will work in cooperation with University's faculty and administrative officials to ensure that all student athletes' requirements are met.

v) Rules Compliance

Employee shall work within the confines of rules, regulations, guidelines and policies of the Athletic Department, the NCAA and the Conference. Employee shall have complete knowledge of the rules and regulations governing intercollegiate athletics and maintain strict compliance therewith and shall periodically hold department-wide rules education meetings, mandatory for all Department employees, unless the Athletic Director or designee gives prior written approval for absence from such meetings.

vi) Concern For Student Welfare Issues

The Director of Athletics will maintain reasonable discipline and be fair to and understanding of the student-athletes while motivating them to excellence, in all

aspects of life, including athletic and non-athletic endeavors, paying particular attention to the high public visibility of student-athletes.

vii) Good Sportsmanship

Intercollegiate athletics contests shall be conducted in a sportsmanlike manner. It is the responsibility of Employee to ensure that all student-athletes, coaches and staff who are associated with the Athletic Department conduct themselves in a sportsmanlike manner. Employee shall, and shall ensure that all student-athletes, coaches and staff, exhibit ethical behavior at all NCAA and Conference competitions and shall conduct themselves in accordance with the rules of the NCAA and the Conference and the playing rules of the respective sports. Employee shall, and shall ensure that all student-athletes, coaches and staff, refrain from making negative comments regarding an opposing institution or its players, teams, coaches/staff or game officials, and shall create a healthy environment for competition.

viii) Fiscal Management

Employee is responsible for all aspects of fiscal management related to the Athletic Department in accordance with University policies and procedures. The Employee, in conjunction with the Vice President for Development, is responsible for securing outside funding to meet other basic needs of the Program or to enhance the overall Athletic Department programs, if necessary.

ix) Scheduling of Contests

The Director of Athletics or designee will have final authority and responsibility with regard to the sports schedules.

x) Public Appearances

As part of the compensation commitment, Employee is encouraged to participate in public appearances as often as possible within the parameters as defined by the job responsibilities for the position of Director of Athletics.

xi) Television, Radio, and Personal Appearances

a. For so long as the Employee serves as Director of Athletics, the Employee will perform such television and radio appearances as are reasonably arranged and scheduled by the University at no additional compensation to the Employee.

b. For so long as the Employee serves as Director of Athletics, the Employee will perform such personal appearance duties as the University shall reasonably arrange and schedule to assist in the recruitment of students and to enhance the regional and national reputation of the University at no additional compensation to the Employee.

xii) Other Specific Duties and Responsibilities

All other duties and responsibilities will be assigned by the President or designee, and will be reasonable to the position of Director of Athletics.

4.03. Employee May Be Disciplined for Violations of NCAA Rules and Regulations.

If the Employee is found to have violated NCAA rules and regulations during prior employment at another NCAA member institution, the Employee shall be subject to disciplinary or corrective action as set forth in the NCAA enforcement procedure. If the Employee is found to be in violation of NCAA, Conference, University, or NSHE rules and regulations while employed by the University, the Employee shall also be subject to disciplinary or corrective action as set forth in the NCAA and/or University enforcement procedure and/or as set forth below in Article 6.01(c) and (d). The Employee may be

suspended for a period of time, the length of time will be determined by the President, with or without pay, or the employment of the Employee may be immediately terminated as provided in Article 6.01 (c) and (d) hereof. "As used in this section, "violation" shall be defined as: a) the direct action by the Employee violating said policies, and/or; b) Employee's failure to act on/or correct violations of other Athletic Department personnel, including student athletes, boosters, coaches or athletic department staff members of which the Employee knew or should have known.

4.04 Reporting Relationship.

The Employee shall report to the President. The Employee is expected to work closely with a variety of athletic departments at other institutions and University staff, including the President's Cabinet/Council, on all relevant matters affecting the Athletic Department or otherwise connected with the discharge of his/her duties as an employee of the University.

4.05 Periodic Personnel Evaluations.

The Employee's performance of his/her job duties and responsibilities will be evaluated by the President on an annual basis. These evaluations will take into account prior evaluations and the expectations and goals set for the Employee in such prior evaluations. Specific areas of evaluation may include, but are not limited to, the Employee's efforts to achieve student centered integration; hiring and motivation of top level coaches; improved graduation rates (which includes student-athlete retention); improved student academic progress and team grade point average; creating a fair and inclusive campus environment; maintaining diversity; maintaining an accountable administration; communicating and collaborating effectively; improving conference rankings and striving for championships; ensuring NCAA compliance; overseeing good fiscal management; and developing effective fundraising and community relations. In addition, each year that Employee serves as

Director of Athletics, Employee will be responsible for evaluating all head coaches and designated staff members.

ARTICLE V – COMPENSATION

In consideration for the promises Employee has made in entering into this Agreement, the Employee shall be entitled to the compensation as described below. All payments, including non-cash consideration and benefits, by the University are subject to normal deductions and withholding of all applicable state, local and federal taxes, including all provisions, regulations and guidelines of the Internal Revenue Code, and for any retirement or other benefits to which the Employee is entitled or in which he/she participates, and are subject to the terms and conditions of Article VI hereof concerning termination of this Agreement and Article VII hereof concerning restrictions on competitive employment.

5.01. Guaranteed Base Salary.

The guaranteed base salary paid by the University to the Employee for his/her services and satisfactory performance of the terms and conditions of this Agreement shall be at the base rate of **\$350,000.00** (“**Guaranteed Base Salary**”) per fiscal year (a fiscal year begins on July 1 and ends the following June 30), prorated to the portion of the fiscal year the Employee is actually employed, and payable in equal monthly installments by the University to the Employee on the first working day of each consecutive calendar month during the Term. Notwithstanding this Article 5.01, in the event there are salary reductions throughout the Nevada System of Higher Education for any fiscal year during the Term, Employee's salary shall be reduced by the same percentage and in the same manner as other non-tenured faculty of University through the mechanisms required by the Board of Regents, such as, for example, pay cuts and unpaid leave days.

Employee shall not be eligible for Cost of Living Adjustments (“**COLA**”) as may be provided by Employer to other professional staff of the University.

If the Nevada State Legislature funds merit awards for Nevada System of Higher Education faculty and the Nevada System of Higher Education and University authorize merit awards for University employees, Employee shall not be eligible to participate in the merit program.

5.02 Fringe Benefits.

The Employee shall be entitled to the standard fringe benefits provided to all other professional employees of the University including, but not limited to, retirement contributions based upon the compensation paid pursuant to Article 5.01 of this Agreement, insurance and sick leave. Employee is responsible for notifying the President or designee in writing of any request for use of sick leave time.

Personal leave shall not be accrued, but may be taken at times and in duration approved in advance or directed by the President, at the request of Employee or otherwise.

5.03 Expenses.

The University will reimburse the Employee for all travel and out-of-pocket expenses reasonably incurred by him/her for the purpose of and in connection with the performance of his/her duties under this Agreement. Such reimbursement shall be made in accordance with standard reimbursement rates and procedures of the University upon presentation to the University of standard travel reimbursement forms, vouchers or other statements itemizing such expenses in reasonable detail. At all times the spouse or one guest of the Employee may travel with the Employee for business purposes in representing the University. Upon prior written approval from the President or designee for said travel, University will provide team or business travel expenses for such spouse or guest in accordance with NSHE and University travel policies.

5.04. Automobiles.

The University, as additional compensation to the Employee, shall make arrangements for and provide to the Employee, on a loan basis, two (2) automobile(s) for the use of the Employee for so long as the Employee serves as the Director of Athletics. The University further agrees to provide appropriate liability and comprehensive automobile insurance to cover the Employee in his/her use and operation of said automobile. Employee shall be responsible for all other expenses involved in the use and operation by Employee of said automobile.

5.05. Season Tickets and Memberships.

a. The University shall make available to the Employee twelve (12) tickets for each regular season contest for all sports for as long as Employee serves as the Director of Athletics.

b. The University shall make available to the Employee, upon request, post season tickets as approved by the President.

c. The University will arrange membership privileges, at no cost to Employee, at a local golf or country club for as long as Employee serves as the Director of Athletics and for no longer.

5.06 Additional Compensation.

Academic Success

The President may annually award Employee an additional one-time bonus consisting of no more than one month's base salary for the overall success of the academic program and progress of student-athletes toward graduation. Criteria for such success shall be set by the President annually using measures including (but not be limited to) comparisons of GPAs to other Division I institutions (by sport and as a whole) and graduation rates compared to University's student body as a whole.

Athletic Success

Employee shall earn additional annual one-time bonuses as specified herein in fiscal years in which University athletic teams achieve the following objectives:

- (i) Should the University football team participate in any “BCS” bowl game- an amount equal to six (6) months’ base salary;
- (ii) Should the University football team win the Conference championship- an amount equal to one month’s salary;
- (iii) Participation by the University’s men’s basketball team in the “Sweet Sixteen” of the NCAA tournament- an amount equal to one month’s salary.

General Terms Regarding One-time Payments

All one-time payments due to Employee herein shall be made by “Letters of Appointment,” which are not eligible for retirement contributions, or by some other mechanism approved by the University that does not result in additional retirement contributions, on July 31st following the fiscal year in which the bonus payments were earned. Such incentive payments will be subject to deduction of taxes in accordance with IRS regulations.

5.07 Intentionally Omitted

5.08. Opportunities to Earn Outside Income.

While the Employee is employed as Director of Athletics, he/she shall have the opportunity to earn outside income as a result thereof, but only upon the following terms and conditions:

a. General Provisions Concerning Outside Income. The following general terms and conditions shall apply to each case in which the Employee seeks to or makes arrangements for activities to earn outside income as a result of being Director of Athletics.

1. University Obligations are Primary. Such outside activities shall not interfere with the full and complete performance by the Employee of his/her duties and obligations as a University employee, recognizing always that the Employee’s primary obligations lie with the University and its students.

2. Laws and University, NCAA and Conference Rules Control. In no event shall the Employee accept or receive directly or indirectly any monies, benefit or any other gratuity whatsoever from any person, corporation, University booster club or alumni association or other benefactor if such action would violate: (1) the laws of the State of Nevada; (2) the Code, any other provisions of the NSHE Board of Regents Handbook, or rules or policies of the University or its Board of Regents; or (3) NCAA legislation or the constitution, bylaws, rules and regulations, or interpretations thereof, or of the Conference, as now or hereafter enacted. Changes or amendments of such laws, legislation, constitution, bylaws, policies, rules and regulations or interpretations thereof shall automatically apply to this Agreement without the necessity of a written modification of this Agreement or of notification to Employee.
3. University Approval is Required. To the extent required by NCAA regulations and as provided in this Agreement, the Employee shall obtain the advance written approval of the University's President before entering into agreements to receive outside income, which approval shall not be unreasonably withheld.
4. University is Not Liable: ANY ARRANGEMENTS FOR OUTSIDE COMPENSATION AND THE ACTIVITIES THEREUNDER ARE INDEPENDENT OF THE EMPLOYEE'S UNIVERSITY EMPLOYMENT, AND THE UNIVERSITY SHALL HAVE NO RESPONSIBILITY OR LIABILITY FOR ANY PAYMENT OF OUTSIDE COMPENSATION OR FOR ANY CLAIMS ARISING THEREFROM UNDER ANY CIRCUMSTANCES WHATSOEVER.
- g. Disclosure of Outside Income. In accordance with NCAA regulations, the

Employee shall report annually in writing to the President of the University, on or before June 30 of each fiscal year, all athletically-related income from sources outside the University, and

the University shall have reasonable access to all records of the Employee necessary to verify such report. In addition, in accordance with NCAA regulations, Employee may be required to report outside income directly to the NCAA.

ARTICLE VI – TERMINATION

6.01. Termination by University.

The Employee recognizes that his/her promise to remain as Athletic Director of the University through the entire term of this Agreement is of the essence of this Agreement to the University. It is also recognized, however, that certain limited circumstances may make it appropriate for the University to terminate this Agreement prior to the completion of its entire term, as follows:

a. Termination By University Without Cause. Notwithstanding any provision of the Code to the contrary, at any time after commencement of this Agreement, the University may terminate this Agreement by giving thirty (30) days' written notice to the Employee, such termination to become effective no earlier than thirty (30) days after receipt of such written notice.

In the event the University terminates this Agreement without cause, the University shall pay to the Employee, as liquidated damages, an amount equal to the Employee's Guaranteed Base Salary for the period remaining in the Term of this Agreement, to be paid on a monthly basis prorated over the remainder of the Term of this Agreement. The University shall not be liable for any consequential damages or loss of any collateral business opportunities or any other benefits, perquisites, or income from any sources that might ensue as a result of the University's termination of this Agreement without cause.

The parties have bargained for and agreed to the foregoing liquidated damages provision, giving consideration to the fact that the Employee may lose certain benefits, supplemental compensation or outside compensation relating to his/her employment at the

University, which damages are extremely difficult to determine with certainty, or fairly or adequately. The parties further agree that payment of such liquidated damages by the University and acceptance thereof by the Employee shall constitute adequate and reasonable compensation to the Employee for damages and injury suffered because of such termination by the University. The foregoing shall not be, nor be construed to be, a penalty.

Notwithstanding the liquidated damages provisions, the Employee agrees to mitigate the University's obligations to pay liquidated damages by making reasonable and diligent efforts to obtain employment. After the Employee obtains such new employment, the University's financial obligations under this Agreement, including liquidated damages, shall cease.

b. Automatic Termination upon Death or Disability of Employee. This Agreement shall terminate automatically if Employee dies, if Employee becomes totally disabled within the meaning of University's disability insurance for employees, or if Employee becomes permanently disabled. "Permanently Disabled" shall mean physical or mental incapacity of a nature which prevents Employee, in the sole judgment of University in consultation with appropriate medical personnel selected by University, from performing duties under the Agreement for a period of sixty (60) consecutive calendar days. If this Agreement is terminated pursuant to this section because of Employee's death, Employee's salary and all other compensation, bonuses and benefits shall terminate as of the last day of the calendar month in which death occurs, except that Employee's personal representative or other designated beneficiary shall be entitled to all such death benefits. If this Agreement is terminated pursuant to this section because Employee becomes totally disabled or permanently disabled, notwithstanding any other University policy, rule or regulation to the contrary, which may be in effect, Employee shall be limited to receiving the salary, compensation, bonuses and other benefits then applicable for a period of sixty (60) days from

the date such disability begins. At the end of such sixty (60) day period, all salary, compensation, bonuses and other benefits shall terminate, except that Employee shall receive any disability benefits to which Employee is entitled.

c. Termination by University for Cause. The University shall have the right to terminate this Agreement for cause at any time. The term “cause” shall include, in addition to and as examples of its reasonable and customary meaning in employment contracts, any of the following:

1. Violations of the duties outlined in Article 4.02 of this Agreement or refusal or unwillingness to perform such duties in good faith and to the best of the Employee’s abilities;
2. Material violations by Employee of any of the other terms and conditions of this Agreement;
3. Any conduct of the Employee in violation of any criminal statute of moral turpitude; Any behavior of Employee that brings Employee into public disrepute, contempt, scandal or ridicule or any behavior that is unfavorable to the reputation of the University;
4. Any serious or intentional violation of any law or of any policy, rule, regulation, constitutional provision, bylaw or interpretation of the University, the Nevada System of Higher Education, the NCAA or the Conference, which violation may, in the sole judgment of the University, reflect adversely upon the University or its Athletic Department, including any violation which may result in the University being sanctioned by the NCAA or the Conference, and including any violation which may have occurred during prior employment of the Employee at another NCAA member institution;

5. Any intentional violation, of which Employee knew or should have known, of any law or of any policy, rule, regulation, constitutional provision, bylaw or interpretation of the University, the NCAA or the Conference, which violation may, in the sole judgment of the University, reflect adversely upon the University or the programs of its Athletic Department, including any violation which may result in the University being sanctioned by the NCAA or the Conference;
6. Conduct of the Employee which, in the sole judgment of the University, is seriously prejudicial to the best interests of the University or its Athletic Department or which violated the University's mission;
7. Prolonged absence from duty without the written consent of the Employee's reporting superior; or
8. Any cause adequate to sustain the termination of any other University employee under the provisions of the Code.

d. Determination of Cause and Employee's Right to University Hearing.

Employee shall be entitled to all notices, hearings, procedures and appeals as are provided by the NSHE Code for any disciplinary action against Employee, including the termination of this Agreement, which may be taken by University pursuant to this Agreement.

e. University's Obligations Upon Termination for Cause. In the event this Agreement is terminated for cause in accordance with the provisions of Article 6.01 (c) and (d) hereof, as of the effective date of such termination, all of the University's obligations to the Employee under this Agreement subsequent to that date shall cease. In no case shall the University be liable to the Employee for the loss of any collateral or outside business opportunities or any other benefits, perquisites or income resulting from activities such as, but not limited to, consulting relationships or from any other source whatsoever.

6.02. Termination by Employee.

The Employee understands that his/her promise to remain employed as Director of Athletics for the entire term of this Agreement is of the essence of this Agreement to the University. The Employee also understands that the University is making a highly valuable investment in his/her continued employment by entering into this Agreement and that its investment would be lost were he/she to resign or otherwise terminate his/her employment with the University prior to the expiration of this Agreement. In recognition of these understandings, the parties agree that while the Employee may, nevertheless, terminate this Agreement prior to its normal expiration, such termination shall be only upon the following terms and conditions:

a. Written Notice by Employee. Subject to the provisions of Article 7.01, the Employee may terminate this Agreement during the Term by immediately notifying the President in writing of the termination of employment with the University. The obligations of Employee under this Agreement shall continue in full force and effect for all purposes until the effective date for the termination of Employee's employment. Beginning on the effective date of the termination, all of University's obligations to Employee under this Agreement shall cease.

b. Effect of Termination by Employee. Employee may terminate this Agreement prior to its expiration pursuant to Article 6.02(a), without incurring any liability to University for damages. If Employee so terminates this Agreement prior to expiration, all compensation and other obligations owed by the University to the Employee under this Agreement will be terminated on the effective date of the Employee's termination. The provision of this Article 6.02(b.) shall be without prejudice to any right the University may have under applicable law.

6.03 Renewal

No later than ninety (90) days prior to the conclusion of this Agreement, University and the Employee, or their designees, may meet to determine whether Employee's employment at University shall be renewed upon mutually acceptable terms and conditions.

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| ARTICLE VII – RESTRICTIVE COVENANTS |
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Employee agrees for himself and his agents and representatives, and hereby specifically promises, not to seek, discuss, negotiate for or accept employment requiring performance of duties prior to the termination date of this Agreement or any extension thereof, without immediately contacting the President. It is agreed that the release of this Agreement shall be entered into by the parties pursuant to that portion of Article 6.02 of this Agreement pertaining to Employee's right to terminate this Agreement and that University will not unreasonably withhold its approval or execution of a release. In the event that Employee resigns from the position of Director of Athletics during the Term of this Agreement and obtains other employment, Employee shall be deemed to have resigned employment and agreed to the terms of Article 6.02.

The parties agree that in the course of employment, Employee will have access to confidential information regarding the Athletic Department and its programs that could be used by other institutions to place the Program's team at a competitive disadvantage. Employee shall not provide, and is prohibited from providing, any such confidential information to other institutions, their coaches, employees, student athletes, agents or representatives. The parties agree that should another athletic director opportunity be presented to the Employee or should the Employee be interested in another position as an athletic director at any institution of higher education which is a member of the NCAA or the NAIA, or any team participating in any professional league or conference in the United States

or elsewhere, requiring the performance of duties prior to the expiration of the Term of this Agreement or any extension hereof, the Employee shall notify in writing the President of such opportunity or interest. The Employee agrees not to seek, discuss, negotiate for or accept employment requiring performance of duties prior to the termination date of this Agreement or any extension thereof, without first obtaining written consent from the President.

7.02 Injunctive Relief

Employee acknowledges that Article VII, and all other provisions of this Agreement, may be enforced by any and all legal and equitable actions available to Employer, including application for a restraining order and preliminary and permanent injunction. In the event that Employee resigns from the position of Director of Athletics during the Term of this Agreement and obtains other employment, Employee shall be deemed to have resigned employment and agreed to the terms in Article 6.02. In no case shall University be liable for the loss of any collateral business opportunities or any other benefits, prerequisites or income resulting from activities such as, but not limited to, campus, clinics, media appearance, shoe or apparel contracts, consulting relationships or from any other sources whatever that may ensue as a results of Employee's resignation or termination of this Agreement.

ARTICLE VIII – MISCELLANEOUS

8.01 Choice of Law and Venue

It is the intent of the parties hereto that this Agreement shall be governed by and construed in accordance with the laws of the State of Nevada and the laws of the State of Nevada shall govern the validity, performance and enforcement of this Agreement. Any and all disputes arising out of or in connection with this Agreement shall be litigated in a court of competent jurisdiction in Clark County, State of Nevada, and the parties hereby expressly consent to the jurisdiction of said court.

8.02 Assignment of Agreement

The Employee's rights and interests under this Agreement may not be assigned, pledged or encumbered by the Employee.

8.03. Merger Clause.

THIS AGREEMENT CONSTITUTES THE FULL AND COMPLETE UNDERSTANDING OF THE PARTIES WITH RESPECT TO THE EMPLOYMENT OF THE EMPLOYEE BY THE UNIVERSITY AND SUPERSEDES ALL PRIOR UNDERSTANDING AND AGREEMENTS, ORAL OR WRITTEN, REGARDING THE EMPLOYEE'S EMPLOYMENT BY THE UNIVERSITY.

8.04 Amendments to Agreement.

This Agreement may be amended at any time only by a written instrument duly approved by the Board of Regents of the Nevada System of Higher Education, and executed by the Chancellor or his/her designee, the University, through its designated representative, and the Employee.

8.05 Severability.

If any provision or provisions hereof shall be deemed invalid or unenforceable, either in whole or in part, this Agreement shall be deemed amended to delete or modify, as necessary, the offending provision or provisions or to alter the bounds thereof in order to render it valid and enforceable.

8.06. No Waiver of Default.

No waiver by the parties hereto of any default or breach of any covenant, term or condition of this Agreement shall be deemed to be a waiver of any other default or breach of the same or any other covenant, term or condition contained herein.

8.07. Acknowledgement.

The Employee acknowledges that he/she has read and understands the foregoing provisions of this Agreement and that such provisions are reasonable and enforceable and he/she agrees to abide by this Agreement and the terms and conditions set forth herein. Employee acknowledges having had the opportunity to consult with counsel of his/her choice regarding the provisions of this Agreement prior to signing it.

8.08. Indemnification of University.

The Employee agrees to hold harmless and indemnify the University from any and all suits, claims, demands, damages, liability, costs and expenses, including attorneys' fees and costs, arising out of the Employee's performance of acts outside the scope of this Agreement, or for acts in pursuit of outside income as permitted by this Agreement, except such suits, claims or demands in which the Employee seeks to compel the University to comply with its obligations hereunder or in which the Employee seeks to enforce any remedies he/she may have hereunder. This Article 8.08 shall survive the termination for any reason of this Agreement.

8.09. University Retains All Materials and Records.

All materials or articles of information including, without limitation, personnel and student athlete records, recruiting records, team information, films, statistics or any other material or data, furnished to the Employee by the University, developed by the Employee on behalf of the University or at the University direction or for the University's use, or otherwise in connection with the Employee's employment hereunder, are and shall remain the sole property of the University. Within seven (7) days of the expiration of the Term of this Agreement or its earlier termination as provided herein or the reassignment of employment from the position of Director of Athletics, Employee shall deliver any such materials in Employee's possession or control to University.

8.10 Employee Will Not Incur University Indebtedness or Contractual Liability.

It is mutually agreed and understood that the Employee shall not incur any indebtedness for or on behalf of the University without first securing the approval of the President or designee and that all contractual obligations incurred by Employee must be in accordance with applicable NSHE and University policies, specifically including delegations of signature authority and provisions for approval of the Board of Regents. No contracts for employment of head or assistant coaches shall be negotiated without the prior approval of the President of all terms thereof, specifically including selection of such coaches, the term of such agreements, and all compensation to be offered.

8.11 Government Immunity Not Waived.

It is expressly agreed and understood between the parties that the University is an entity of the State of Nevada and that nothing contained herein shall be construed to constitute a waiver or relinquishment by the University of its right to claim such exemption, privileges and immunities as may be provided by law.

8.12. Notice.

Any notice or communication which may or is required to be given under this Agreement shall be in writing and shall be deemed to have been given on the earlier of either the day actually received or on the close of business on the third business day next following the day when deposited in the United States Mail, postage prepaid, registered or certified, addressed to the party at the address set forth at its name below or such other address as may be given by such party in writing to the other:

If to the Employee:

Don J. Livengood
Director of Athletics
Department of Intercollegiate Athletics
4505 S. Maryland Parkway
University of Nevada, Las Vegas
Las Vegas, Nevada 89154-1001

If to the University:

Office of the President
4505 S. Maryland Parkway
University of Nevada, Las Vegas
Las Vegas, Nevada 89154-1001

8.13. Applicability of Nevada System of Higher Education Code.

This Agreement is subject to the provisions of the Code, except as stated herein.

8.14 Captions.

All captions in this Agreement are included for convenience only and do not constitute, nor are incorporated in, the terms and conditions of this Agreement.

8.15 “Force Majeure” Clause.

Neither party shall be considered in default in the performance of its obligations under this Agreement if such performance is prevented or delayed by Force Majeure. “Force Majeure” shall be understood to be any cause which is beyond the reasonable control of the party affected and which is forthwith, by notice from the party affected, brought to the attention of the other party, including but not limited to war, hostilities, revolution, civil commotion, strike, lockout, epidemic, accident, fire, wind or flood or because of any law, order, proclamation, ruling, regulation or ordinance of any government or subdivision of government or because of any act of God.

8.16 Employee Will Not Make Investments Competitive With University’s Objections

During the Term of employment hereunder, Employee shall not make or continue to hold any investment in or be associated with any enterprise, which could be deemed to be competitive with University’s objectives and philosophies or with the Athletic Department, without first having obtained the written approval of the President.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement or caused this Agreement to be executed, effective the day and year first written above, intending to be legally bound by its provisions upon approval of the Board of Regents of the Nevada System of Higher Education, the Employee acknowledging that he/she has reviewed this Agreement with his/her attorney.

**BOARD OF REGENTS OF THE
NEVADA SYSTEM OF
HIGHER EDUCATION,
ON BEHALF OF THE
UNIVERSITY OF NEVADA, LAS VEGAS**

EMPLOYEE:

By: _____
Chancellor

By: _____
Don J. Livengood

Date: _____

Date: _____

By: _____
President

Date: _____

By: _____
General Counsel

Date: _____