

City of Klamath Falls
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2020-001062

Klamath County, Oregon



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Fee: \$122.00

After recording return to:

Nickole Barrington
500 Klamath Avenue
Klamath Falls, OR 97601

Oregon Institute of Technology
Office of Finance and Administration
3201 Campus Drive
Klamath Falls, OR 97601

DEFERRED IMPROVEMENT AGREEMENT AND LOCAL IMPROVEMENT CONTRACT

THIS DEFERRED IMPROVEMENT AGREEMENT AND LOCAL IMPROVEMENT CONTRACT ("Agreement") is made and entered into by and between the Oregon Institute of Technology ("Oregon Tech") and the City of Klamath Falls, Oregon (the "City"), (collectively, the "Parties"), with reference to the following facts:

RECITALS

A. Oregon Tech is the owner of certain real property in the City of Klamath Falls, Oregon addressed as 3201 Campus Drive and further identified with an Assessor's Map and Tax Lot description of R-3809-0000-04900-000 ("Parcel 1"). Parcel 1 is approximately 156 acres in-size and is developed with Oregon Tech's Klamath Falls university campus.

Oregon Tech is additionally the owner of certain real property in the City of Klamath Falls, Oregon described as Parcel 1 of Land Partition 26-07 ("Parcel 2"). A copy of Land Partition 26-07 is attached as Exhibit A and included by reference herein. Parcel 2 is approximately 28 acres in size and is further identified with an Assessor's Map and Tax Lot description of R-3809-02000-00200-000. Along the eastern property boundary of Parcel 2, there is a 150' easement that Industrial Park Drive has been constructed within by the City. A map showing the locations of Parcel 1 and Parcel 2 is attached as Exhibit B and included by reference herein.

Parcel 1 is located immediately east of Parcel 2. Oregon Tech has proposed the construction of an approximately 60,000 square foot academic building known as the Center for Excellence in Engineering and Technology ("CEET") along the western boundary of Parcel 1 adjacent to and east of Industrial Park Drive. City Planning Division staff reviewed Oregon Tech's submittal through land use application 12-Design Review-2019 (12-DR-19).

B. In connection with Oregon Tech's proposed construction of the CEET building on Parcel 1 (the "Project") which will contribute to the need for, as well as benefit from certain pedestrian improvements, the City is requiring Oregon Tech to construct such improvements in the vicinity of the eastern portion of Industrial Park Drive frontage adjacent to the CEET building where no improvements exist as of the date of this Agreement. A depiction showing options for the potential location of pedestrian improvements required through the Campus Planned Unit Development - Development Standards Section 11 and identified in the Planning Manager's Decision for 12-DR-19 is attached as Exhibit C and

included by reference herein. This identified eastern segment of Industrial Park Drive frontage between Facilities Loop Road and the driveway entrance to Parking Lot E as shown in Exhibit C is approximately 400' in length. A roadway cross-section depicting Industrial Park Drive improvements as contained within the Campus Sub-Area Master Plan is attached as Exhibit D and included by reference herein. Required Industrial Park Drive improvements shall be constructed in conformance with Exhibit D or in conformance with an alternate improvement plan as proposed by Oregon Tech if determined acceptable by the Klamath Falls Public Works Director.

C. The City shall defer the obligation to construct the approximate 400' of pedestrian walkway as described in Recital (B) above. Since similar improvements do not currently exist along Industrial Park Drive and/or are not currently required for the remainder of Parcel 1, the City will defer construction of the pedestrian improvements until either of the following respective triggering events occurs:

1. At such time as any additional development requiring a Design Review application occurs adjacent to and fronting Industrial Park Drive on either Parcel 1 or Parcel 2.
2. At such time a Local Improvement District ("LID") is formed for the funding and construction of the improvements designated in Recital (B) above or similar.

Oregon Tech hereby waives any and all right to remonstrate against formation of a Local Improvement District (LID) by the City for the purpose of improving Industrial Park Drive as noted in Recital B above and assessing the proportionate cost to benefited properties pursuant to the City's code in effect at the time of such improvement.

The phrase "right to remonstrate against the formation of a LID refers solely to a property owner's right under the City Charter Section 38 to be counted as part of an extraordinary majority of property owners that can, in certain circumstances, suspend proceedings on formation of a LID for six months. The waiver of this right does not limit or otherwise restrict the ability of a property owner bound by this covenant to appear at any of the required public hearings and testify regarding formation of the LID, whether the boundaries include all benefited property, the equity of the assessment formula, the scope and nature of the project or of the final assessment, or any other issue regarding the LID.

The City agrees that a LID assessment levied against Oregon Tech's property shall not exceed the benefit conferred upon the property.

Triggering events (1) and (2) above are independent of one another and both need not occur to trigger the development of improvements by Oregon Tech as noted in Recital (B) above.

NOW, THEREFORE, in consideration of the foregoing recitals and the conditions and obligations set forth herein, the Parties agree as follows:

1. Incorporation of Recitals and Sufficiency of Consideration. The recitals set forth above are true and correct and are hereby incorporated by this reference. The Parties hereby acknowledge the sufficiency of the consideration for this Agreement.
2. Deferral of Improvements on Burdened Property. Except as otherwise provided in this

Agreement, the City agrees not to require Oregon Tech to construct improvements along the eastern segment of Industrial Park Drive as depicted in Exhibits C and D concurrently with construction of the Project as a condition to the City's approval of the Project.

3. Future Duty to Construct Improvements on the Burdened Property. Oregon Tech covenants and agrees that it or any subsequent owner of Parcel 1 shall construct, or pay its fair share for, the improvements along the eastern segment of Industrial Park Drive as depicted in Exhibits C and D at such time as the triggering event occurs as stated in Recital (C) above, or at such time a Local Improvement District is formed. Such pedestrian improvements shall meet the appropriate City Public Works Engineering Standards at the time of construction. Completion of the improvements if triggered by Recital (C) above shall be within twelve (12) months of the respective triggering condition.
4. Covenants Run with the Land. This Agreement, and all of the rights, duties, powers, covenants, conditions, restrictions and obligations contained in this Agreement, burden Parcel 1 and are binding upon the Parties and their respective successors (by merger, consolidation or otherwise), and assigns, and all other persons acquiring Parcel 1, whether by operation of law or in any manner whatsoever.
5. Recordation. Effective Date of Agreement. This Agreement is effective and binding upon its execution by both Parties. The Parties agree that upon execution, the Agreement shall be recorded in the records of the County of Klamath, Oregon.
6. Miscellaneous Provisions.
 - 6.1. No Third-Party Beneficiary. The provisions of this Agreement are for the exclusive benefit of the Parties, and their successors and assigns, and not for the benefit of any third person, and this Agreement does not confer any rights, express or implied, upon any such third person.
 - 6.2. Amendment. Except as otherwise specified in this Agreement, this Agreement may be canceled, modified or amended in whole or in part only by a written instrument, executed by the City and the owner of Parcel 1.
 - 6.3. Entire Agreement. This Agreement and the Exhibits hereto contain all the representations and the entire agreement between the Parties with respect to the subject matter hereof. Any prior negotiations, correspondence and memoranda are superseded in total by this Agreement and Exhibits hereto.
 - 6.4. Construction and Interpretation. The captions preceding the text of each article, section, subsection, paragraphs and exhibits of this Agreement are included only for convenience of reference and shall be disregarded in the construction and interpretation of this Agreement. This Agreement has been fully negotiated at arm's length between the signatories hereto, and after advice by counsel and other representatives chosen by such signatories, and such signatories are fully informed with respect thereto; no such signatory shall be deemed the scrivener of this Agreement; and, based on the foregoing,

the provisions of this Agreement and the Exhibits hereto shall be construed as a whole according to their common meaning and not strictly for or against any party.

- 6.5. Signature Pages. For convenience, the signatures of each of the signatories may be executed on separate pages which, when attached to this Agreement, shall constitute this as one complete Agreement.
- 6.6. Time. Time is of the essence of this Agreement and each and every provision hereof.
- 6.7. Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Oregon.
- 6.8. Venue. Any action or proceeding seeking to enforce any provision of this Agreement or based on any right arising out of this Agreement must be brought against any of the parties in Klamath County Circuit Court of the State of Oregon or, subject to applicable jurisdictional requirements, in the United States District Court for the District of Oregon, and each of the parties consents to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to such venue.
- 6.9. Waivers. No waiver by any party of any default under this Agreement shall be effective or binding on such party unless made in writing by such party and no such waiver shall be implied from any omission by a party to take action in respect to such default. No express written waiver of any default shall affect any other default or cover any other period of time other than any default and/or period of time specified in such express waiver. One or more written waivers of any default under any provision of this Agreement shall not be deemed to be a waiver of any subsequent default in the performance of the same provision or any other term or provision contained in this Agreement.
- 6.10. Attorney Fees. In the event litigation or arbitration is instituted to enforce or determine the Parties' rights or duties arising out of the terms of this Agreement, the prevailing party shall recover from the losing party reasonable attorney fees incurred in such proceeding to the extent permitted by the judge or arbitrator, in arbitration, at trial on appeal or in any bankruptcy proceedings.

Approved as to Form:


City Attorney

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates written below.

OREGON INSTITUTE OF TECHNOLOGY

By: [Signature] Date: 1.13.2020

STATE OF OREGON)
) ss.
County of Klamath)

This instrument was acknowledged before me on the 13 day of January ~~2019~~ 2020
by Brian Fox as Vice President of Oregon Institute of Technology.



[Signature]
NOTARY PUBLIC FOR OREGON

CITY OF KLAMATH FALLS, OREGON

By: [Signature] Date: 12-26-19
City Manager

STATE OF OREGON)
) ss.
County of Klamath)



This instrument was acknowledged before me on the 26th day of December, 2019
by Nathan Cherpeski as City Manager of the City of Klamath Falls, Oregon.

[Signature]
NOTARY PUBLIC FOR OREGON



Exhibit B



Exhibit C

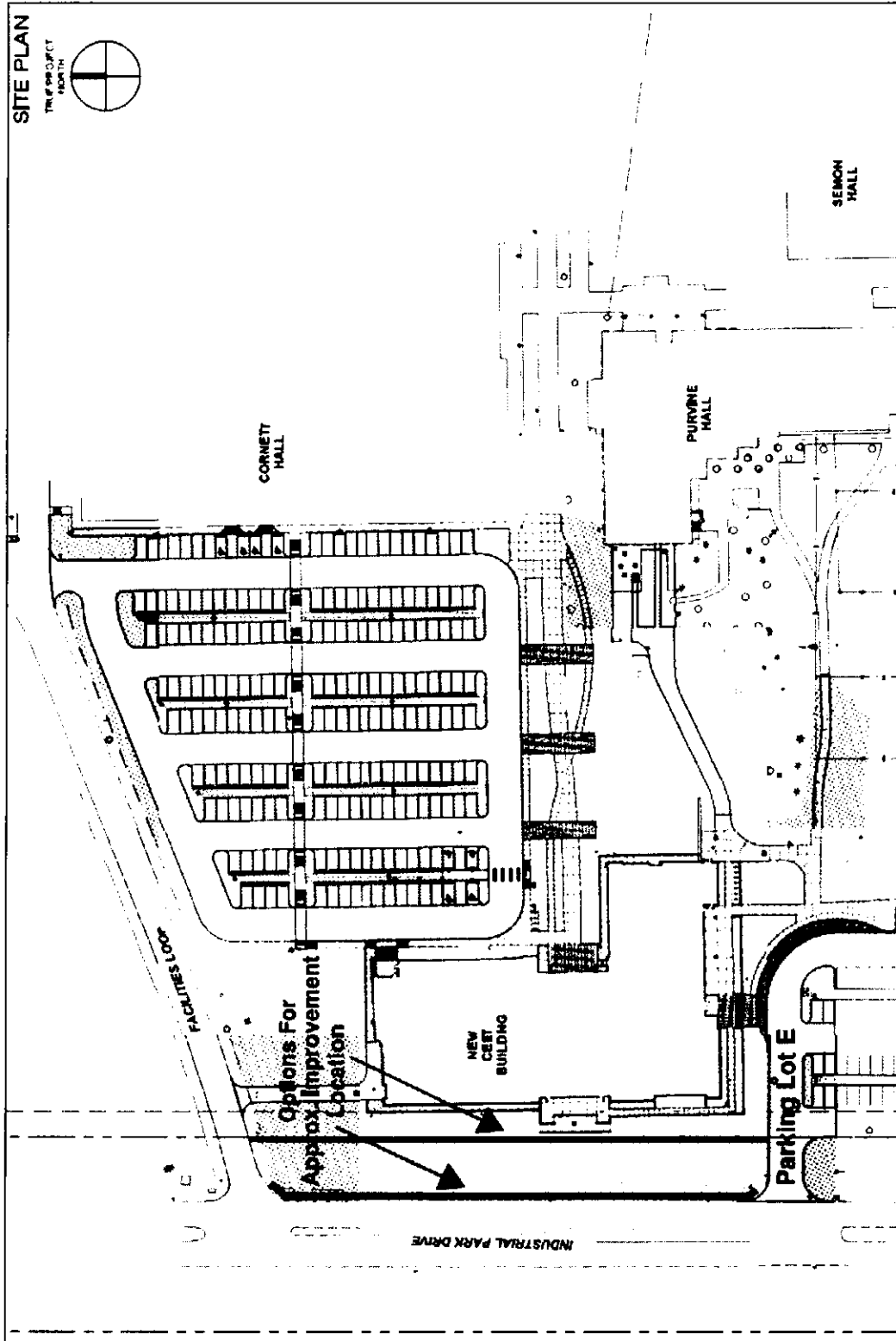


Exhibit D

