

After recording return to:

City of Klamath Falls
500 Klamath Avenue
Klamath Falls, OR 97601

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

2021-005547

Klamath County, Oregon



04/13/2021 02:03:49 PM

Fee: \$107.00

DEFERRED IMPROVEMENT AGREEMENT

THIS DEFERRED IMPROVEMENT AGREEMENT ("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 3201 Campus Drive and identified as Klamath County Assessor Map Tax Lot 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.

B. The Owner submitted City land use application 2-DR-21 to construct an approximately 1,750 square foot addition to its Student Health Center Building. The Student Health Center Building is located on the southeastern portion of Parcel 1 immediately west of East University Drive. The Final Decision and Conditions for City land use application 2-DR-21 were issued on March 11, 2021 with all Conditions of Approval remaining in-effect. A map showing the location of Parcel 1 is attached as Exhibit A and included by reference herein.

C. Pedestrian Circulation standards for the Campus Planned Unit Development within which Parcel 1 is located require the construction of sidewalks adjacent to all streets. Sidewalks do not presently exist along East University Drive's western frontage adjacent to the Student Health Center building expansion (the "Project") nor adjacent to any streets bordering Parcel 1. The City and Oregon Tech separately executed a Deferred Improvement Agreement for select Industrial Park Drive frontage improvements tied to approval of the CEET Building (City land use application 12-DR-19) on January 27, 2020.

D. In connection with the proposed Project, the City is requiring Oregon Tech to construct sidewalk improvements along the Project scope shown in Exhibit B which is attached and included by reference herein. The Project scope is approximately 125' in length, adjacent to East University Drive, and stretches approximately from ADA parking space improvements in the south to private concrete sidewalk improvements in the north. Required sidewalk improvements shall be constructed in conformance with the City Public Works Engineering Standards at the time of construction or per an alternate standard as proposed by Oregon Tech and determined acceptable by the Public Works Director.

E. Because sidewalk improvements do not exist along any portion of East University Drive near the Project, the City shall defer the obligation to construct the approximately 125' sidewalk improvement described in Recital (D) above until such time any new land use application is submitted for a project immediately abutting or situated toward East University Drive between Campus Drive and North University Drive.

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 sidewalk improvements along the Project scope, as depicted in Exhibit B, abutting East University Drive at this time as part of 2-DR-21.
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 sidewalk improvements along the Project scope, as depicted in Exhibit B, abutting East University Drive at such time as the triggering event occurs as stated in Recital (E) above. Such improvements shall adhere to appropriate City Public Works Engineering Standards at the time of construction or an approved alternative as determined by the Public Works Director. Completion of the sidewalk improvements, if triggered by Recital (E), shall be within six months of the triggering event.
4. Covenants Run with the Land. This Agreement, and all of the rights, duties, powers, covenants, conditions, restrictions and obligations contained in this Agreement, burdens Parcel 1 and are binding upon the Parties and their respective successors (by merger, consolidation, or otherwise), any assignees, and any other entities acquiring Parcel 1 or any portion thereof or interest therein, 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 Klamath County, 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 the 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.

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

OREGON INSTITUTE OF TECHNOLOGY

By: [Signature]

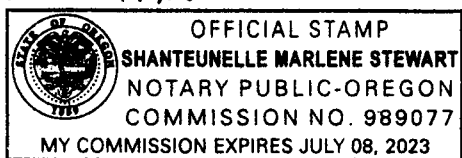
Date: 3/31/2021

(XX - Insert), Authorized Signatory of
Oregon Institute of Technology

JOHN HARMAN
VP OF FINANCE & ADMIN

STATE OF OREGON)
) ss.
County of Klamath)

This instrument was acknowledged before me on the 31 day of MARCH, 2021
by ~~(XX - Insert)~~, authorized signatory of Oregon Institute of Technology, as owner of Parcel 1.
JOHN HARMAN



[Signature]
NOTARY PUBLIC FOR OREGON

CITY OF KLAMATH FALLS, OREGON

By: [Signature]
Nathan Cherpeski, City Manager

Date: 4/8/21

STATE OF OREGON)
) ss.
County of Klamath)

This instrument was acknowledged before me on the 8th day of APRIL, 2021
by Nathan Cherpeski as City Manager of the City of Klamath Falls, Oregon.



[Signature]
NOTARY PUBLIC FOR OREGON

Exhibit A
Parcel 1



Exhibit B Project Scope

