

Executive Committee

Agenda

1. **Call to Order/Roll/Declaration of a Quorum** (4:30 pm) (5 min) *Chair John Davis*
2. **Action Item:** (4:35 pm) (25 min)
 - 2.1. **Approval to enter into a lease with the Orgon Tech Foundation,** *Vice President of Finance and Administration, John Harman, and Executive Director of the Foundation, Dr. Ken Fincher*

After discussion and review of related documents, staff requests a Motion for Approval of the President or his designee to negotiate and execute a Lease Agreement with the Oregon Tech Foundation to cause construction of an indoor Athletics Fieldhouse with an estimated value to Oregon Tech of approximately \$3.5 million, and Authorization for the President to Accept the Athletics Fieldhouse on behalf of and without cost to Oregon Tech upon completion, after which the lease will also terminate.
3. **Other Business/New Business** (5:00 pm) (5 min) *Chair Davis*
4. **Adjournment** (5:05 pm)

All times are approximate.

Board- Executive Committee

Agenda Item No. 2.1

Authorization for Lease Execution and Gift Acceptance

Background

Oregon Tech (University) is a member of the National Association of Intercollegiate Athletics (NAIA) and has competitive men's and women's sports teams that compete in the Cascades Collegiate Conference (CCC). Oregon Tech also has various intramural sports activities and often hosts conferences and summer campus on the Klamath Falls campus. Oregon Tech is one of the few Universities in the Conference that does not have a year-round indoor practice facility (athletics fieldhouse). Oregon Tech winters can be prolonged and brutal. Summer and early fall outdoor activities can be impacted by air quality advisories/warnings caused by the wildfires that often plague the area and surrounding region.

For these reasons, Oregon Tech has long needed an indoor athletics fieldhouse where athletic teams can practice and train year-round despite adverse weather and climate conditions. The State of Oregon does not fund the construction of athletic facilities for public universities except through the Series XI-F Bonds whereby the university is solely responsible for the repayment. With the construction of the new Student Housing Facility expected to be completed in late December 2025, Oregon Tech has utilized most of its debt capacity as allowed under Board Policy.

The Oregon Tech Foundation (Foundation) exists to further the educational, cultural, charitable and service functions of Oregon Tech and acquires financial support for these activities through gifts, grants, bequests, development campaigns or other types of transactions designed to create funds for the benefit of the University; to promote the public relations aspect of the university in order to improve the understanding of its programs among students, alumni, potential employers of graduates, friends of Oregon Institute of Technology and other individuals, groups, organizations or publics.

The Oregon Tech Foundation has been involved in fundraising to support the construction of an athletics fieldhouse on the Klamath Falls campus for several months and has recently reached the level of funding necessary to proceed with construction. The University has a unique opportunity through the generosity of the Foundation and its donors to achieve the vision of a spacious indoor athletics fieldhouse to support its conference and intramural teams as well as many other campus activities that will benefit from a year-round indoor facility.

Oregon Tech and the Foundation mutually desire to enter into a short-term lease agreement for property that is currently paved, adjacent to and directly east of the Athletics Building on the Klamath Falls campus, where the outside basketball court is currently located (see Attachment A). During the lease term, the Foundation will support the construction of an indoor fieldhouse. Construction will be performed by Bogatay Construction, Inc. of Klamath Falls. Total project costs are estimated to be approximately \$3,500,000 for construction of an 8,525 gross square foot single-story pre-engineered metal building with metal siding and roofing. It will also feature a concrete foundation and multi-

purpose flooring, but no restrooms or locker rooms. Student athletes will utilize the adjacent Athletics building for restrooms and locker rooms.

Following completion of construction, successful occupancy inspection, receipt of any required certificates or licenses and free from any encumbrances or liens related to the project, the project and all associated improvements and property shall automatically vest in, revert to, and become the property of the University without compensation to or requirement of consent for other act of the Foundation or the University and the lease shall automatically terminate.

Staff Recommendation

After discussion and review of related documents, staff requests a **Motion for Approval of the President or his designee to negotiate and execute a Lease Agreement with the Oregon Tech Foundation to cause construction of an indoor Athletics Fieldhouse with an estimated value to Oregon Tech of approximately \$3.5 million, and Authorization for the President to Accept the Athletics Fieldhouse on behalf of and without cost to Oregon Tech upon completion, after which the lease will also terminate.**

Attachments

Attachment A- Lease Agreement with Attachments

LEASE

This Lease (this “**Lease**”) is entered into by Oregon Institute of Technology (“**University**”) and Oregon Tech Foundation, an Oregon nonprofit public benefit corporation (“**Foundation**”), effective the date of last signature of this Lease.

RECITALS:

- A. University is the owner of certain land and improvements east of the Athletics Building, currently occupied by paved outdoor basketball courts, as described on Exhibit A-1 attached hereto, and depicted on Exhibit A-2 attached hereto (the “**Premises**”).
- B. Foundation is established under Oregon Revised Statutes (ORS) Chapter 65. Foundation is recognized as a tax-exempt public charity under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended. The purpose of the Oregon Tech Foundation is to further the educational, cultural, charitable, and service functions of Oregon Institute of Technology, or any successor or affiliated institution; to acquire financial support for these activities through gifts, grants, bequests, development campaigns or other types of transactions designed to create funds for the benefit of the university; to promote the public relations aspect of the university in order to improve the understanding of its programs among students, alumni, potential employers of graduates, friends of Oregon Institute of Technology and other individuals, groups, organizations or publics. Foundation’s Board of Directors is responsible for overseeing the mission, leadership, and operations of Foundation.
- C. Foundation and University desire for Foundation to undertake certain development, construction, alteration, and improvement projects to build a field house (the “**Field House Project**”; also referred to hereafter as the “**Project**”) on the Premises.
- D. Foundation intends to hire contractors and subcontractors (collectively, “**Contractors**”) to construct the Project as described herein.
- E. To allow Foundation and its Contractors to construct the Project, University desires to lease to Foundation, and Foundation desires to lease from University, the Premises, after completion of which the Lease will Terminate, and the Project will be given to University as a gift-in-kind to assist the University’s student athletes, students, employees and the public.

AGREEMENT:

University hereby leases the Premises to Foundation on and subject to the following terms, conditions, and provisions:

1. LEASE TERM AND SCOPE

1.1 **Term.** University leases the Premises to Foundation commencing on the later of (1) March 3, 2025, and (2) the date of a preconstruction meeting by University and University contractors (the “**Start Date**”), subject to all conditions described in this Lease. On the Start Date, University will deliver to Foundation possession of the Premises, and the lease term will commence and continue until ending on the date on which the Project is tendered to University after it is Substantially Completed, as defined

in Section 2.10.1 (the “**End Date**,” and the entire period, from Start Date to End Date, is referred to as the “**Term**”).

1.2 Uninterrupted Use. University may continue to use surrounding University property not included in the Premises of this Lease throughout the Term, including the Athletics Building, the Campus Union, and adjacent parking lots and walkways; provided, however, that any such use will not interfere with the construction of the Project. Foundation and its Contractors will not enter any other portion of the University campus except as authorized under the terms of this Lease or otherwise specifically authorized by University. Foundation and its Contractors will coordinate authorized use of any other portion of the University campus with University pursuant to Section 2.4 to minimize interference with any event, activity, or use of the surrounding University property not included in the Premises by University and its lessees and licensees.

1.3 Consideration and Taxes. Foundation will pay University a fee of one dollar as consideration for this Lease, which will be due and payable before the Start Date. No rent will be payable to University by Foundation in connection with this Lease. Foundation is responsible for filing any property tax exemptions that may be required by applicable local and/or state regulations, including but not limited to ORS 307.166 *Property leased by exempt institution, organization or public body to another exempt institution, organization or public body*.

2. ALTERATIONS AND IMPROVEMENTS

2.1 Design. Foundation will design the Project in such a manner that considers the benefit to the public as well as University’s students and employees. University hereby approves the Project design concepts presented to University and depicted in Exhibit B attached to this Lease (the “**Approved Project Design**”). Foundation may make revisions to the design unless the revisions are, by University’s determination, substantially inconsistent with the Approved Project Design. If the revisions are not substantially consistent with the Approved Project Design, the revisions will be subject to University’s review and approval, which approval shall not be unreasonably withheld, conditioned, or delayed. Foundation will perform the Project in accordance with the Approved Project Design, including all revisions made in accordance with this Section.

2.2 Authorization for Improvements. During the Term, Foundation will have the right to demolish any landscaping and hardscaping located within the Premises to the extent necessary to perform the Project and cause certain Project repairs, alterations, and improvements to be constructed, installed, and performed on the Premises to complete the Project in accordance with this Lease.

2.3 Ancillary Improvements. The Project is not expected to require repairs, alterations, or improvements to be made to facilities, land, or structures owned by University that are not located on the Premises. If Foundation determines such “**Ancillary Improvements**” are required, Foundation will coordinate with University pursuant to Sections 1.2 and 2.8 regarding the need for any such Ancillary Improvements and obtain University’s consent, which consent shall not be unreasonably withheld, conditioned, or delayed, prior to constructing, installing, or performing any such Ancillary Improvements. Foundation will restore any portion of the University’s property affected by any Ancillary Improvements undertaken by Foundation to substantially the condition it was in immediately prior to such Ancillary Improvements (subject to the installed Ancillary Improvements).

2.4 Access. To facilitate the Project, University grants to Foundation and its Contractors a nonexclusive right of access, ingress, and egress to, over, and through University property adjacent to the Premises during the Term to the extent reasonably necessary to perform the Project.

2.5 Parking. In addition to the access rights described above in Section 2.4, University will also allow Foundation and its Contractors to park up to ten (10) vehicles at the Learning Resource Center (LRC) parking lot nearest the Athletics Building, for the duration of the Project.

2.6 Labor and Service Fees. The Project is not expected to involve any University service fees or interdepartmental charges.

2.7 Contractor Requirements. In connection with Project work:

2.7.1 Foundation will use only Contractors that are properly licensed in Oregon and will keep the Premises free from any liens arising out of any work performed, materials furnished, or obligations incurred by or for Foundation, or will procure a bond acceptable to University, in an amount sufficient to cover the cost of removing any such lien from the Premises. Any Project work performed, materials furnished, or obligations incurred will be at Foundation's sole request and cost and not at the instance of or as agent for University. Foundation will be solely responsible for obtaining and paying for any and all permits and licenses, but University will cooperate with Foundation and use best efforts to assist Foundation with the process of obtaining the required permits and licenses.

2.7.2 If the Project is subject to prevailing wage requirements, Foundation will require its Contractors of all tiers to pay applicable prevailing wages as required by law for the Project. If the Project is subject to Oregon's prevailing wage law, and Foundation will comply with all applicable prevailing wage statutes, regulations, and other requirements set forth in Exhibit C.

2.7.3 Foundation will require its Contractors to competitively bid or procure the work as appropriate. This procurement may include, without limitation, bidding of the intended scope of work, interviewing selected bidders, negotiating with selected bidders, and awarding to the bidders, in Foundation's sole discretion, that are best able to perform the work, based on price and other relevant factors. The selection need not be based solely on price. Foundation reserves the right not to competitively procure any aspect of the Project if, in Foundation's sole discretion, it is in the best interest of the Project. Foundation has the right to make direct and sole-source purchases for any aspect of the Project without competitive procurement.

2.7.4 Foundation will require its Contractors to use good faith efforts in the solicitation of minority, women, and veteran-owned businesses as well as emerging small businesses for the Project and will maintain records of such efforts and the actual usage of such businesses.

2.7.5 Foundation is not and will not, in any way, be acting as a public agency with respect to the Project nor will any provision of this Lease require Foundation to act as a public agency. However, if the prevailing wage requirements in ORS 279C.800 to 279C.870 apply to the Project and that, for purposes of prevailing wage requirements, the Project is a "public works" pursuant to ORS 279C.800. Except as provided in the foregoing sentence, it is the intent of the parties that the Project is not and will not be deemed a public project or public improvement.

2.8 Coordination With University Facilities Management Services. Thom Darrah, Director of Facilities Management Services (“Darrah”), shall be Foundation’s primary point of contact with respect to the construction of the Project. Representatives of Foundation shall contact Darrah to discuss the progress of the Project, University’s reasonable needs for use and access to the Geo Trail and Premises, any other Project coordination issues, and any approvals required hereunder for the Project.

2.9 Safety Signage, Barriers. Foundation agrees to provide clear and consistent safety signage and appropriate safety barriers for the Project in accordance with applicable law.

2.10 Surrender of Premises with Improvements; Close-Out Procedures.

2.10.1 On or before the End Date: (a) Foundation will remove and cause its Contractors to remove their personal property from the Premises, (b) Foundation will surrender the Premises to University with the Project substantially completed such that the Project (i) can be used for its intended purpose, (ii) is free of any encumbrances or liens not existing prior to the Start Date, and (iii) has passed occupancy inspection and any related certificate or licenses required under applicable law (collectively, “**Substantially Completed**”), and (c) the Project and all such associated improvements and property shall automatically vest in, revert to, and become the property of University without compensation to, or requirement of consent or other act of, Foundation, and without the necessity of deed, bill of sale, conveyance or other act or agreement of Foundation, and without any payment of any kind or nature by University to Foundation and Foundation shall thereafter have no further rights thereto or interest therein, and this Lease shall automatically terminate.

2.10.2 Foundation’s design, construction and installation of the Project is a private project, but Foundation will return the Premises to University at the end of the Term with the Project as a gift-in-kind to University and Substantially Completed.

2.11 . Damage or Destruction of Improvements. If, during the Term, the Project improvements are wholly or partially damaged or destroyed (whether or not such casualty is covered by insurance, or required to be covered by insurance under the terms of this Lease), Foundation shall promptly give written notice of such damage or destruction to University, and Foundation shall have the option to either (a) repair such damage or destruction and complete the Project, utilizing any insurance proceeds received by University or Foundation in connection therewith, and in which case such damage or destruction shall not terminate this Lease, or (b) elect not to repair or restore the Project improvements, in which case, Foundation will restore the Premises to a condition that is the same or better condition than exists at the Start Date, utilizing any insurance proceeds received by University or Foundation in connection therewith, and thereafter this Lease shall terminate and Foundation shall have no liability to University therefor.

3. CONDITION OF PREMISES AND HAZARDOUS MATERIALS. Except as otherwise provided in this Lease, Foundation accepts the Premises in its “AS-IS” condition with all faults, including both latent and patent defects. University and University’s agents, employees, and trustees do not make, have not made, and expressly disclaim any representations or warranties, express or implied, with respect to the Premises. However: Foundation is not responsible for the existence of any hazardous materials at, on, or under the Premises prior to the Start Date. If any hazardous material is discovered in the Premises, then University shall indemnify Foundation for any claims, costs or expenses in connection therewith, and, if it is possible to remediate the hazardous material condition in a way that does not substantially and

materially change the design, engineering, or construction timeline for the Project, or substantially and materially increase the Project construction cost, then University will undertake and be responsible for the cost of remediation of the hazardous material condition (including any action required by applicable environmental law) to: (a) clean up, remove, treat or in any other way address hazardous material, (b) prevent the release or minimize the further release of hazardous material, or (c) investigate and determine if remediation is required); otherwise, if it is not possible to remediate the hazardous material condition in a way that does not substantially and materially change the design, engineering, or construction timeline for the Project, or substantially and materially increase the Project construction cost, Foundation shall have the right to terminate this Lease in accordance with Section 7 hereof. As used in this Lease, hazardous material includes: (a) any material, substance, chemical, waste, product, derivative, compound, mixture, solid, liquid, or gas, whether naturally occurring or manmade, that is defined as hazardous, toxic, a contaminant, or words of similar import or regulatory effect under any environmental law; and (b) any petroleum or petroleum by-products or degradation products, radon, radioactive materials or wastes, lead paint, asbestos in any form, urea formaldehyde foam insulation, methane-generating wastes (such as wood chips and other wood wastes), and polychlorinated biphenyls. Also as used in this Lease, environmental law includes federal, state or local statutes, laws, rules, ordinances, codes, regulations, permits, authorizations, judgments, directives, and orders applicable to the Premises and relating to protection of human health or the environment (including ambient and indoor air, surface water, ground water, drinking water, wildlife, plants, land surface or subsurface strata), and including any statutes, regulations, binding administrative decisions or orders relating to releases or threatened releases of hazardous materials or otherwise relating to the manufacture, processing, distribution, use, generation, treatment, storage, disposal, transport, remediation or handling of hazardous materials.

4. INSURANCE AND INDEMNITY.

4.1 Foundation's Indemnity of University. To the extent of its insurance on the Project, Foundation will indemnify, defend, and hold University, including its employees and trustees, harmless from and against any and all liability, damages, expenses, judgments, proceedings, and causes of action based solely on claims by third parties for injury to or death of any person or damage to or destruction of any property arising out of Foundation's use or occupancy of the Premises, provided, however, such obligation only applies to the extent of Foundation's or Foundation's managers', officers' or employees' negligence or willful or intentional misconduct.

4.2 Foundation's Insurance. Foundation or its Contractors will maintain the insurance specified on Exhibit D in connection with the Project for the duration of this Lease.

4.3 University's Indemnity of Foundation. To the extent permitted by Article XI, Section 7 of the Oregon Constitution and by the Oregon Tort Claims Act (ORS 30.260 through 30.300), the University agrees to indemnify and hold harmless, within the limits of the Oregon Tort Claims Act, the Sponsor, its directors, officers, employees, agents, permitted successors, and permitted assigns against all liability for personal injury or damage to life or property as a result of any negligent acts or omissions of the University faculty in supervising the Students under this Agreement; provided, however, that the University shall not be required to indemnify the Sponsor for any such liability arising out of the wrongful acts of the Sponsor, its officers, employees or agents. University has no liability for the acts or inactions of University's officers, employees, or agents outside their assigned duties.

4.4 University's Insurance. University will maintain property insurance on the Premises for the duration of this Lease that is commensurate with that which is maintained for the University's other real property.

5. ASSIGNMENT. Foundation may not assign this Lease or sublicense the whole or any part of the Premises without the prior written approval of University, which approval University may grant or withhold in University's sole and absolute discretion.

6. COMPLIANCE WITH LAW. During the Term, all obligations of Foundation under this Lease and actions taken by Foundation and its Contractors pursuant to this Lease will comply with all applicable statutes, regulations, rules, and other legal requirements of all federal, state, county and municipal authorities having jurisdiction over the Premises. This includes, but is not limited to, compliance with (a) the ADA; (b) applicable Oregon Building Codes; (c) all laws, regulations, rules, and policies established pursuant to the foregoing laws; and (d) all laws, regulations, rules, and policies specifically made applicable by reference in this Lease.

7. TERMINATION. Foundation may, at any time and without cause, terminate this Lease and return the Premises to University in the same or better condition than it exists as of the Start Date. In addition, in the event of a material breach of this Lease by Foundation or University, the party not in breach may terminate this Lease. The right to terminate this Lease is not an exclusive remedy, and a party may singularly, successively, cumulatively, simultaneously or concurrently pursue all rights and remedies available to the non-breaching party at law or in equity.

8. UNIVERSITY ACCESS TO PREMISES. University and University's agents may enter the Premises, upon prior notice to and in coordination with Foundation (except in case of emergency): (a) to inspect the general condition of the Premises, (b) to perform such duties as University is obligated to perform under this Lease or applicable law or policy, and (c) to engage in other activities coordinated with Foundation that will not interfere with the activities of Foundation (including Foundation's Contractors) on the Premises. University's Campus Safety and other emergency response personnel may enter the Premises at all times to respond to health or safety emergencies and to enforce controlling state and federal laws, municipal ordinances, and University policies, rules, and regulations.

9. MISCELLANEOUS

9.1 Mutual Cooperation. The parties hereto will cooperate with each other to accomplish the Project and will use all reasonable efforts to cause the fulfillment of the conditions to the parties' obligations hereunder and to provide, or obtain from any third party, as promptly as possible, all consents, authorizations, orders, or approvals required in connection with the Project and this Lease. The parties will execute such further documents and take such actions as may be necessary or convenient to accomplish the purposes of the Project and this Lease.

9.2 Governing Law. This Lease will be governed and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law.

9.3 Force Majeure. Neither University nor Foundation will be held responsible for delay or default caused by fire, riot, acts of nature, terrorist acts, or other acts of political sabotage, or war where such cause was beyond, respectively, University's or Foundation's reasonable control. Foundation will, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and will,

upon the cessation of the cause, diligently pursue performance of its obligations under this Lease. However, if a default or delay due to a force majeure event continues for an unreasonable time, as determined by either party, then such party is entitled to terminate the Lease pursuant to the terms of Section 7 hereof. In the event it is commercially unreasonable for Foundation to commence or complete construction of the Project as a result of an event of force majeure, Foundation shall have no liability to University therefor and, to the extent construction has already commenced, Foundation will restore the Premises to a condition that is the same or better condition than it exists at the Start Date.

9.4 Binding Effect. All of the provisions contained in this Lease are binding upon and inure to the benefit of the heirs, personal representatives, successors and assigns of the parties hereto.

9.5 Rules of Interpretation. All of the provisions of this Lease are to be construed as a whole and not strictly for or against any party.

9.6 No Partnership or Other Venture. This Lease is not intended to create, nor will it in any way be interpreted or construed to create, a joint venture, partnership, agency, or any other similar relationship, including a joint employer relationship, between the parties.

9.7 Waiver. Failure of University or Foundation to enforce any provision of the Lease will not constitute a waiver or relinquishment of the right of performance in the future nor of the right to enforce any other provision of this Lease.

9.8 Counterparts. This Lease may be executed in several counterparts, each of which will be an original, all of which, together, will constitute one instrument.

9.9 Attorney Fees. In any dispute involving the interpretation or enforcement of this Lease or involving issues related to bankruptcy (whether or not such issues relate to the terms of this Lease), the prevailing party will be entitled to recover from the non-prevailing party reasonable attorney fees, paralegal fees, costs, disbursements, and other expenses incurred by the prevailing party in the dispute, including those arising before and at any trial, arbitration, bankruptcy, or other proceeding, and in any appeal or review thereof. In addition, the amount recoverable by the prevailing party will include an amount estimated as the fees, costs, disbursements, and other expenses that will be reasonably incurred in collecting a monetary judgment or award, or otherwise enforcing any order, judgment, award, or decree entered in the proceeding.

9.10 Authority. Except for those approvals described in Section 9.1 which are conditions to this Lease, each party represents it has full authority to sign this Lease.

9.11 Survival. All obligations of a party to this Lease which, by their nature, are continuing, will survive expiration or termination of this Lease (except to the extent that the party is released or the obligation is assumed pursuant to this Lease).

9.12 Notices. A notice or communication under this Lease by either party to the other party must be in writing and delivered by registered or certified mail, postage prepaid, return receipt requested and by regular first-class mail, or, subject to the provisions of the last paragraph of this Section, via email, addressed as follows (or to such other address as a party may designate for itself by notice to the other party pursuant to this Section):

If to University:
Vice President of Finance and Administration
3201 Campus Drive
Klamath Falls, OR 97601
Email: john.harman@oit.edu

with a copy to:
University General Counsel
3201 Campus Drive
Klamath Falls, OR 97601
Email: david.groff@oit.edu

If to Foundation:
Executive Director, Oregon Tech Foundation
735 Commercial Street
Klamath Falls, OR 97601
Email: ken.fischer@oit.edu

Notice given by mail pursuant will be considered received on the earlier of (a) the date of actual receipt, or (b) three days after the date of mailing. Alternatively, a notice or communication under this Lease by any party to any other party may be sent by email, addressed to a party pursuant to this Section, but will be effective only if the sender receives a reply from the addressee confirming receipt, in which event it will be deemed effective the day the notice email is sent or, if the next day is a weekend or federal holiday, on the next business day after the notice email is sent.

9.13 Entire Agreement. This Lease (including its Recitals and Exhibits, which are incorporated in this Lease) constitutes the entire agreement of the parties with respect to the Project, supersedes all prior or contemporaneous oral or written agreements with respect to the matters set forth in this Lease, and may not be modified, amended or supplemented except in writing and signed by the parties.

[Signature Page Follows.]

University:

Oregon Institute of Technology

By: _____

Name: _____

Title: _____

Date: _____

Foundation:

Oregon Tech Foundation

By: _____

Name: _____

Title: _____

Date: _____

Attachments:

Exhibit A-1:	Description of Premises
Exhibit A-2:	Depiction of Premises
Exhibit B:	Approved Project Design
Exhibit C:	Prevailing Wage Rate Law Compliance
Exhibit D:	Foundation's Insurance Requirements

Exhibit A-1
Description of Premises

The paved area adjacent to and directly east of the Athletics Building on University's Klamath Falls campus, where the outside basketball court is currently located.

Exhibit A-2
Depiction of Premises

[Please see attached.]

N. University Dr.

STD

MOEHL STADIUM
(STD)

Danny Miles Way

RNETT
& MMET
ORAGE
COS)

LOT N

LOT K

LEARNING
RESOURCE
CENTER

PHYSICAL
EDUCATION
(ATH)

LOT M

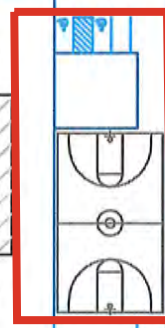


Exhibit B
Approved Project Design

[Please see attached.]



Oregon Tech Athletics Field House



Need

The purpose of building a new athletics field house is to shield student-athletes from inclement weather conditions and lengthen the periods in which they can participate comfortably in practices and workouts. Acting as a shelter, the field house enables student-athletes to pursue their training in a controlled and favorable environment, regardless of external weather conditions.

Projected Cost and Dimensions

- Approximately \$3,500,000
- Estimated size: 155' x 55' = 8,525 sq ft
- Single-story pre-engineered metal building with metal siding and roofing.
- Concrete foundation and multi-purpose flooring.
- No restrooms or locker rooms.
 - Student-athletes will utilize the adjacent Athletics building for restrooms and locker rooms.



Exhibit C

Prevailing Wage Rate Law Compliance

As more particularly described in this Exhibit C, and if applicable, Foundation will comply with and will require all of Foundation's construction contractors and subcontractors to comply with ORS 279C.800 through 279C.870. If the Project is subject to prevailing wage requirements, the Oregon Bureau of Labor and Industries ("**BOLI**") prevailing wage rates that will apply to the Project under the Lease (and the construction contract that Foundation will enter into with Foundation's construction contractor) are those that are in effect at the time the construction contract is executed, or if no construction work is authorized to be performed in the initial form of the construction contract, then those prevailing wage rates in effect at the time the construction contractor is under a contractual obligation to perform construction work on the Project. Once established, the prevailing wage rates will then be in effect for the remainder of the Lease and the construction contract between Foundation and Foundation's construction contractor. The prevailing wage rates that will apply will be those set forth in the then current version of the following BOLI booklet, together with any amendments to that booklet: "**PREVAILING WAGE RATES for Public Works Contracts in Oregon.**"

If the Project is subject to prevailing wage requirements, Foundation will pay construction workers at not less than the specified minimum hourly rate of wage, and will include that requirement in all construction contracts and subcontracts pertaining to construction of the Project.

If the Project is subject to prevailing wage requirements, in accordance with ORS 279C.845, every contractor and Subcontractor performing work on the Project will submit written certified statements to the Foundation and University, on the form prescribed by the Commissioner of BOLI, certifying the hourly rate of wage paid to each worker which Foundation's contractors or subcontractors have employed on the Project, and further certifying that no worker employed on the Project has been paid less than the prevailing rate of wage or less than the minimum hourly rate of wage. The certificate and statement will be verified by the oath of the contractor or subcontractor that it has read the certified statement, that the contractor or subcontractor knows the contents of the certified statement, and that, to the contractor's or subcontractor's best knowledge and belief, the certified statement is true.

If the Project is subject to prevailing wage requirements, in order to comply with statutory requirements and administrative rules promulgated by the Commissioner of BOLI, the fee required by ORS 279C.825(1) will be paid by Foundation to University, so the University can pay the fee to the Commissioner of BOLI.

Exhibit D
Foundation's Insurance Requirements

- I. **Required Policies.** Foundation's general contractor will provide, maintain, and have in force continuously for the entire Term of the Lease the following classes of insurance in the form and with the limits specified below.
- a. **Commercial General Liability Insurance** covering claims for personal injury, bodily injury, and property damage arising out of the Project and in a form providing coverage no less broad than that of the current ISO Commercial General Liability Insurance policy (Occurrence Form, number CG 00 01). Such insurance will provide coverage for all operations and will be maintained for ten years after termination of the Lease. The limits of such insurance shall not be less than:
 - i. \$1,000,000 each occurrence;
 - ii. \$2,000,000 general aggregate limit; and
 - iii. \$1,000,000 products/completed operations aggregate.
- The policy shall not contain any exclusions for any types of projects, materials, or processes involved in the Project.
- b. **Professional Liability Insurance** insuring against professional errors and omissions arising from services by any party providing construction management, architectural, engineering, or surveying services and any party whose services involve the preparation of plans or drawings, with limits not less than \$1,000,000 per claim and \$2,000,000 annual aggregate. The policy will not contain any exclusions for any types of projects, materials, services, or processes involved in the Project.
 - c. **Business Auto Liability Insurance** covering vehicles on and off-site. The coverage will be not less than the standard ISO Comprehensive Automobile Liability policy (CA 00 01, CA 00 05, CA 00 12, CA 0020), with limits not less than \$1,000,000 each accident and \$1,000,000 each occurrence.
 - d. **Workers' Compensation Insurance** as required by statute in the State of Oregon. Foundation and Contractors will comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt. Foundation will require and keep on file a certificate of insurance from each of its Contractors documenting such Workers' Compensation coverage.
 - e. [Reserved.]
 - f. [Reserved.]
 - g. [Reserved.]
- II. **General Insurance Requirements.** The following requirements are applicable to all insurance coverages required under this Exhibit D, except to the extent otherwise indicated.
- a. **Insurer Requirements.** The policies must be issued by an insurance company authorized to do business in Oregon with a minimum AM Best rating of A- VII or higher.
 - b. **Additional Insured.** Except with regard to Workers' Compensation and Professional liability insurance, all required insurance policies must include "State of Oregon, Board of Trustees of the Oregon Institute of Technology and the Oregon Institute of Technology their respective officers, employees and members" as additional insured. For the Commercial General Liability insurance, additional insured status must be provided on ISO forms CG 20 10 and CG 20 37 or equivalent.

- c. **Primary and Non-Contributory.** The insurance provided to the additional insured in each policy will be primary and non-contributory, and no other insurance or self-insured retention carried or held by University will be called upon to contribute to a loss covered by insurance for the named insured.
- d. **Occurrence Basis.** With the exception of Professional Liability, all policies will be established on an “occurrence” basis. No policy will be allowed if established on a “claims made” basis.
- e. **Waiver of Subrogation.** To the fullest extent permitted by law, Foundation and its Contractors will require all insurance policies to include clauses stating each insurer will waive all rights of recovery and subrogation.
- f. **Self-Insured Retentions.** No policy will be subject to any self-insured retention greater than \$250,000 without University’s written approval.
- g. **Subcontract Agreements.** Foundation will flow down the requirements for (i) insurer requirements, (ii) waiver of subrogation, and (iii) additional insured to all tiers of Contractors for all insurance required by Foundation for the Project.
- h. **Certificates of Insurance.**
 - i. Foundation and its Contractors shall furnish University with certificates of insurance (“COI”) evidencing the required policies. The COIs will be delivered to University before commencement of the Project. University may, in its discretion, require Foundation and its Contractors to provide new or updated COIs from time to time.
 - ii. Failure of University to demand the COIs will not constitute a waiver of the Foundation’s and its Contractors’ obligations to maintain the required insurance. University’s receipt of any COI does not constitute approval or agreement by University that the insurance requirements have been met.

Foundation and its Contractors, or their insurance brokers, must submit a copy of the Declarations page for each required policy. The page must include the name of the carrier, the policy number, the types of coverage and limits, the effective dates of the policy, and the broker’s name and license number.