

**SETTLEMENT AGREEMENT  
AND  
MUTUAL RELEASE OF ALL CLAIMS**

THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE OF ALL CLAIMS ("Release Agreement") is entered into this 7th day of December, 2015, by and between Brad Avakian, in his capacity as the Commissioner of the Oregon Bureau of Labor and Industries ("BOLI"), and Southern Oregon University ("SOU") (collectively, "the Parties").

**RECITALS**

WHEREAS, BOLI contends that a construction project, known as the "Southern Oregon University New Student Housing and Dining Commons Project" (the "Project"), is a "public work" within the meaning of ORS Chapter 279C subject to the requirements of ORS 279C.800 to ORS 279C.870 and OAR Chapter 839, Division 025; and

WHEREAS, SOU was the purported contracting agency; Adroit Construction, Inc. ("Adroit") was the general contractor; ACC-SC Development LLC ("ACC") was the developer; and CHF Ashland-LLC, ("CHF-Ashland") is the owner of the housing portion of the Project; and

WHEREAS, BOLI made demand on or about December 23, 2014 for payment of allegedly unpaid prevailing wages ("Prevailing Wage Claims"), as defined in ORS 279C.800, *et seq.*, and

WHEREAS, SOU denies that any wages were due and contends that all appropriate wages have been paid and asserts that at all times its acts and conduct were lawful; and

WHEREAS, the Parties desire to settle fully, finally, and forevermore all differences among and between them, including, but in no way limited to, those differences described above.

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained and other good and valuable consideration, receipt of which is hereby acknowledged, and to avoid unnecessary litigation, it is hereby agreed by and between the Parties as follows:

1. Incorporation by Reference. The foregoing Recitals are contractual, are not merely recitals, and are incorporated by this reference.
2. SOU's Payments. SOU agrees to pay and BOLI agrees to accept the following amounts in settlement: (a) \$2,517,461.79 in unpaid prevailing wages, less required withholdings ("Unpaid Prevailing Wages"); and (b) a payment of \$7,500 as payment of the statutory prevailing wage rate fee ("Prevailing Wage Rate Fee"). The Unpaid Prevailing Wages and Prevailing Wage Rate Fee are collectively referred to as "SOU's Payment."
3. Prevailing Wage Checks. Exhibit 1 to this Release Agreement contains the names of the employees who performed work on the Project ("Payee Workers") and the gross unpaid prevailing wages BOLI contends are owed to each. For those Payee Workers for whom SOU has the necessary tax-reporting information, SOU agrees to prepare a check ("Prevailing Wage Check")

payable to each such Payee Worker in the amount of his or her gross prevailing wages as set forth in Exhibit 1, less the following withholdings:

- a. 25 percent of the gross wages for federal income tax withholding ("Employee Federal Income Tax");
  - b. 9 percent of the gross wages for Oregon income tax withholding ("Employee Oregon Income Tax");
- and
- c. 7.65 percent of the gross wages for each such Payee Worker's share of applicable social security and Medicare tax (such share of tax is referred to herein as the "Employee FICA Tax") under the Federal Insurance Contribution Act.

For those Payee Workers who assigned their wage claims to BOLI by executing and returning BOLI's Assignment of Wages Form (Form WH-10A), SOU agrees to deliver the Prevailing Wage Checks to BOLI no later than December 31, 2015. As soon as practicable, SOU shall issue each such Payee Worker an Internal Revenue Service ("IRS") Form W-2 reflecting the wages paid and the amount of the withholdings reflected in each such Payee Worker's Prevailing Wage Check. SOU can only prepare a Prevailing Wage Check for a Payee Worker if it has a valid Social Security Number for the Payee Worker. In the event that SOU is unable to locate a valid Social Security Number for any Payee Worker(s) who assigned their claim to BOLI, SOU shall instead pay to BOLI the gross amount of unpaid wages associated with all such Payee Workers, as set forth in Exhibit 1, in a single check no later than December 31, 2015. For those Payee Workers who did not assign their wage claims to BOLI, SOU shall issue the Payee Worker's Prevailing Wage Check following the protocol described in Section 9 of this Agreement.

4. Prevailing Wage Rate Fee Check. SOU will provide BOLI with a check in the amount of the Prevailing Wage Rate Fee no later than December 31, 2015.

5. Obligations To Taxing Authorities. SOU shall remit to the IRS the total amount of Employee Federal Income Tax and Employee FICA Tax withheld as provided in Section 3. In addition, SOU shall pay to the IRS the employer's share of social security and Medicare tax (such share of tax is referred to herein as the "Employer FICA Tax") under the Federal Insurance Contribution Act, calculated as 7.65 percent of the gross wages paid to each Payee Worker; and any applicable tax (the "Employer FUTA Tax") under the Federal Unemployment Tax Act, calculated as 0.6 percent of gross wages paid to each Payee Worker. Finally, SOU shall pay any remaining payroll taxes normally payable by an employer with respect to the amounts of the Prevailing Wage Checks ("Employer's Payroll Tax") directly to the appropriate taxing authorities.

6. Release to Be Obtained Before Payment Made. BOLI agrees that no Prevailing Wage Check shall be delivered to any Payee Worker who has not assigned their wage claims to BOLI without the execution of the Individual Release of Claims attached as Exhibit 2 to this Agreement (the "Individual Release"). BOLI agrees that it will mail, via regular or certified mail, return receipt requested, at its sole option, an Individual Release to each of the Payee Workers who

have not assigned their wage claims to BOLI. BOLI agrees that each Individual Release shall be sent with a letter in the form attached hereto as **Exhibit 3**.

7. BOLI's Approval on Behalf of Payee Workers. BOLI's agreement to this Release Agreement constitutes its irrevocable approval of the Individual Release (**Exhibit 2**), and of the release language contained BOLI's Assignment of Wages Form, for all Payee Workers to the fullest extent authorized by law.

8. Transmission of Payments. Once the Prevailing Wage Checks and Prevailing Wage Rate Check are timely received by BOLI, SOU's Payment will be considered timely received, and BOLI will be legally responsible for timely transmission and delivery of the Prevailing Wage Checks to the Payee Workers.

9. Delivery of Prevailing Wage Checks To BOLI and Disposition of Payments. Each Payee Worker who has not already assigned their wage claim to BOLI and to whom a payment is due shall have 30 days from the date of mailing to sign, date and return the Individual Release to BOLI. At the conclusion of the 30-day period, BOLI shall deliver to SOU a list identifying by name each Payee Worker who has accepted, failed to respond, or rejected the Individual Release, along with the Payee Worker's current address and Social Security Number, if available. This list is referred to as the "Final Payee Worker List."

- (a) For each Payee Worker who returns an Individual Release and for whom SOU has obtained a Social Security Number, SOU shall deliver to BOLI a separate Prevailing Wage Check in the gross amount payable to each Payee Worker as set forth in Exhibit 1, less withholdings as set forth in Section 3 of this Agreement. SOU shall deliver the Prevailing Wage Checks to BOLI no later than 60 days following SOU's receipt of the Final Payee Worker List.
- (b) For Payee Workers who return an Individual Release but for whom SOU has not obtained a Social Security Number, SOU shall deliver to BOLI a single check equal to the gross amount payable to all such Payee Workers as set forth in Exhibit 1. SOU shall deliver this check to BOLI no later than 60 days following SOU's receipt of the Final Payee Worker List.
- (c) For Payee Workers who do not return an Individual Release, SOU shall deliver to BOLI a single check equal to the gross amount payable to all such Payee Workers as set forth in Exhibit 1. SOU shall deliver this check to BOLI no later than 60 days following SOU's receipt of the Final Payee Worker List.
- (d) For Payee Workers who reject the Individual Release, SOU shall be under no obligation to tender to BOLI the amounts associated with such Payee Workers as set forth in Exhibit 1, and such amounts shall be deemed to belong permanently to SOU.

If a Payee Worker fails to sign and return the Individual Release within 30 days of mailing, BOLI will hold the amount payable to that Payee Worker in trust until it is claimed by the Payee Worker or until it is deemed abandoned under the law, at which time said payment will be processed in accordance with the law relating to abandoned property. In no event will such payments be returned

to SOU.

10. Release By SOU. SOU, on behalf of itself and its affiliated entities, and all of its and their respective predecessors, successors, assigns, trustees, officers, directors, agents, attorneys, representatives, employees, insurers and sureties, whether present or former, and anyone for whose act or omission any of them may be liable, hereby releases and forever discharges BOLI and its predecessors, successors, assigns, officers, agents, attorneys, representatives, employees, insurers and sureties, whether present or former, and anyone for whose act or omission any of them may be liable, from any and all claims, known and unknown, past, present, or future, whether in contract, tort, statute or otherwise, that arise out of or relate in any way to the Prevailing Wage Claims associated with the Project.

11. Release By BOLI. BOLI hereby releases and forever discharges SOU, ACC, and Adroit, and their subsidiaries and affiliated entities, and all of their respective predecessors, successors, assigns, trustees, shareholders, members, partners, directors, officers, agents, attorneys, representatives, employees, insurers and sureties, whether present or former, and anyone for whose act or omission any of them may be liable, from any and all claims, known and unknown, past, present, or future, whether in contract, tort, statute or otherwise, that arise out of or relate in any way to the Prevailing Wage Claims associated with the Project. Specifically included in the foregoing release are the release terms set forth in the third paragraph of BOLI's Assignment of Wages Form. Also included is BOLI's release and discharge of claims arising only under ORS 279C.800 to ORS 279C.870 against any contractor or subcontractor that performed work on the Project, and all of their respective predecessors, successors, assigns, shareholders, members, partners, directors, officers, agents, attorneys, representatives, employees, insurers and sureties, whether present or former, and anyone for whose act or omission any of them may be liable. BOLI and SOU agree that ACC and Adroit are intended third party beneficiaries of this Agreement and, as such, that ACC and Adroit have an enforceable right to enforce its terms and conditions as to any party to this Agreement.

12. No Admission of Wrongdoing or Liability. BOLI acknowledges that the settlement of this dispute involves the settlement of disputed claims and that nothing in the Release Agreement is or shall be considered an admission of fault, liability or wrongdoing by SOU, which hereby expressly denies fault and liability.

13. BOLI's Investigation and Determination. BOLI has duly conducted an independent investigation of all facts relating to the subject matter of the dispute and has determined that, with respect to the Project, only the employees whose names are set forth in Exhibit 1 would be entitled to receive a payment of wages required by ORS 279C.800, *et seq.*, and that, with the exception of one worker named Michael Teran who worked on the Project for companies called Massey and GSR and two John Does who may have worked on the Project for a company called H&W Flooring, BOLI is not aware of any other employee, worker, or any other person that is entitled to receive wages in excess of the wages already paid to them for any work, labor, or services performed on the Project.

14. Execution of Further Documents. The Parties shall execute such other documents, and will take all further actions as are necessary or appropriate to carry out this Release Agreement. If the approval by any court or other tribunal of any provision of this Release Agreement or the

Individual Releases (Exhibit 2) is required to carry out, give effect to, enforce or apply any of its terms, the Parties will take such action as is necessary to seek and obtain such approval.

15. Representation of Authority. The undersigned representatives of the Parties represent and warrant that they have the requisite authority to enter into this Release Agreement.

16. Entire Agreement. This Release Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof, and it supersedes all prior or contemporaneous agreements, understandings, negotiations, and discussions, whether oral or written, of the Parties in connection with the subject matter hereof, except as specifically set forth herein. No supplements or modifications or waivers or terminations of this Release Agreement shall be binding unless executed in writing by the parties to be bound thereby. No waiver of any provisions of this Release Agreement shall be deemed or shall constitute a waiver of any other provision herein (whether or not similar), nor shall such waiver constitute a continuing waiver unless otherwise expressly provided. This Release Agreement may be executed in counterparts and by facsimile signature.

17. Binding on Successors. All of the terms and provisions of this Release Agreement shall be binding upon or shall inure to the benefit of the Parties, their assigns, heirs, administrators, executors, or successors.

18. Governing Laws, Venue, Interpretation. This Release Agreement has been entered into and executed in the state of Oregon and shall be interpreted in accordance with the laws of said state. Any action in connection with this Release Agreement shall be brought and maintained in the Circuit Court of the State of Oregon for Multnomah County. The Parties agree to submit to personal jurisdiction in state court in Multnomah County, Oregon. This Release Agreement is the product of negotiation and drafting by all Parties and their legal counsel, and it shall be deemed to have been drafted by no Party individually but as a joint effort of the Parties.

19. Attorneys' Fees. In the event any party hereto shall commence legal proceedings against any other party to enforce the terms hereof, or to declare rights hereunder, as the result of a breach of any covenant or condition of this Release Agreement, the prevailing party in any such proceeding shall be entitled to recover from the losing party its costs of suit, including reasonable attorneys' fees, as may be fixed by the court.

20. Severability. In the event that any covenant, condition, or other provision herein contained is held to be invalid, void, or illegal by any court of competent jurisdiction, the same shall be deemed severable from the remainder of this Release Agreement, and shall in no way affect, impair, or invalidate any other covenant, condition, or other provision herein contained. If such condition, covenant, or other provision shall be deemed invalid due to its scope or breadth, such covenant, condition, or other provision shall be deemed valid to the extent of the scope or breadth permitted by law.

21. Headings. The headings contained in this Release Agreement have been inserted for convenience only and in no way define or limit the scope or interpretation of this Release Agreement.

22. Number and Gender. Whenever the singular number is used herein and when required by the context, the same shall include the plural, and the masculine, feminine, and neuter genders shall each include the others.

BUREAU OF LABOR AND INDUSTRIES      SOUTHERN OREGON  
UNIVERSITY

By: Carl T. Aune

DATED: December 7, 2015

APPROVED AS TO FORM:

Oregon Department of Justice

Timothy D. Smith  
Timothy D. Smith, OSB No. 914374  
Senior Asst. Attorney General

By: Amy Joseph Pedersen

DATED: December \_\_, 2015

APPROVED AS TO FORM:

Stoel Rives LLP

Amy Joseph Pedersen OSB No. 083085  
for AJP  
Amy Joseph Pedersen, OSB No. 853958

Dec. 21,  
2015