After Recording Return to:
City of Hermiston
180 NE 2nd Street
Hermiston, Or 97838

PROPERTY USE AND ALIENATION AGREEMENT

THIS PROPERTY USE AGREEMENT (hereinafter "Agreement") concerning approximately 40 acres of real property situated in the South Hermiston Industrial Park, Hermiston, Umatilla County, Oregon and more fully described on Exhibit A attached hereto (hereinafter the "Property") is made this _____ day of _____, 2021 by and between the City of Hermiston, an Oregon municipal corporation (hereinafter "Recipient") and Port of Umatilla, an Oregon municipal corporation (hereinafter "Owner").

WITNESSETH

WHEREAS, Recipient applied for financial assistance from the Economic Development Administration (hereinafter "EDA") under the Public Works and Economic Development Act of 1965, as amended; and

WHEREAS, EDA made a financial assistance award to Recipient under EDA Project No. 07-01-07544 (hereinafter the "Award") on September 8, 2020, (hereinafter the "Award Date") for the construction of certain improvements, consisting of installation of approximately 4,500 linear feet of 10" new water main, and approximately 4,500 linear feet of new asphalt roadway to support development of light industrial parcels (hereinafter the "Project"); and

WHEREAS, as a condition of the Award, Recipient must provide adequate assurance that the property improved by the Project will be used in a manner consistent with the authorized general and special purposes of the Award; and

WHEREAS, Owner holds fee simple title to the Property; and

WHEREAS, the Project will directly benefit and facilitate development of the Property; and

WHEREAS, Recipient and Owner deem it beneficial to have the Project completed and wish to enter into an agreement restricting use of the Property so that Recipient may satisfy the requirements of the Award.

NOW, THEREFORE, in consideration of the mutual promises contained herein, Recipient and Owner agree as follows:

1. The following terms shall have the definitions set forth below, unless otherwise indicated:

    a. Useful Life of the Project. Twenty years from the date of recording of this Agreement.

2. Owner hereby represents and warrants that it holds good and marketable title to the Property.

3. In consideration of the Project, Owner agrees to use its best efforts to develop the Property in a manner that will further the purpose of the Award by creating new jobs and investment in the local community. Owner further agrees to use the Property only for the authorized purposes of the Award in furthering light industrial activity during the Useful Life of the Project.

4. Owner agrees that the lease or license of all or part of the Property during the Useful Life of the Project consistent with the purpose of the Award in furthering light industrial activity.

5. Owner may sell all or part of the Property during the Useful Life of the Project provided that the sale is for fair market value and the subsequent owner agrees to succeed to the Owner's rights and obligations under this Agreement.

6. Owner agrees to disclose to Recipient sufficient details of any and all sales, leases, or other conveyances of the Property that occur during the Useful Life of the Project so that Recipient may monitor compliance with the terms of this Agreement. Owner further agrees that the sales and lease information disclosed to Recipient may be shared with EDA.

7. Recipient has notified Owner that the estimated completion date established at the Award Date is December 31, 2021. Recipient agrees to notify Owner if the Project completion date is delayed for more than 180 days.

8. Owner will comply with the terms and conditions of the Award and the regulations set forth in 13 C.F.R. Chapter III and 2 C.F.R. part 200.

9. Owner agrees that if it fails to comply with the terms of this Agreement, it will reimburse Recipient the amount Recipient is required to reimburse EDA for Owner's failure to abide by the terms of the Agreement, as determined by EDA pursuant to applicable statutes and regulations, including without limitation 13 C.F.R. Part 314.

10. To better provide notice of the limitations on use and alienation of the Property agreed to herein, Owner agrees to record this Agreement in the chain of title for the Property in the Umatilla County Records office.

11. Recipient and Owner each binds itself and its partners, successors, executors, administrators and assigns to the other party to the Agreement and to the partners, successors, executors, administrators,

and assigns of such other party, in respect to the promises, representations, acknowledgments, covenants and responsibilities contained in this Agreement.

12. Recipient and Owner agree that if any provision of this Agreement is declared or determined to be null, void, inoperative, illegal or invalid for any reason, the validity of the remaining parts, terms or provisions will not be affected thereby, and they will remain in full force and effect.

13. This Agreement may be amended only by written instrument signed by both Recipient and Owner. This Agreement and the documents incorporated herein represent the entire understanding of the parties.

14. Recipient and Owner acknowledge that they have read or have had the opportunity to read this Agreement, and that it reflects the terms as agreed to by the parties hereto.

15. This Agreement shall become effective on the date of execution by both signatories.

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have signed this Agreement on the date first above written.

Recipient
CITY OF HERMISTON

By: _____
Byron Smith, City Manager
Dated: _____

Owner
PORT OF UMATILLA

By: _____
Kim B. Puzey, General Manager
Dated: _____

STATE OF OREGON)
) ss.
County of Umatilla)

On this _____ day of _____, 2021, personally appeared before me Byron Smith, as dully authorized City Manager of the City of Hermiston and acknowledged the foregoing instrument to be his voluntary act.

_____
Notary Public for Oregon
My Commission Expires: _____

STATE OF OREGON)
) ss.
County of Umatilla)

On this _____ day of _____, 2021, personally appeared before me Kim B. Puzey, as the duly authorized General Manager of the Port of Umatilla and acknowledged the foregoing instrument to be his voluntary act.

_____
Notary Public for Oregon
My Commission Expires: _____

EXHIBIT A

The Northeast Quarter of the Northeast Quarter of Section 23, Township 4 North, Range 28, East of the Willamette Meridian, Umatilla County; Excepting therefrom any portion lying within the County Road right-of-way.