

**GRANT AGREEMENT
OREGON DEPARTMENT OF TRANSPORTATION
IMMEDIATE OPPORTUNITY FUND (IOF)**

Project Name: South Hermiston Industrial Park (E. Penney Extension)

This Grant Agreement (“Agreement”) is made and entered into by and between the **State of Oregon**, acting by and through its Department of Transportation (“ODOT”), and **The City of Hermiston**, acting by and through its Governing Body, (“Recipient”), both referred to individually or collectively as “Party” or “Parties.”

- 1. Effective Date.** This Agreement shall become effective on the date this Agreement is fully executed and approved as required by applicable law (the “Effective Date”). The availability of Grant Funds (as defined in Section 3) shall end five (5) years after the Effective Date (the “Availability Termination Date”).
- 2. Agreement Documents.** This Agreement consists of this document and the following documents:
 - a. Exhibit A: Project Description**
 - b. Exhibit B: Recipient Requirements**
 - c. Exhibit C: Subagreement Insurance Requirements**
 - d. Exhibit D: Documentation provided by Recipient prior to execution of the Agreement (i.e. application, Part 1 of the Project Prospectus)**

Exhibits A, B and C are attached to this Agreement. Exhibit D is incorporated by reference. In the event of a conflict between two or more of the documents comprising this Agreement, the language in the document with the highest precedence shall control. The precedence of each of the documents comprising this Agreement is as follows, listed from highest precedence to lowest precedence: this Agreement without Exhibits; Exhibit A; Exhibit B; Exhibit C; Exhibit D.

- 3. Project Cost; Grant Funds.** The total estimated Project cost is \$1,193,200. In accordance with the terms and conditions of this Agreement, ODOT shall provide Recipient grant funds in a total amount not to exceed \$596,600.00 (the “Grant Funds”). Recipient will be responsible for all Project costs not covered by the Grant Funds.
- 4. Project.**
 - a. Use of Grant Funds.** The Grant Funds shall be used solely for the Project described in Exhibit A (the “Project”) and shall not be used for any other purpose. No Grant Funds will be disbursed for any changes to the Project unless ODOT approves such changes by amendment pursuant to Section 4(c).
 - b. Eligible Costs.** Recipient may seek reimbursement for its actual costs to develop the Project, consistent with the terms of this Agreement (“Eligible Costs”).
 - i. Eligible Costs are actual costs of Recipient to the extent those costs are:**
 - A. reasonable, necessary and directly used for the Project;**
 - B. permitted by generally accepted accounting principles established by the Governmental Accounting Standards Board, as reasonably interpreted by the State, to be capitalized to an asset that is part of the Project; and**

C. eligible or permitted uses of the Grant Funds under the Oregon Constitution, the statutes and laws of the state of Oregon, and this Agreement.

ii. Eligible Costs do NOT include:

A. operating and working capital or operating expenditures charged to the Project by Recipient;

B. loans or grants to be made to third parties;

C. any expenditure incurred before ODOT's Director awards the Project or after the Availability Termination Date; or

D. costs associated with the Project that substantially deviate from Exhibit A, Project Description, unless such changes are approved by ODOT by amendment of this Agreement;

E. right of way costs; or

F. Costs to adjust, reconstruct or relocate utilities.

c. **Project Change Procedures.**

i. If Recipient anticipates a change in scope or Availability Termination Date, Recipient shall submit a written request to their ODOT Contact. The request for change must be submitted before the change occurs.

ii. Recipient shall not proceed with any changes to scope or Availability Termination Date before the execution of an amendment to this Agreement executed in response to ODOT's approval of a Recipient's request for change. A request for change may be rejected at the sole discretion of ODOT.

5. Reimbursement Process

a. ODOT shall reimburse Recipient for Eligible Costs up to the Grant Fund amount provided in **Section 3**. ODOT shall reimburse Eligible Costs within forty-five (45) days of ODOT's receipt and approval of a request for reimbursement from Recipient. Recipient must pay its contractors, consultants and vendors before submitting a request for reimbursement to ODOT for reimbursement.

b. ODOT will reimburse Recipient Eligible Cost not to exceed 50% of the grant amount shown in **Section 3**. Upon Project completion and final project acceptance by ODOT, ODOT will reimburse Recipient for Eligible Costs up to the remaining grant amount shown in **Section 3**.

c. Each reimbursement request shall be submitted on letterhead to the ODOT Contact and include the Agreement number, the start and end date of the billing period, and itemize all expenses for which reimbursement is claimed.

d. Upon ODOT's receipt of the final reimbursement request, ODOT will conduct a final on-site review of the Project. ODOT will withhold payment of the final reimbursement request until on-site review is conducted and the Project is approved by the ODOT Contact or designee.

e. ODOT's obligation to disburse Grant Funds to Recipient is subject to satisfaction, with respect to each disbursement, of each of the following conditions precedent:

- i. ODOT has received funding, appropriations, Limitations, allotments, or other expenditure authority sufficient to allow ODOT, in the exercise of its reasonable administrative discretion, to make the disbursement;
 - ii. Recipient is in compliance with the terms of this Agreement; and
 - iii. Recipient's representations and warranties set forth in **Section 6** are true and correct on the date of disbursement.
- f. Recovery of Grant Funds.
- i. Recovery of Misexpended Funds. Any Grant Funds disbursed to Recipient under this Agreement that are expended in violation of one or more of the provisions of this Agreement "(Misexpended Funds") must be returned to ODOT. Recipient shall return all Misexpended Funds to ODOT no later than fifteen (15) days after ODOT's written demand for the same.
 - ii. Recovery of Grant Funds upon Termination. If this Agreement is terminated under any of Sections 9(b)(i), 9(b)(ii), 9(b)(iii) or 9(b)(vi), Recipient shall return to ODOT all Grant Funds disbursed to Recipient within 15 days after ODOT's written demand for the same.

6. Representations and Warranties of Recipient. Recipient represents and warrants to ODOT as follows:

- a. **Organization and Authority.** Recipient is duly organized and validly existing under the laws of the State of Oregon and is eligible to receive the Grant Funds. Recipient has full power, authority and legal right to make this Agreement and to incur and perform its obligations hereunder, and the making and performance by Recipient of this Agreement (1) have been duly authorized by all necessary action of Recipient and (2) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency or any provision of Recipient's Articles of Incorporation or Bylaws, if applicable, (3) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which Recipient is a party or by which Recipient or any of its properties may be bound or affected. No authorization, consent, license, approval of, filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by Recipient of this Agreement.
- b. **Binding Obligation.** This Agreement has been duly executed and delivered by Recipient and constitutes a legal, valid and binding obligation of Recipient, enforceable in accordance with its terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.
- c. **No Solicitation.** Recipient's officers, employees, and agents shall neither solicit nor accept gratuities, favors, or any item of monetary value from contractors, potential contractors, or parties to subagreements. No member or delegate to the Congress of the United States or State of Oregon employee shall be admitted to any share or part of this Agreement or any benefit arising therefrom.
- d. **No Debarment.** Neither Recipient nor its principals is presently debarred, suspended, or voluntarily excluded from any federally-assisted transaction, or proposed for debarment, declared ineligible or voluntarily excluded from participating in this Agreement by any state or federal agency. Recipient agrees to notify ODOT immediately if it is debarred, suspended or otherwise excluded from any federally assisted transaction for any reason or if circumstances change that may affect this status, including without limitation upon any relevant indictments or convictions of crimes.

- e. **Compliance with Oregon Taxes, Fees and Assessments.** Recipient is, to the best of the undersigned(s) knowledge, and for the useful life of the Project will remain, current on all applicable state and local taxes, fees and assessments.

7. Records Maintenance and Access; Audit.

- a. **Records, Access to Records and Facilities.** Recipient shall make and retain proper and complete books of record and account and maintain all fiscal records related to this Agreement and the Project in accordance with all applicable generally accepted accounting principles, generally accepted governmental auditing standards and state minimum standards for audits of municipal corporations. Recipient shall ensure that each of its subrecipients and subcontractors complies with these requirements. ODOT, the Secretary of State of the State of Oregon (the "Secretary") and their duly authorized representatives shall have access to the books, documents, papers and records of Recipient that are directly related to this Agreement, the Grant Funds, or the Project for the purpose of making audits and examinations. In addition, ODOT, the Secretary and their duly authorized representatives may make and retain excerpts, copies, and transcriptions of the foregoing books, documents, papers, and records. Recipient shall permit authorized representatives of ODOT and the Secretary to perform site reviews of the Project, and to inspect all vehicles, real property, facilities and equipment purchased by Recipient as part of the Project, and any transportation services rendered by Recipient.
- b. **Retention of Records.** Recipient shall retain and keep accessible all books, documents, papers, and records that are directly related to this Agreement, the Grant Funds or the Project for a period of six (6) years after final payment. If there are unresolved audit questions at the end of the period described in this section, Recipient shall retain the records until the questions are resolved.
- c. **Expenditure Records.** Recipient shall document the expenditure of all Grant Funds disbursed by ODOT under this Agreement. Recipient shall create and maintain all expenditure records in accordance with generally accepted accounting principles and in sufficient detail to permit ODOT to verify how the Grant Funds were expended.

This Section 7 shall survive any expiration or termination of this Agreement.

8. Recipient Subagreements and Procurements

- a. **Subagreements.** Recipient may enter into agreements with sub-recipients, contractors or subcontractors (collectively, "subagreements") for performance of the Project.
 - i. All subagreements must be in writing, executed by Recipient and must incorporate and pass through all of the applicable requirements of this Agreement to the other party or parties to the subagreement(s). Use of a subagreement does not relieve Recipient of its responsibilities under this Agreement.
 - ii. Recipient shall require all of its contractors performing work under this Agreement to name ODOT as a third-party beneficiary of Recipient's subagreement with the Contractor and to name ODOT as an additional or "dual" obligee on contractors' payment and performance bonds.
 - iii. Recipient shall provide ODOT with a copy of any signed subagreement, as well as any other purchasing or contracting documentation, upon ODOT's request at any time. Recipient must report to ODOT any material breach of a term or condition of a subagreement within ten (10) days of Recipient discovering the breach.
- b. **Subagreement indemnity; insurance.**
 - i. *Recipient's subagreement(s) shall require the other party to such subagreements(s) that is not a unit of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless State of Oregon, the Oregon Transportation Commission and its members, the Department of Transportation, their*

officers, agents and employees from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of the other party to Recipient's subagreement or any of such party's officers, agents, employees or subcontractors ("Claims"). It is the specific intention of the Parties that ODOT shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of ODOT, be indemnified by the other party to Recipient's subagreement(s) from and against any and all Claims.

- ii. Any such indemnification shall also provide that neither Recipient's subrecipient(s), contractor(s) nor subcontractor(s), nor any attorney engaged by Recipient's subrecipient(s), contractor(s) nor subcontractor(s) shall defend any claim in the name of ODOT or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State may, at any time at its election, assume its own defense and settlement in the event that it determines that Recipient's subrecipient is prohibited from defending the State, or that Recipient's subrecipient is not adequately defending the State's interests, or that an important governmental principle is at issue or that it is in the best interests of the State to do so. The State reserves all rights to pursue claims it may have against Recipient's subrecipient if the State of Oregon elects to assume its own defense.
 - iii. If the Project or Project work is on or along a state highway, Recipient shall require its contractor(s) to meet the minimum insurance requirements provided in Exhibit C. Recipient may specify insurance requirements of its contractor(s) above the minimum insurance requirements specified in Exhibit C. Recipient shall verify its contractor(s) meet the insurance requirements in Exhibit C.
 - iv. Recipient shall determine insurance requirements, insurance types and amounts, as deemed appropriate based on the risk of the work outlined within the subagreement. Recipient shall specify insurance requirements and require its contractor(s) to meet the insurance requirements. Recipient shall obtain proof of the required insurance coverages, as applicable, from any contractor providing services related to the subagreement.
 - v. Recipient shall require its contractor(s) to require and verify that all subcontractors carry insurance coverage that the contractor(s) deems appropriate based on the risks of the subcontracted work.
- c. **Procurements.** Recipient shall make purchases of any equipment, materials, or services for the Project under procedures that comply with Oregon law, including all applicable provisions of the Oregon Public Contracting Code, Oregon Revised Statute (ORS) 279 A, B, and C, and rules, ensuring that:
- i. All applicable clauses required by federal statute, executive orders and their implementing regulations are included in each competitive procurement; and
 - ii. All procurement transactions are conducted in a manner providing full and open competition.
- d. **Self-Performing Work.** Recipient must receive prior approval from ODOT for any self-performing work.
- e. **Conflicts of Interest.** Recipient's public officials shall comply with Oregon's government ethics laws, ORS 244.010 *et seq.*, as those laws may be subsequently amended.

9. Termination

- a. **Mutual Termination.** This Agreement may be terminated by mutual written consent of the Parties.
- b. **Termination by ODOT.** ODOT may terminate this Agreement effective upon delivery of written notice of termination to Recipient, or at such later date as may be established by ODOT in such written notice, under any of the following circumstances:
 - i. If Recipient fails to perform the Project within the time specified in this Agreement, or any extension of such performance period;
 - ii. If Recipient takes any action pertaining to this Agreement without the approval of ODOT and which under the provisions of this Agreement would have required ODOT's approval;
 - iii. If Recipient fails to perform any of its other obligations under this Agreement, and that failure continues for a period of 10 calendar days after the date ODOT delivers Recipient written notice specifying such failure. ODOT may agree in writing to an extension of time if it determines Recipient instituted and has diligently pursued corrective action;
 - iv. If ODOT fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow ODOT, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement;
 - v. If Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement; or
 - vi. If the Project would not produce results commensurate with the further expenditure of funds.
- c. **Termination by Either Party.** Either Party may terminate this Grant Agreement upon at least ten (10) days' notice to the other Party and failure of the other Party to cure within the period provided in the notice, if the other Party fails to comply with any of the terms of this Grant Agreement.
- d. **Rights upon Termination; Remedies.** Any termination of this Grant Agreement shall not prejudice any rights or obligations accrued before termination. The remedies set forth in this Grant Agreement are cumulative and are in addition to any other rights or remedies available at law or in equity.

10. GENERAL PROVISIONS

- a. **Contribution.**
 - i. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against ODOT or Recipient with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.
 - ii. With respect to a Third Party Claim for which ODOT is jointly liable with Recipient (or would be if joined in the Third Party Claim), ODOT shall contribute to the amount of expenses (including attorneys' fees),

judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Recipient in such proportion as is appropriate to reflect the relative fault of ODOT on the one hand and of the Recipient on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of ODOT on the one hand and of Recipient on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. ODOT's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if ODOT had sole liability in the proceeding.

- iii.** With respect to a Third Party Claim for which Recipient is jointly liable with ODOT (or would be if joined in the Third Party Claim), Recipient shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by ODOT in such proportion as is appropriate to reflect the relative fault of Recipient on the one hand and of ODOT on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Recipient on the one hand and of ODOT on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Recipient's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.
- b. Dispute Resolution.** The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
- c. Amendments.** This Agreement may be amended or extended only by a written instrument signed by both Parties and approved as required by applicable law.
- d. Duplicate Payment.** Recipient is not entitled to compensation or any other form of duplicate, overlapping or multiple payments for the same work performed under this Agreement from any agency of the State of Oregon or the United States of America or any other party, organization or individual.
- e. No Third-Party Beneficiaries.** ODOT and Recipient are the only Parties to this Agreement and are the only Parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly or indirectly, to a third person unless such a third person is individually identified by name herein and expressly described as an intended beneficiary of the terms of this Agreement.
- f. Notices.** Except as otherwise expressly provided in this Agreement, any communications between the Parties hereto or notices to be given hereunder shall be given in writing by personal delivery, email or mailing the same, postage prepaid, to Recipient Contact or ODOT Contact at the address or number set forth on the signature page of this Agreement, or to such other addresses or numbers as either Party may hereafter indicate pursuant to this Section 10(g). Any communication or notice personally delivered shall be deemed to be given when actually delivered. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine, and to be effective against ODOT, such facsimile transmission must be confirmed by telephone notice to ODOT Contact. Any communication by email shall be deemed to be given when the recipient of the email acknowledges receipt of the email. Any communication or notice mailed shall be deemed to be given when received.

- g. Governing Law, Consent to Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between ODOT (or any other agency or department of the State of Oregon) and Recipient that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County in the State of Oregon. In no event shall this section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.
- h. Compliance with Law.** Recipient shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Agreement or to the implementation of the Project, including without limitation as described in Exhibit B. Without limiting the generality of the foregoing, Recipient expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. Recipient agrees to comply with the requirements of ORS 366.514, Use of Highway Fund for footpaths and bicycle trails.
- i. Insurance; Workers' Compensation.** All employers, including Recipient, that employ subject workers who provide services in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Employer's liability insurance with coverage limits of not less than \$500,000 must be included. Recipient shall ensure that each of its subrecipient(s), contractor(s), and subcontractor(s) complies with these requirements.
- j. Independent Contractor.** Recipient shall perform the Project as an independent contractor and not as an agent or employee of ODOT. Recipient has no right or authority to incur or create any obligation for or legally bind ODOT in any way. ODOT cannot and will not control the means or manner by which Recipient performs the Project, except as specifically set forth in this Agreement. Recipient is responsible for determining the appropriate means and manner of performing the Project. Recipient acknowledges and agrees that Recipient is not an "officer", "employee", or "agent" of ODOT, as those terms are used in ORS 30.265, and shall not make representations to third parties to the contrary.
- k. Severability.** If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held to be invalid.
- l. Counterparts.** This Agreement may be executed in two or more counterparts, each of which is an original and all of which together are deemed one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart.
- m. Integration and Waiver.** This Agreement, including all Exhibits, constitutes the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. The delay or failure of either party to enforce any provision of this Agreement shall not constitute a waiver by that party of that or any other provision. Recipient, by the signature below of its authorized representative, acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

Recipient/ODOT
No. 73000-00004323

THE PARTIES, by execution of this Agreement, acknowledge that their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

The Oregon Transportation Commission approved use of Type A, funds for the project described in this Agreement on June 16, 2021.

Recipient's project is in the 2018-2021 Statewide Transportation Improvement Program (STIP), (Key No. 22501) that was adopted by the Oregon Transportation Commission on July 20, 2017 (or subsequently approved by amendment to the STIP).

Signature Page to Follow

Recipient/ODOT
No. 73000-00004323

Electronic Signatures. *The Parties agree that signatures showing on PDF documents, including but not limited to PDF copies of the Agreement, Work Orders, and amendments, submitted or exchanged via email are “Electronic Signatures” under ORS Chapter 84 and bind the signing Party and are intended to be and can be relied upon by the Parties. State reserves the right at any time to require the submission of the hard copy originals of any documents.*

Recipient, by and through its elected officials

By _____
Mayor or (Legally designated representative)

Name _____
(printed)

Date _____

By _____
City Recorder or (Legally designated representative)

Name _____
(printed)

Date _____

**LEGAL REVIEW APPROVAL
(If required in Recipient’s process)**

By _____
Recipient’s Legal Counsel

Date _____

Recipient Contact:

Mark Morgan, Assistant City Manager
City of Hermiston
180 NE 2nd Street
Hermiston, Oregon 97838
Phone:(541)567-5521
mmorgan@hermiston.or.us

ODOT Contact:

Michelle Tragesser, Local Agency Liaison
Oregon Department of Transportation
3012 Island Avenue
La Grande, Oregon 97850
Phone: (541) 963-1353
Michelle.TRAGESSER@odot.state.or.us

STATE OF OREGON, by and through its
Department of Transportation

By _____
Delivery and Operations Divisions Administrator

Name _____
(printed)

Date _____

APPROVAL RECOMMENDED

By _____
Region 5 Manager

Name Craig Sipp _____
(printed)

Date _____

**APPROVED AS TO LEGAL SUFFICIENCY
(For funding over \$150,000)**

By _____
Assistant Attorney General

Date _____

IOF Manager:

Cecelia Gilbert
555 13th Street NE
Salem, OR 97301-4178
Phone: 503-986-3528
Cecelia.Gilbert@odot.state.or.us

EXHIBIT A

Project Description

Agreement No. 73000-00004323

Project Name: South Hermiston Industrial Park (E. Penney Extension)

A. PROJECT DESCRIPTION

1. Recipient agrees to make roadway improvements near the South Hermiston Industrial Park. The improvements will consist of extending E. Penney Avenue to connect to US 395 (Umatilla – Stanfield Highway), which meets IOF criteria. The improvements shall include, but not limited to the following:
 - Constructing two 12’ Travel lanes
 - 6’ shoulders
 - Bi-directional Travel
 - Curb, gutter, and Sidewalks
 - Storm water collection/infiltration to existing city owned property.

These improvements will provide safety and vital roadway connections between E. Penney Avenue and US 395, which will create a more direct access to the Industrial Park, with not cross-traffic turns after leaving Highway 395. Enable truck traffic to bypass the more densely developed SE Kelly Blvd., provide more direct access to adjacent industrial sites, and create recruitment of new employer(s). The location of the Project is approximately as shown on the sketch map attached hereto, marked “Exhibit A,” and by this reference made a part hereof.

Recipient acknowledges that such Project improvements funded under this Agreement may trigger other Recipient responsibilities under the Americans with Disabilities Act. Recipient agrees that it is solely responsible for ensuring Americans with Disabilities Act compliance pursuant to Exhibit B, Recipient Requirements, Section 5.

The OTC approved use of Type A IOF funds for the Project described in this Agreement at its June 16, 2021, meeting. Recipient will comply with all applicable provisions of ODOT’s IOF Policy Guidelines, revised and approved by the OTC on March 19, 2015.

South Hermiston Industrial Park Master Plan



GeoEye, Maxar, Microsoft

Potential IOF Street Improvement



Path: I:\Planning\GIS\Projects\South Hermiston LID\South Hermiston Industrial Park Master Plan.aprx

EXHIBIT B

Recipient Requirements

1. Recipient shall comply with all applicable provisions of ORS 279C.800 to 279C.870 pertaining to prevailing wage rates and including, without limitation, that workers on the Project shall be paid not less than rates in accordance with ORS 279C.838 and 279C.840 pertaining to wage rates and ORS 279C.836 pertaining to having a public works bond filed with the Construction Contractors' Board.
2. Recipient shall notify ODOT's Contact in writing when any contact information changes during the Agreement.
3. Recipient shall, at its own expense, maintain and operate the Project upon completion and throughout the useful life of the Project at a minimum level that is consistent with normal depreciation or service demand or both. The Parties agree that the useful life of the Project is defined as seven (7) years from its completion date (the "Project Useful Life"). Unless otherwise negotiated, and after the Project Useful Life, ODOT will maintain that portion of the project that is within its jurisdiction.
4. Recipient shall maintain insurance policies with responsible insurers or self-insurance programs, insuring against liability and risk of direct physical loss, damage or destruction of the Project, at least to the extent that similar insurance is customarily carried by governmental units constructing, operating and maintaining similar facilities. If the Project or any portion is destroyed, insurance proceeds will be paid to ODOT, unless Recipient has informed ODOT in writing that the insurance proceeds will be used to rebuild the Project.

5. Americans with Disabilities Act Compliance

- a. **State Highway:** For portions of the Project located on or along the State Highway System or a State-owned facility ("state highway"):
 - i. Recipient shall utilize ODOT standards to assess and ensure Project compliance with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 as amended (together, "ADA"), including ensuring that all sidewalks, curb ramps, pedestrian-activated signals meet current ODOT Highway Design Manual standards;
 - ii. Recipient shall follow ODOT's processes for design, construction, or alteration of sidewalks, curb ramps, and pedestrian-activated signals, including using the ODOT Highway Design Manual, ODOT Design Exception process, ODOT Standard Drawings, ODOT Construction Specifications, providing a temporary pedestrian accessible route plan and current ODOT Curb Ramp Inspection form;
 - iii. At Project completion, Recipient shall send a completed ODOT Curb Ramp Inspection Form 734-5020 to the address on the form and to State's Project Manager for each curb ramp constructed or altered as part of the Project. The completed form is the documentation required to show that each curb ramp meets ODOT standards and is ADA compliant. ODOT's fillable Curb Ramp Inspection Form and instructions are available at the following address:

<https://www.oregon.gov/ODOT/Engineering/Pages/Accessibility.aspx>
 - iv. Recipient shall promptly notify ODOT of Project completion and allow ODOT to inspect Project sidewalks, curb ramps, and pedestrian-activated signals located on or along a state highway prior to acceptance of Project by Recipient and prior to release of any Recipient contractor.

- v. Recipient shall ensure that temporary pedestrian routes are provided through or around any Project work zone. Any such temporary pedestrian route shall include directional and informational signs, comply with ODOT standards, and include accessibility features equal to or better than the features present in the existing pedestrian facility. Recipient shall also ensure that advance notice of any temporary pedestrian route is provided in accessible format to the public, people with disabilities, disability organizations, and ODOT at least 10 days prior to the start of construction.
- b. Local Roads:** For portions of the Project located on Recipient roads or facilities that are not on or along a state highway:
- i. Recipient shall ensure that the Project, including all sidewalks, curb ramps, and pedestrian-activated signals, is designed, constructed and maintained in compliance with the ADA.
 - ii. Recipient may follow its own processes or may use ODOT's processes for design, construction, or alteration of Project sidewalks, curb ramps, and pedestrian-activated signals, including using the ODOT Highway Design Manual, ODOT Design Exception process, ODOT Standard Drawings, ODOT Construction Specifications, providing a temporary pedestrian accessible route plan and current Curb Ramp Inspection form, available at:

<https://www.oregon.gov/ODOT/Engineering/Pages/Accessibility.aspx>;

Additional ODOT resources are available at the above-identified link. ODOT has made its forms, processes, and resources available for Recipient's use and convenience.
 - iii. Recipient assumes sole responsibility for ensuring that the Project complies with the ADA, including when Recipient uses ODOT forms and processes. Recipient acknowledges and agrees that ODOT is under no obligation to review or approve Project plans or inspect the completed Project to confirm ADA compliance.
 - iv. Recipient shall ensure that temporary pedestrian routes are provided through or around any Project work zone. Any such temporary pedestrian route shall include directional and informational signs and include accessibility features equal to or better than the features present in the existing pedestrian route. Recipient shall also ensure that advance notice of any temporary pedestrian route is provided in accessible format to the public, people with disabilities, and disability organizations prior to the start of construction.
- c.** Recipient shall ensure that any portions of the Project under Recipient's maintenance jurisdiction are maintained in compliance with the ADA throughout the useful life of the Project. This includes, but is not limited to, Recipient ensuring that:
- i. Pedestrian access is maintained as required by the ADA,
 - ii. Any complaints received by Recipient identifying sidewalk, curb ramp, or pedestrian-activated signal safety or access issues are promptly evaluated and addressed,
 - iii. Recipient, or abutting property owner, pursuant to local code provisions, performs any repair or removal of obstructions needed to maintain the Project in compliance with the ADA requirements that were in effect at the time the Project was constructed or altered,
 - iv. Any future alteration work on Project or Project features during the useful life of the Project complies with the ADA requirements in effect at the time the future alteration work is performed, and
 - v. Applicable permitting and regulatory actions are consistent with ADA requirements.
- d.** Maintenance obligations in this Section 5 shall survive termination of this Agreement.

6. Work Performed within ODOT's Right of Way

- a. Prior to the commencement of work, Recipient shall obtain, or require its contractor to obtain, permission from the appropriate ODOT District Office to work on or along the state highway. This Agreement does not provide permission to work on or along the state highway.
- b. If the Project includes traffic control devices (see ODOT's Traffic Manual, Chapter 5, for a description of traffic control devices) on or along a state highway, Recipient shall, pursuant to Oregon Administrative Rule (OAR) 734-020-0430, obtain the approval of the State Traffic Engineer prior to design or construction of any traffic control device being installed.
- c. Recipient shall enter into a separate traffic signal agreement with ODOT to cover obligations for any traffic signal being installed on a state highway.
- d. Recipient shall ensure that its electrical inspectors possess a current State Certified Traffic Signal Inspector certificate before the inspectors inspect electrical installations on state highways. The ODOT's District Office shall verify compliance with this requirement before construction. The permit fee should also cover the State electrician's supplemental inspection.

7. General Standards

The Project shall be completed within industry standards and best practices to ensure that the functionality and serviceability of the Program's investment meets the intent of the application and the Program.

8. Land Use Decisions

- a. Recipient shall obtain all permits, "land use decisions" as that term is defined by ORS 197.015(1) (2020), and any other approvals necessary for Recipient to complete the Project by the Project completion deadline identified in Exhibit A (each a "Land Use Decision" and collectively, "Land Use Decisions").
- b. If at any time before the Availability Termination Date identified in Section 1 of this Agreement ODOT concludes, in its sole discretion, that Recipient is unlikely to obtain one or more Land Use Decisions before the Availability Termination Date, ODOT may (i) suspend the further disbursement of Grant Funds upon written notice to Recipient (a "Disbursement Suspension") and (ii) exercise any of its other rights and remedies under this Agreement, including, without limitation, terminating the Agreement and recovering all Grant Funds previously disbursed to Recipient.
- c. If after a Disbursement Suspension ODOT concludes, in its sole discretion and based upon additional information or events, that Recipient is likely to timely obtain the Land Use Decision or Decisions that triggered the Disbursement Suspension, ODOT will recommence disbursing Grant Funds as otherwise provided in this Agreement.
- d. This Section 8 is in addition to, and not in lieu of, ODOT's rights and remedies under Section 5.f ("Recovery of Grant Funds") of this Agreement.

9. Website

Recipient shall provide ODOT a link to any website created about the Project identified in Exhibit A before any costs being considered eligible for reimbursement. Recipient shall notify the ODOT Contact in writing when the link changes during the term of this Grant Agreement.

10. Immediate Opportunity Fund

a. Required Reporting:

- i. Recipient, within sixty (60) months (5 years) after road improvements have been completed Recipient shall provide to ODOT documentation that seventy (70) new full-time equivalent (FTE) positions have been retained or created by the road improvements made as part of this Project. If such documentation cannot be provided from the City of Hermiston that seventy (70) FTE positions have been retained or new FTE positions created and filled by the road improvements made, Recipient shall reimburse ODOT all IOF funds distributed to Recipient as outlined below.
- ii. The targeted number of new FTE positions is the number approved by the OTC. "New FTE positions" shall mean new positions created, filled and remaining on the payroll for at least one (1) year.
- iii. The verification documentation shall be a letter on city letterhead signed by an official of City of Hermiston duly authorized to represent the City of Hermiston certifying the number of FTE positions retained *or* new FTE positions. ODOT, Oregon Business Development Division (OBDD) or the Oregon Secretary of State Audits Division, shall have the right to audit the payroll records of City of Hermiston in order to confirm information in the letter.
- iv. If the documentation shows a deficiency in the number of FTE positions, Recipient shall reimburse ODOT on a pro-rated basis. The formula for the pro-rated amount of IOF funds paid to Recipient will be an amount equal to the number of actual FTE positions divided by the number of projected FTE positions multiplied by total IOF funds available. Reimbursement will be the amount actually distributed less the pro-rated amount.
- v. At Recipient's request and upon consultation with OBDD, ODOT may extend the time allotted to produce job growth. Any extension will only be effective upon amendment to this Agreement.

EXHIBIT C Subagreement Insurance Requirements

1. GENERAL.

- a. If the Project is on or along a state highway, Recipient shall require in its first tier subagreements with entities that are not units of local government as defined in ORS 190.003, if any, to: i) obtain insurance specified under TYPES AND AMOUNTS and meeting the requirements under ADDITIONAL INSURED, "TAIL" COVERAGE, NOTICE OF CANCELLATION OR CHANGE, and CERTIFICATES OF INSURANCE before performance under the subagreement commences, and ii) maintain the insurance in full force throughout the duration of the subagreement. The insurance must be provided by insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to ODOT. Recipient shall not authorize work to begin under subagreements until the insurance is in full force. Thereafter, Recipient shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. Recipient shall incorporate appropriate provisions in the subagreement permitting it to enforce compliance with the insurance requirements and shall take all reasonable steps to enforce such compliance. In no event shall Recipient permit work under a subagreement when Recipient is aware that the contractor is not in compliance with the insurance requirements. As used in this section, "first tier" means a subagreement in which the Recipient is a Party.
- b. The insurance specified below is a minimum requirement that the contractor within the subagreement shall meet. Recipient may determine insurance types and amounts in excess to the minimum requirement as deemed appropriate based on the risks of the work outlined within the subagreement.
- c. Recipient shall require the contractor(s) to require that all of its subcontractors carry insurance coverage that the contractor deems appropriate based on the risks of the subcontracted work. Contractor shall obtain proof of the required insurance coverages, as applicable, from any subcontractor providing Services related to the Contract.

2. TYPES AND AMOUNTS.

a. WORKERS COMPENSATION.

All employers, including Contractor, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide **Workers' Compensation Insurance** coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). The coverage shall include Employer's Liability Insurance with limits not less than \$500,000 each accident. **Contractor shall require compliance with these requirements in each of its subcontractor contracts.**

b. COMMERCIAL GENERAL LIABILITY.

Commercial General Liability Insurance shall be issued on an occurrence basis covering bodily injury and property damage and shall include personal and advertising injury liability, products and completed operations, and contractual liability coverage. When work to be performed includes operations or activity within 50 feet of any railroad property, bridge, trestle, track, roadbed, tunnel, underpass or crossing, the Contractor shall provide the Contractual Liability – Railroads CG 24 17 endorsement, or equivalent, on the Commercial General Liability policy.

Amounts below are a minimum requirement as determined by ODOT:

Coverage shall be written on an occurrence basis in an amount of not less than \$1,000,000 per occurrence. Annual aggregate limit shall not be less than \$2,000,000.

c. AUTOMOBILE Liability Insurance: Automobile Liability.

Recipient/ODOT
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Automobile Liability Insurance covering Contractor's business-related automobile use covering all owned, non-owned, or hired vehicles for bodily injury and property. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for Commercial General Liability and Automobile Liability). Amount below is a minimum requirement as determined by ODOT:

Coverage shall be written with a combined single limit of not less than \$1,000,000.

d. ADDITIONAL INSURED.

The Commercial General Liability Insurance and Automobile Liability Insurance must include the **“State of Oregon, the Oregon Transportation Commission and the Department of Transportation, and their respective officers, members, agents and employees”** as an **endorsed** Additional Insured but only with respect to the contractor's activities to be performed under the Subcontract. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

Additional Insured Endorsements on the Commercial General Liability shall be written on ISO Form CG 20 10 07 04, or equivalent, with respect to liability arising out of ongoing operations and ISO Form CG 20 37 07 04, or equivalent, with respect to liability arising out of completed operations. Additional Insured Endorsements shall be submitted with the Certificate(s) of Insurance and must be acceptable to the Recipient.

e. “TAIL” COVERAGE.

If any of the required insurance policies is on a “claims made” basis, such as professional liability insurance or pollution liability insurance, the contractor shall maintain either “tail” coverage or continuous “claims made” liability coverage, provided the effective date of the continuous “claims made” coverage is on or before the effective date of the Subcontract, for a minimum of twenty-four (24) months following the later of : (i) the contractor's completion and Recipient's acceptance of all Services required under the Subcontract or, (ii) the expiration of all warranty periods provided under the Subcontract. Notwithstanding the foregoing twenty-four (24) month requirement, if the contractor elects to maintain “tail” coverage and if the maximum time period “tail” coverage reasonably available in the marketplace is less than the twenty-four (24) month period described above, then the contractor may request and ODOT may grant approval of the maximum “tail” coverage period reasonably available in the marketplace. If ODOT approval is granted, the contractor shall maintain “tail” coverage for the maximum time period that “tail” coverage is reasonably available in the marketplace.

f. NOTICE OF CANCELLATION OR CHANGE.

The contractor or its insurer must provide thirty (30) days' written notice to Recipient before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

g. CERTIFICATE(S) OF INSURANCE.

Recipient shall obtain from the contractor a certificate(s) of insurance for all required insurance before the contractor performs under the Subcontract. The certificate(s) or an attached endorsement must specify: i) **“State of Oregon, the Oregon Transportation Commission and the Department of Transportation, and their respective officers, members, agents and employees”** as an endorsed Additional Insured in regards to the Commercial General Liability and Automobile Liability policies and ii) that all liability insurance coverages shall be primary and non-contributory with any other insurance and self-insurance, with exception of Workers' Compensation..

The Recipient shall immediately notify ODOT of any change in insurance coverage.

EXHIBIT D
Supporting Documentation



April 14, 2021

Kris Strickler, Director
Oregon Department of
Transportation 355 Capitol St. NE,
Room 135
Salem, Oregon 97301-3871

RE: Immediate Opportunity Fund (IOF) Request - \$596,600 (Type
A) Extension of E Penney Ave to existing intersection with Hwy.
395 City of Hermiston

Dear Director Strickler:

Business Oregon and the Oregon Department of Transportation (ODOT) have worked closely with the City of Hermiston to expand development opportunities at the South Hermiston Industrial Park. The extension of E Penney Blvd. through to an existing intersection with Hwy. 395 is essential to improve access to undeveloped sites, improve traffic flows, and to decrease the potential for safety issues presented by alternative routes. A specific business recruitment project has expressed interest in developing a distribution center along E Penney Blvd. and their decision to move forward with the project is contingent on the City's commitment to construct the described road improvements.

Background:

The South Hermiston Industrial Park is over 100 acres of industrially zoned land near Hwy 395 south of Hermiston. Over the last 12 years, the City and its funding partners have made significant infrastructure investments to prepare the area for development, including:

- Development of E. Penny Ave., SE 9th Street, SE 10th St., and E Cook Ct.
- Development of 7,400LF of new water main
- Development of 6,700LF of new sewer main

The park has several large, undeveloped tracts that have received interest from companies in industries that largely reflect the industrial profile of the region as a whole: value added

agriculture, light manufacturing, and distribution & logistics. Despite the City's recent investments, development of these tracts has been hindered, in some cases, by transportation infrastructure that is less than optimal for truck traffic.

An auto parts company has expressed interest in acquiring land and developing a distribution center near the intersection of SE 9th St. and E Penney Ave. The facility would be constructed in three phases of roughly 200,000 square feet per phase with construction of Phase I beginning in mid 2021 and operational by third quarter 2022. Phase I would create about 70 new jobs with average wages expected to be on par with the county average. Phase I would generate about 40 truck trips per day, which is expected to grow to around 100 per day when Phase III is completed.

The Project:

Current access to the proposed project site is circuitous, requiring either cross-traffic turns or trips through more densely developed industrial areas (SE Kelli Blvd). By extending E Penney Ave through to an existing intersection with Hwy 395, truck traffic serving the proposed distribution center would have more direct access with less potential for congestion. The project scope consists of constructing 1,500 lineal feet of road as described below:

- Two 12' travel lanes
- 6' shoulders
- Bi-directional travel
- Curb, gutter, and sidewalk
- Stormwater collection/infiltration to existing city owned property

Benefits of the project would include:

- Recruitment of a new employer, creating about 70 new primary jobs in rural Eastern Oregon.
- More direct access to the site with no cross-traffic turns after leaving Highway 395.
- Truck traffic serving the proposed project would bypass the more densely developed SE Kelly Blvd.
- Providing transportation access to adjacent industrial sites.
- Establishes access point to US395 at site of future traffic signal called for in adopted TSP, which will allow for channelization of truck traffic and improve ingress/egress to the park.

A map illustrating the project is enclosed.

Budget Summary

The total estimated project cost for design, engineering, and construction is \$1,193,200

Activity	Amount
Design & Engineering	\$278,640
Roadway Construction	\$914,560
Total	\$1,193,200

Recipient/ODOT
No. 73000-00004323

Immediate Opportunity Fund Program Type

This project falls under the category of Type A: Specific economic development projects that affirm job retention and job creation opportunities.

How the Project Meets Immediate Opportunity Fund Criteria

- This project is projected to create approximately 70 full time distribution warehouse jobs in rural Eastern Oregon with average wages that are on par with county averages.
- This project requires an immediate commitment of funds to address transportation access, traffic flow, and safety concerns associated with development of a distribution center.
- The improvements will be made in a public right-of-way owned and maintained by the City of Hermiston.
- The proposed grant does not exceed 50% of project costs. City of Hermiston has all other funds necessary for successful completion of the project secured.
- The project, and private development associated with the project, do or will comply with all necessary land use and environmental requirements and will be able to obtain all necessary permits.
- All other infrastructure needed for development (water, sewer, etc.) are in place.
- The project, and private development associated with the project, are consistent with regional priorities for community and economic development developed by the Eastern Oregon Regional Solutions Advisory Committee.

This project has been reviewed by the Business Oregon Regional Development Officer, ODOT Region 5 Region Manager, and the Eastern Oregon Regional Solutions Team. This project meets priorities in the Business Oregon strategic plan, *Innovate Oregon's Economy and Grow Small and Middle-market Companies*. The strategic plan encourages prioritizing infrastructure investments to directly promote business growth and enhance local economic development capacity. This project is also part of Hermiston's ODOT-approved Transportation System Plan.

Business Oregon recommends an Immediate Opportunity Fund award of \$596,600 to the City of Hermiston to construct the improvements described above which will improve transportation flow and business access, and bring 70 new primary jobs to rural Eastern Oregon.



Sincerely,

Sophorn Cheang
Director

Recipient/ODOT

No. 73000-00004323

c: Craig Sipp, Region 5 Manager,
ODOT Ken Patterson, Area
Manager, ODOT

Chris Cummings, Assistant Director, Business Oregon

Ryan DeGrofft, Regional Development Officer, Business
Oregon Shanna Bailey, Regional Project Manager, Business
Oregon

Recipient/ODOT
No. 73000-00004323



Oregon

Kate Brown, Governor

Oregon Transportation Commission

Office of the Director, MS 11
355 Capitol St NE
Salem, OR 97301-3871

DATE: June 10, 2021

TO: Kris Strickler,
Director

FROM: Craig Sipp,
Region 5 Manager

SUBJECT: Approve Immediate Opportunity Fund for the City of Hermiston

Requested Action:

Approve awarding \$596,600 in Type A Immediate Opportunity Funds (IOF) to the City of Hermiston (City) and adding the project to the 2021-2024 Statewide Transportation Improvement Program (STIP) for public road improvements associated with a new interstate parts distribution center.

STIP Amendment Funding Summary:

Type A Immediate Opportunity Funds (IOF) – Current Fund Balance: **\$6,543,000**

New Project:

E Penney Ave – Jct US395 (Hermiston) IOF		COST	
PHASE	YEAR	Current	Proposed
Preliminary Engineering	2021	\$0	\$139,320
Right of Way	N/A	\$0	\$0
Utility Relocation	N/A	\$0	\$0
Construction	2019	\$0	\$457,280
TOTAL			\$596,600

Background:

The South Hermiston Industrial Park is over 100 acres of industrially zoned land near Highway 395 south of Hermiston. Over the last 12 years, the City and its funding partners have made significant infrastructure investments to prepare the area for development, including:

- Development of East Penny Avenue, Southeast (SE) 9th Street, SE 10th St., and East Cook Court
- Development of 7,400 Lineal Feet of new water main
- Development of 6,700 Lineal Feet of new sewer main

The park has several large, undeveloped tracts that have received interest from companies in industries that largely reflect the industrial profile of the region as a whole: value added agriculture, light manufacturing, and distribution & logistics. Despite the City's recent investments, development of these tracts has been hindered, in some cases, by transportation infrastructure that is less than optimal for truck traffic.

An auto parts company has expressed interest in acquiring land and developing a distribution center near the intersection of SE 9th Street and East Penney Avenue. The facility would be constructed in three phases of roughly 200,000 square feet per phase with construction of Phase I beginning in mid-2021 and operational by third quarter 2022. Phase I would create about 70 new jobs with average wages expected to be on par with the county average. Phase I would generate about 40 truck trips per day, which is expected to grow to around 100 per day when Phase III is completed.

Project Description:

Current access to the proposed project site is circuitous, requiring either cross-traffic turns or trips through more densely developed industrial areas (SE Kelli Blvd). By extending East Penney Avenue through to an existing intersection with Highway 395, truck traffic serving the proposed distribution center would have more direct access with less potential for congestion. The project scope consists of constructing 1,500 lineal feet of road as described below:

- Two 12' travel lanes
- 6' shoulders
- Bi-directional travel
- Curb, gutter, and sidewalk
- Stormwater collection/infiltration to existing city owned property

Benefits of the project would include:

- Recruitment of a new employer, creating about 70 new primary jobs in rural Eastern Oregon.
- More direct access to the site with no cross-traffic turns after leaving Highway 395.
- Truck traffic serving the proposed project would bypass the more densely developed SE Kelly Blvd.
- Providing transportation access to adjacent industrial sites.
- Establishes access point to U.S. 395 at site of future traffic signal called for in adopted TSP, which will allow for channelization of truck traffic and improve ingress/egress to the park.

A map illustrating the project is attached.

Budget Summary:

The total estimated cost for design, engineering and design is \$1,193,200. Type A IOF grants provide up to 50% cost reimbursement. ODOT would award a maximum of \$596,600 to this project.

- | | |
|--------------------------|------------------|
| • Design and Engineering | \$278,640 |
| • Roadway Construction | <u>\$914,560</u> |
| • Total Cost | \$1,193,200 |

IOF Program Background

The purpose of the IOF is to support primary economic development in Oregon through the construction and improvement of highway facilities. Access to this fund is discretionary, and

applications may be submitted at any time so long as there is a balance within the program. The fund may only be used when other sources of financial support are unavailable or insufficient; the IOF is not a replacement of substitute for other funding sources. The program is jointly managed with Business Oregon.

This biennium, the IOF was provided \$7,000,000 across four categories.

Type	Use	Limit per Biennium	Limit per Project
Type A	Specific economic development projects that affirm job retention and job creation opportunities	\$7,000,000	\$1,000,000
Type B	Revitalization of business or industrial centers to support economic development	\$1,000,000	\$250,000
Type C	Preparation of Oregon Certified Project Ready Industrial Sites	\$1,500,000	\$500,000
Type D	Preparation of Regionally Significant Industrial Areas	\$3,000,000	\$1,000,000

Project Funding and Schedule:

The City of Hermiston is seeking approval of \$596,600 in Type A Immediate Opportunity Funds. The total project cost for the improvement of East Jenney Avenue is estimated to be \$ 1,193,200. The City is seeking one-half of this amount, or \$596,600, in funding from the Immediate Opportunity Fund.

IOF Program Type:

This project falls under the category of Type A: Benefits in terms of specific economic development project that affirm job retention and job creation opportunities.

How the Project Meets Immediate Opportunity Fund Criteria

The Immediate Opportunity Fund grant represents 50% of the estimated cost for the project. The remaining funds will be provided by the City of Hermiston. If approved, an intergovernmental agreement will be executed.

- This project is projected to create approximately 70 full time distribution warehouse jobs in rural Eastern Oregon with average wages that are on par with county averages.
- This project requires an immediate commitment of funds to address transportation access, traffic flow, and safety concerns associated with development of a distribution center.
- The improvements will be made in a public right-of-way owned and maintained by the City of Hermiston.
- The proposed grant does not exceed 50% of project costs.
- City of Hermiston has all other funds necessary for successful completion of the project secured.
- The project, and private development associated with the project, do or will comply with all necessary land use and environmental requirements and will be able to obtain all necessary permits.

ODOT/Recipient
Agreement No. 73000-00004323

- All other infrastructure needed for development (water, sewer, etc.) are in place.
- The project, and private development associated with the project, are consistent with regional priorities for community and economic development developed by the Eastern Oregon Regional Solutions Advisory Committee.

This project has been reviewed by the Business Oregon Regional Development Officer, ODOT Region 5 Region Manager, and the Eastern Oregon Regional Solutions Team. This project meets priorities in the Business Oregon strategic plan, Innovate Oregon’s Economy and Grow Small and Middle-market Companies. The strategic plan encourages prioritizing infrastructure investments to directly promote business growth and enhance local economic development capacity. This project is also part of Hermiston’s ODOT-approved Transportation System Plan.

Business Oregon recommends an Immediate Opportunity Fund award of \$596,600 to the City of Hermiston to construct the improvements described above which will improve transportation flow and business access, and bring 70 new primary jobs to rural Eastern Oregon.

Options:

With approval, \$596,600 in IOF funds will be awarded to the City of Hermiston for improvements to Lind Road and Union Street, which will improve transportation flow and connect to the considerable investment made by AWS for this project.

Without approval, insufficient and unsafe connectivity will result to this development which is already in progress. It will also put the city of Hermiston at a disadvantage for future expansion of the AWS facility.

Attachments:

- Attachment 1 – Location and Vicinity Maps
- Attachment 2 – Business Oregon Recommendation to ODOT for IOF Award to the City of Hermiston
- Attachment 3 – IOF Commitment Table

Copies to:

Amanda Pietz	Travis Brouwer	Tom Fuller	Bob Gebhardt
Cooper Brown	Craig Sipp	John Svadlenak	Jeff Flowers
Alice Bibler	Kris Strickler	Amanda Sandvig	Arlene Santana
Jane Goode			

ODOT/Recipient
Agreement No. 73000-00004323

DATE: June 16, 2021

TO: Kris Strickler, Director

FROM: Jeff Flowers, Statewide Investments Management Section

SUBJECT: Approval

Requested Action:

Approve new Immediate Opportunity Fund (IOF) project, E Penney Ave – Jct US395 (Hermiston) in the amount of \$596,000.

Approval Signature:



Name: Kristopher W. Strickler

Title: Director