

WATER AND WASTEWATER SERVICE AGREEMENT

This WATER AND WASTEWATER SERVICE AGREEMENT (“**Agreement**”) is entered into as of this _____ day of _____, 2023 (the “**Effective Date**”) by and between the CITY OF HERMISTON, OREGON, a municipal corporation with offices at 180 NE 2nd St., Hermiston, OR 97838 (the “**City**”) and AMAZON DATA SERVICES, INC., a Delaware corporation with offices at 410 Terry Avenue North, Seattle, WA 98109 (“**ADS**”). The City and ADS are each referred to as a “**Party**,” and collectively as the “**Parties**.”

RECITALS

- A. The City owns and operates a potable water supply system comprised of water diversion, treatment, and distribution facilities that provide potable water to residents and businesses that are customers of the City (“**Potable Water System**”). The City also owns and operates a non-potable industrial water supply system comprised of water diversion, treatment, and distribution facilities that provide industrial water to industrial users that are customers of the City (the “**Regional Water System**”). Collectively, the Potable Water System and Regional Water System are referred to as the “**City Water System**.”
- B. ADS is developing two new data center campuses in the City, the **PDX 138 Campus** and the **PDX 245 Campus**, the operation of which requires constant sources of potable and industrial water supply. The City desires to provide potable and industrial water to the PDX 138 and PDX 245 Campuses, and is currently undertaking improvements to the Potable Water System to deliver potable water for domestic purposes (the “**Potable Water System Improvements**”) and improvements and upgrades to the Regional Water System to deliver temporary and permanent industrial cooling water to the campuses (the “**Regional Water System Improvements and Upgrades**”).
- C. At ADS’s request, the City and ADS desire to enter into an agreement that provides for water and sanitary sewer services for the PDX 138 and PDX 245 Campuses, as described below:
- a. With respect to the PDX 138 Campus: 1) the delivery from the Regional Water System of 1,400 gallons per minute (“gpm”) of temporary potable cooling water at a pressure of 50 pounds per square inch (“psi”) to the PDX 138 Campus by September 27, 2023; 2) the acceptance of up to 14,000 gallons per day

- (“gpd”) of thickened backwash and domestic sanitary sewer water from the PDX 138 Campus into the City’s sanitary sewer system by September 27, 2023; and 3) the delivery from the Potable Water System of 5,000 gpd of filtered potable water for domestic use by September 27, 2023. Upon the Port of Umatilla’s (the “**Port**”) delivery of 1,620 gpm of permanent non-potable water capacity at the PDX 138 Campus through the Regional Water System, ADS will abandon its continuous use of 1,400 gpm potable water connection at PDX 138, cease receiving potable water from the Regional Water System for industrial cooling needs except in the case of an emergency, and continue to receive potable water from the Potable Water System for domestic purposes only.
- b. With respect to the PDX 245 Campus: 1) the temporary delivery from the Regional Water System of 350 gpm of filtered potable water at a pressure of 50 psi to the PDX 245 Campus by August 1, 2024, until the Port’s delivery from the Regional Water System of 1,620 gpm of permanent non-potable industrial water at a pressure of 55 psi to the PDX 245 Campus, provided that the temporary potable cooling water capacity allocated under Recital C.a. shall be simultaneously reduced by 350 gpm (the physical connection for such temporary water will be completed by September 27, 2023); 2) the acceptance of up to 14,000 gpd of thickened backwash and domestic sanitary sewer water from the PDX 245 Campus into the City’s sanitary sewer system by September 1, 2024; and 3) the delivery from the Potable Water System of 5,000 gpd of filtered potable water for domestic use by September 1, 2024. Upon the Port’s delivery of the total 1,620 gpm of non-potable water capacity at the PDX 245 Campus, ADS will abandon its continuous use of 350 gpm potable water connection at PDX 245 except in the case of an emergency, cease receiving potable water from the Regional Water System for industrial cooling needs, and continue to receive potable water from the Potable Water System for domestic purposes only.

AGREEMENT

NOW THEREFORE, for and in consideration of the mutual promises, terms and understandings contained herein, and intending to be legally bound hereby, the Parties hereto do agree as follows:

ARTICLE 1 – DEFINITIONS AND INTERPRETATION

1.1 **Definitions.** As used in this Agreement, the following terms will have the meanings set forth below:

(a) **“ADS Indemnified Party”** means ADS and its Affiliates and their respective directors, officers, employees, agents, representatives, successors, and assigns.

(b) **“Affiliate”** means any entity that directly or indirectly controls, is controlled by or is under common control with ADS, including any direct or indirect subsidiary, parent, or sister company of ADS. For the purposes of this definition, the term “control” means the power to direct or cause the direction of the management or policies, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise.

(c) **“Applicable Law”** means all laws, statutes, rules, regulations, ordinances, codes, judgments, orders, approvals, tariffs, decrees, and other pronouncements having the effect of law of any Governmental Authority.

(d) **“Cease Data Center Operations”** means any of the following has occurred:

- The water meter supplying the campus water has not registered any flow within the previous 12 months.
- ADS has made a request to the Umatilla County Board of Property Tax Adjustment to reduce the property tax liability for the campus due to business closure.

(e) **“Damages”** means any loss, demand, claim, suit, action, assessment, damage, liability, cost, expense, fine, penalty, judgment, award or settlement, whether or not involving a Governmental Authority or third party claim, including related Fees and Costs, interest, and any amounts paid in investigation, defense or settlement of any of the foregoing. Except as specifically provided in this Agreement, “Damages” does not include, and neither Party will be liable for, any loss of profit and any other incidental, consequential, exemplary, or punitive damages, including, without limitation, lost profits, lost production or lost revenues, except to the extent such damages are awarded and actually paid to a third party.

(f) **“Fees and Costs”** means the reasonable fees and expenses of attorneys, experts, and other persons, and all court costs, fees, and related expenses incurred in connection with any arbitration, administrative, legal or equitable proceeding in any court, administrative body or arbitral forum.

(g) **“Governmental Authority”** means any national, state, provincial, local, tribal or municipal government, any political subdivision thereof or any other governmental, regulatory, quasi-governmental, judicial, public or statutory instrumentality, authority, body, agency, department, bureau, or entity with authority to bind a Party at law

(h) **“Latecomer”** means any person who in the future receives City water supply services from the City Water System within twenty (20) years of the date the Potable Water System Improvements or (20) years of the date the Regional Water System Improvements and Upgrades were completed.

(i) **“PDX 138 Industrial Water Connection”** means the industrial water connection point located on the PDX 138 Campus at the intersection of SE Kelli Blvd. and Feedville Rd., to be designed and constructed by ADS.

(j) **“PDX 138 Potable Water Connection”** means the potable water connection point located on the PDX 138 Campus at the intersection of SE Kelli Blvd. and Feedville Rd., to be designed and constructed by ADS.

(k) **“PDX 245 Industrial Water Connection”** means the industrial water connection point located on the PDX 245 Campus at the intersection of SE Kelli Blvd. and Feedville Rd., to be designed and constructed by ADS.

(l) **“PDX 245 Potable Water Connection”** means the potable water connection point located on the PDX 245 Campus at the intersection of SE Kelli Blvd. and Feedville Rd., to be designed and constructed by ADS.

(m) **“Port Agreement”** means the water services agreement entered between ADS and the Port for the Port’s supply of permanent non-potable cooling water to the PDX 138 and PDX 245 Campuses.

(n) **“Prudent Industry Practices”** means any of the practices, methods, and acts engaged in or approved by a significant portion of the water industry during the relevant time period, or any of the practices,

methods, and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, and expedition. Prudent Industry Practices is not intended to be limited to the optimum practice, method, or act, to the exclusion of all others, but rather is intended to include acceptable practices, methods, and acts generally accepted in the industry.

(o) **“Supply Chain Standards”** means the supply chain standards available at: <https://sustainability.aboutamazon.com/people/supply-chain>, as amended from time to time.

1.2 **Interpretation.** In this Agreement, unless the context otherwise requires, in the event of any conflict between the terms and conditions of the body of this Agreement with the terms and conditions of any Exhibit, the terms and conditions of the body of this Agreement will control.

ARTICLE 2– TERM, EFFECTIVE DATE, TERMINATION

2.1 Term.

(a) **Initial Term.** This Agreement will be in full force and effect from the Effective Date and will remain in effect for an initial term of twenty-five (25) years (“**Initial Term**”).

(b) **Renewal Terms.** At the end of the Initial Term, this Agreement will automatically renew for ten successive one (1) year terms (each a “**Renewal Term**”) unless ADS provides written notice to the City at least 90 days prior to the end of the Initial Term or any Renewal Term that it does not intend to renew the Agreement.

2.2 Termination.

(a) **Termination by Mutual Consent.** The City and ADS may terminate this Agreement at any time by mutual written consent.

(b) **Termination by ADS.** ADS may terminate this Agreement at any time by providing written notice to the City at least 90 days prior to the date of such termination.

(c) **Termination by the City.** The City acknowledges the substantial investment to be made by ADS in the PDX 138 and PDX 245 Campuses, and that the operation of the PDX 138 and PDX 245 Campuses is dependent upon the delivery of water by the City. Therefore, the City will keep this Agreement in place and may not unilaterally terminate this Agreement.

(d) **Termination from closure.** ADS Acknowledges the substantial value of the water rights that the City grants ADS via this Agreement. Therefore, after the Initial Term, the City may terminate this Agreement if both the PDX 138 or PDX 245 Campuses cease their data center operation. If only one Campus closes its data center operation, the City and ADS will amend this agreement to terminate the City's obligations with respect to the closed Campus. The City's obligations under this Agreement with respect to the operational Campus will remain in effect and unchanged.

ARTICLE 3 – WATER AND SANITARY SEWER SERVICES

3.1 City Obligations.

(a) **Potable Water System and Regional Water System Improvements; sanitary sewer.** The City will design, engineer, construct, operate, and maintain the Potable Water System Improvements, sanitary sewer, and Regional Water System Improvements and Upgrades in accordance with Exhibit 1 (Scope of Work and Cost of Phase 1 System Improvements), Exhibit 2 (Scope of Work and Cost of Phase 2 Regional Water System Upgrades), and Exhibit 3 (Scope of Work and Cost of PDX245 Offsite Improvements), Prudent Industry Practices, and Applicable Law.

(b) **Written progress updates.** Within 30 days of the Effective Date, the City will give ADS a written update on the City's progress in designing, engineering, and constructing the Potable Water System Improvements and the Regional Water System Improvements and Upgrades.

(c) **Temporary cooling water.**

(1) PDX 138. As described in Exhibit 1, no later than September 27, 2023, the City will provide 1,400 gpm of temporary cooling water at a pressure of 50 psi to the PDX 138 Campus to be delivered at the PDX 138 Potable Water Connection via the Regional Water System. If the City cannot provide temporary cooling water via its Regional Water System by September 27, 2023, the City will provide ADS with an alternative source of cooling water at the City's sole costs.

(2) PDX 245. The City will provide a temporary delivery of 350 gpm of

filtered potable water at a pressure of 50 psi to the PDX 245 Campus on Feedville Rd by August 1, 2024, until the time that the Port's non-potable water service can begin. If the City cannot provide temporary cooling water via its Regional Water System by August 1, 2024, the City will provide ADS with an alternative source of cooling water at the City's sole costs.

(d) City step-in obligations for permanent industrial cooling water. If the Port cannot provide 1,620 gpm and 1.16 million gpd of industrial cooling water at a pressure of 55 psi to the PDX 138 and PDX 245 Campuses by February 1, 2025, the City will provide ADS with an alternative source of such cooling water at the City's sole costs until the Port provides such non-potable industrial water.

(1) City step-in by or prior to February 1, 2025. If the Port terminates the Port Agreement, or otherwise fails to meet its water service obligations under the Port Agreement, by, or prior to, February 1, 2025, the City will step in and use its own water rights to provide the PDX 138 and PDX 245 Campuses with permanent non-potable cooling water that meets the capacity and pressure specifications set forth in the Port Agreement. The City's obligations to provide ADS with permanent non-potable cooling water under this section will be subject to the City's obligations set forth in this Agreement. The City's obligations to provide ADS with permanent non-potable cooling water under this section will begin immediately upon the earlier of the Port's failure to meet its water service obligations under the Port Agreement or the Port's termination of the Port Agreement, and will continue until the earlier of (i) the termination of this Agreement or (ii) the Parties mutually agree the City will stop providing such service. ADS will pay the City for such permanent industrial cooling water under the rates provided in Section 4.2(b).

(2) City step-in after February 1, 2025. If the Port terminates the Port Agreement or otherwise fails to meet its water service obligations under the Port Agreement after February 1, 2025, and the City has water rights available, the City will step in and use its own water rights to provide the PDX 138 and PDX 245 Campuses with permanent non-potable cooling water that meets the capacity and pressure specifications set forth in the Port Agreement. The City will only be obligated to step in if the City has available water rights to cover some or all of the Campuses' permanent non-potable cooling water needs. The City's water rights are available if they are (1) un-committed, meaning the City is not already obligated to

provide the water rights to another person or entity; (2) fully-developed, meaning the physical infrastructure needed to deliver the water already exists; and (3) un-restricted, meaning the City’s ability to provide the water has not been legally prevented by state or government action. The City’s obligations to provide ADS with permanent non-potable cooling water under this section will be subject to the City’s obligations set forth in this Agreement. If the City has un-committed, un-restricted, and fully-developed water rights available, the City’s obligations to provide ADS with permanent non-potable cooling water will begin immediately upon the Port’s failure to meet its water service obligations under the Port Agreement, and will continue until the earlier of (i) the termination of this Agreement or (ii) the Parties mutually agree the City will stop providing such service. ADS will pay the City for such permanent industrial cooling water under the rates provided in Section 4.2(b).

(e) **Potable water.**

(1) PDX 138. Beginning September 27, 2023, the City will provide 5,000 gpd of filtered potable water via the Potable Water System to the PDX 138 Campus for domestic purposes only, and not for industrial purposes, except as a backup or emergency supply, provided that the City makes no assurances as to available potable capacity for backup or emergency supply after February 1, 2025.

(2) PDX 245. Beginning August 1, 2024, the City will provide 5,000 gpd of filtered potable water via the Potable Water System to the PDX 245 Campus for domestic purposes only, and not for industrial purposes, except as a backup or emergency supply, provided that the City makes no assurances as to available potable capacity for backup or emergency supply after August 1, 2024.

(f) **Sanitary sewer services.**

(1) PDX 138. As described in Exhibit 1, the City will provide sanitary sewer services capable of serving up to 14,000 gpd to the PDX 138 Campus by September 27, 2023.

(2) PDX 245. As described in Exhibit 3, the City will provide sanitary sewer services capable of serving up to 14,000 gpd to the PDX 245 Campus by August 1, 2024.

(g) **Time is of the essence.** City water service to the PDX 138 and PDX 245 Campuses is of the essence of this Agreement, and except as a result of a Force Majeure Event or as agreed to by ADS for maintenance purposes, such service will not be suspended for more than 24 hours.

3.2 ADS Obligations

(a) ADS will reimburse the City \$3,122,813 for costs incurred by the City to design and construct the Potable Water System Improvements, sanitary sewer, and Regional Water System Improvements and Upgrades as described in **Exhibit 1** (Scope of Work and Cost of Phase 1 System Improvements).

(b) ADS will reimburse the City \$15,818,913 for costs incurred by the City to design and construct the Regional Water System Improvements and Upgrades, and installation of generators at the Regional Water System intake and non-potable pump station #2, to provide electrical system redundancy, as described in **Exhibit 2** (Scope of Work and Cost of Phase 2 Regional Water System Upgrades).

(c) ADS will reimburse the City \$3,213,000 for costs incurred by the City to design and construct the Potable Water System Improvements, sanitary sewer, and Regional Water System Improvements and Upgrades, as described in **Exhibit 3** (Scope of Work and Cost of PDX245 Offsite Improvements).

(d) The ADS reimbursement amounts set forth in Section 3.2(a), (b), and (c) will not be increased without the prior written consent of ADS. The City will supply ADS with proof of actual costs within 30 days of the expense. ADS will, upon receipt of request for reimbursement of costs from the City, reimburse the City for the actual costs within 30 days.

3.3 **Latecomer Connection Charge.** For twenty (20) years after the Potable Water System Improvements are completed, and for twenty (20) years after the Regional Water System Upgrades are completed, the City will collect a water connection charge from any and all Latecomers that connect to the Potable Water System Improvements or the Regional Water System Upgrades (“**Latecomer Connection Charge**”) prior to allowing the Latecomer to connect. The Latecomer Connection Charge will be based on the amount of water requested by the Latecomer in proportion to the capacity of the Potable Water System Improvements or the Regional Water System Upgrades. For example, if the total cost of the Regional Water System Upgrades is \$1 million for an added capacity of 1 cfs, and the Latecomer requests 0.1 cfs, the Latecomer Connection Charge should be \$100,000. The City will pay to ADS the full amount of any and all Latecomer Connection Charges collected pursuant to this Section within thirty (30) days of receipt from the Latecomer.

3.4 **City Operation, Maintenance and Repair Responsibilities.** The City will operate and maintain the City Water System and the related connections to the Potable Water System and the Regional Water System in a manner consistent with Prudent Industry Practices and in compliance with all Applicable Law.

3.5 **ADS Operation, Maintenance, and Repair Responsibilities.** ADS will be solely responsible for operation and maintenance of facilities on its properties to the extent such facilities are operated exclusively for the benefit of ADS.

ARTICLE 4 - RATES AND PAYMENTS

4.1 **Water & Sanitary Sewer Rates.**

(a) **Potable water.** Filtered, potable water will be billed at the City of Hermiston Water Department's rate as it exists at the time of usage. The City's and ADS's obligations with respect to billing, payments, appeals, and delinquencies will be governed by Chapter 52 of the Hermiston City Code (including any amendments thereto that the City may from time-to-time duly adopt). In the event that the rate at which the City of Hermiston's Water Department purchases potable water from the Regional Water System exceeds the rate charged to ADS, then City will notify ADS on a monthly basis of the actual overage cost amount and will present ADS with an invoice, due within 30 days, for the actual overage cost no later than January 31 of each year.

(b) **Non-potable industrial water.** If the City steps in to provide permanent non-potable cooling water under Section 3.1(f), ADS will pay the City, as operator of the Regional Water System, for water deliveries according to the rates charged by the City to other non-potable customers of the Regional Water System, as well as any unpaid System Development Charges owed to the Regional Water System according to the adopted methodology. The City's and ADS's obligations with respect to billing, payments, appeals, and delinquencies will be governed by Chapter 52 of the Hermiston City Code (including any amendments thereto that the City may from time-to-time duly adopt).

(c) **Sanitary Sewer.** Sanitary sewer shall be billed at the City of Hermiston Sewer Department's Industrial Discharge User rate as it exists at the time of usage. The City's and ADS's obligations with respect to billing, payments, appeals, and delinquencies will be governed by Chapter 51 of the Hermiston City Code (including any amendments thereto that the City may from time-to-time duly adopt).

4.2 **Rate Discrimination Prohibited.** In the event that the City modifies its rate structure to establish different customer classes or proposes to adopt any other change in rates or charges that do not apply equally to all classes of customers, any such rates

and charges will be fairly and reasonably allocated to each customer class in relation to the cost of the City of providing water service to such customer class.

4.3 **Measurement of Water Quantity.** The City will install, own, and maintain a water meter that meets all applicable accuracy, precision, and calibration standards established by all Applicable Laws. The City will operate, maintain, test, and calibrate the water meter, as necessary, pursuant to Prudent Industry Practices and Applicable Law. The City will meter the amount of water service delivered to ADS facilities within fifteen (15) days following the end of each calendar month. City charges for water service deliveries will be based on the flow rate of the City’s adopted rate structure.

4.4 **Water Meter Calibration and Inspection.** The City will provide ADS with reasonable notice of meter test and calibration dates, provide ADS with access to observe such testing and calibration, and provide ADS certified results of tests and calibrations within 30 days after completion. If, as a result of any test, the water meter is found to be registering outside the applicable accuracy standard, the City will promptly restore the water meter to the applicable accuracy standard, or replace the meter with one that meets such accuracy standard. The City will correct all inaccurate readings for up to a maximum correction period of 12 months and adjust monthly invoices as necessary to incorporate the accurate data.

ARTICLE 5 – FORCE MAJEURE EVENT

5.1 **Definition.** A Party will not be responsible for any delay or failure to perform to the extent that the delay or failure to perform is caused by an event or circumstance that (a) is beyond the reasonable control of such Party, (b) was not foreseeable at the time of execution of this Agreement, or if foreseeable, could not have been avoided or overcome by such Party through the exercise of commercially reasonable diligence, and (c) prevents, hinders or delays such Party in its performance of any (or any part) of its obligations under this Agreement (each, a “**Force Majeure Event**”). Subject to the requirements of the prior sentence, Force Majeure Events may include acts of God, sudden actions of the elements such as floods, earthquakes, hurricanes, or tornadoes; high winds, lightning, ice storms or other weather event or physical natural disaster of a strength or duration that is not normally encountered in the area of the Project; fire; sabotage; vandalism; terrorism; war; cyber-attacks; invasion; hostilities; rebellion; revolution; requisition, expropriation or compulsory acquisition by any governmental or competent authority; riots; explosion; blockades; insurrection; employment strike against

a third-party; slow down or labor disruptions (even if such difficulties could be resolved by conceding to the demands of a labor group); or interruptions to transportation.

Under no circumstances will the following events constitute a Force Majeure Event: (i) any acts or omissions of any third party under the control or direction of a Party, including, without limitation, any vendor, customer, or supplier of the Party claiming a Force Majeure Event, unless such acts or omissions themselves result from underlying Force Majeure Events; (ii) changes in economic or market conditions that affect the costs or benefits of a Party's performance or availability of funds to make payments due; (iii) equipment defects; or (iv) any delay in providing, or cancellation of, any approvals by the issuing Governmental Authority unless resulting from an underlying Force Majeure Event.

5.2 **Notice and Mitigation.** The Party affected by a Force Majeure Event will promptly notify the other Party in writing of such event, giving details of the Force Majeure Event, its anticipated effect on the affected Party's performance under this Agreement, and the steps that the affected Party is taking to remedy the delay. Upon the occurrence of a Force Majeure Event, the affected Party will, as promptly as practicable, use all reasonable efforts to eliminate the cause of such Force Majeure Event, reduce costs, and resume performance under this Agreement. Upon cessation of a Force Majeure Event, the affected Party will provide prompt written notice to the other Party.

ARTICLE 6 – INDEMNIFICATION

Indemnification by the City. To the extent allowed and limited by the Oregon Constitution and the Oregon Tort Claims Act, the City will indemnify, defend, and hold harmless the ADS Indemnified Parties from and against all third party claims, demands, and legal proceedings and all resulting Damages, arising or resulting from: (1) the negligence or willful conduct of the City or any of its officers, employees, agents, representatives, or contractors in connection with performance of the City's obligations under this Agreement; (2) any violation of Applicable Law arising from the activities of the City or any of the City's officers, employees, agents, representatives, or contractors in connection with performance of the City's obligations under this Agreement; (3) the failure by the City to fulfill any of its obligations under this Agreement; *except that* the ADS Indemnified Parties will not be indemnified hereunder to the extent that such Damages arise or result from the gross negligence or willful misconduct of any ADS

Indemnified Party or the unexcused breach by ADS of any of its obligations under this Agreement.

ARTICLE 7 – REPRESENTATIONS, WARRANTIES AND COVENANTS

7.1 ADS Representations and Warranties. ADS represents and warrants that:

(a) ADS is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, with all requisite power and authority to enter into and perform its obligations under this Agreement.

(b) This Agreement has been duly authorized, executed, and delivered by all necessary action of ADS and constitutes a legal, valid, and binding obligation of ADS, subject to general equity principles, enforceable against ADS in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization or other similar laws affecting the rights of creditors generally.

(c) Neither the execution nor delivery by ADS of this Agreement, nor the performance by ADS of its obligations in connection with the transactions contemplated hereby or the fulfillment by ADS of the terms or conditions hereof: (i) conflicts with, violates, or results in a breach of any Applicable Law; or (ii) conflicts with, violates, or results in the breach of any term or condition of any order, judgment, or decree, or any contract, agreement, or instrument, to which ADS is a party or by which ADS or any of its properties or assets are bound, or constitutes a default under any of the foregoing.

(d) There is no action, lawsuit, claim, demand or proceeding pending before any court, arbitrator, private alternative dispute resolution system, or Governmental Authority, or, to the best of ADS's knowledge, threatened, the outcome of which, if determined in a manner adverse to ADS, could reasonably be expected to have a material adverse effect on the execution and delivery of this Agreement or any other agreement or instrument entered into by ADS in connection with the transactions contemplated hereby, the validity, legality, or enforceability of this Agreement, or any other agreement or instrument entered into by ADS in connection with the transactions contemplated hereby, or which would adversely affect the ability of ADS to perform its obligations hereunder or under any such other agreement or instrument.

7.2 **City Representations and Warranties.** The City represents and warrants that:

(a) The City is a municipal corporation duly organized, validly existing and in good standing under the laws of the State of Oregon, with its principal office and place of business at the location set forth in **Section 9.1**, with all requisite power and authority to enter into and perform its obligations under this Agreement.

(b) This Agreement has been duly authorized, executed, and delivered by all necessary action of the City and constitutes a legal, valid, and binding obligation of the City, subject to general equity principles, enforceable against the City in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization, or other similar laws affecting the rights of creditors generally.

(c) Neither the execution nor delivery by the City of this Agreement, nor the performance by the City of its obligations in connection with the transactions contemplated hereby or the fulfillment by the City of the terms or conditions hereof: (i) conflicts with, violates, or results in a breach of any Applicable Law; or (ii) conflicts with, violates, or results in the breach of any term or condition of any order, judgment, or decree, or any contract, agreement, or instrument, to which the City is a party or by which the City or any of its properties or assets are bound, or constitutes a default under any of the foregoing.

(d) There is no action, lawsuit, claim, demand, or proceeding pending before any court, arbitrator, private alternative dispute resolution system, or Governmental Authority, or, to the best of the City's knowledge, threatened, the outcome of which, if determined in a manner adverse to the City, could reasonably be expected to have a material adverse effect on the execution and delivery of this Agreement or any other agreement or instrument entered into by the City in connection with the transactions contemplated hereby, the validity, legality, or enforceability of this Agreement, or any other agreement or instrument entered into by the City in connection with the transactions contemplated hereby, or which would adversely affect the ability of the City to perform its obligations hereunder or under any such other agreement or instrument.

7.3 **Supply Chain Standards.** To the extent applicable to the City's activities in connection with the Agreement, the City will, and will cause its Affiliates to, comply with the Supply Chain Standards. If any updates made to the Supply Chain Standards after the Effective Date are unacceptable to the City (acting reasonably and in accordance with Prudent Industry Practices), the City may provide written notice to

ADS of the same, including a full explanation. Following the City’s receipt of such notice, the Parties will work together in good faith to agree to any exceptions from the updates to the Supply Chain Standards.

7.4 **Confidential Information.** The Parties’ disclosures and activities in connection with this Agreement and the Project are subject to the Non-Disclosure Agreement signed by the Parties dated May 21, 2014 (“NDA”). If the NDA expires or is terminated during the Term and is not renewed or replaced, the terms of such prior NDA will continue to apply to the Parties’ activities in connection with this Agreement and the Project until a new NDA is executed by the Parties.

7.5 **Public Announcements.** The City will not issue, or allow a third party or Affiliate to issue, any public announcement, press release or public statement, or conduct press tours, regarding this Agreement without ADS’s prior written consent, not to be unreasonably withheld. Subject to the NDA, ADS may issue public announcements, press releases, and statements related to this Agreement in its sole discretion. The City may disclose information to third parties if such information has already been publicly disclosed by ADS, and the City is directly asked to provide such information by the third party.

ARTICLE 8 – DEFAULT AND REMEDIES

8.1 **Events of Default.** Any of the following actions or inactions by a Party will constitute an “**Event of Default**” if such Party (the “**Defaulting Party**”):

(a) **Breach of Representations.** Makes a representation or warranty that is false or misleading when made to such an extent that it prevents the Party from performing its commitments under this Agreement.

(b) **Breach of Obligations.** Fails to perform any of its material obligations or covenants under this Agreement, which failure continues for 30 days after written notice from the other Party (“**Non-Defaulting Party**”).

(c) **Reorganization or Insolvency.** (i) Becomes insolvent or is unable to pay its debts or fails (or admits in writing its inability) generally to pay its debts as they become due; (ii) makes a general assignment, arrangement, or composition with or for the benefit of its creditors; (iii) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditor’s rights, or a petition is presented

for its winding-up or liquidation, which proceeding is not dismissed, stayed, or vacated within 30 days thereafter; (iv) commences a voluntary proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights; (v) seeks or consents to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian, or other similar official for it or for all or substantially all of its assets; (vi) has a secured party take possession of all or substantially all of its assets, or has a distress, execution, attachment, sequestration, or other legal process levied, enforced, or sued on or against all or substantially all of its assets; (vii) causes or is subject to any event with respect to it which, under the applicable law of any jurisdiction, has an analogous effect to any of the events specified in clauses (i) to (vi) inclusive; or (viii) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

8.2 Remedies for Event of Default. Upon the occurrence of an Event of Default and notice to the Defaulting Party, the Non-Defaulting Party may:

- (a) Suspend performance of its obligations under this Agreement; and
- (b) Receive from the Defaulting Party direct Damages incurred by the Non-Defaulting Party in connection with such Event of Default.

8.3 Limitation of Damages. Damages payable under this Agreement will be limited to direct Damages. In no event will ADS be liable for Damages in excess of five million dollars (\$5,000,000). Neither Party will be liable for any indirect, special, consequential, incidental, exemplary, or punitive Damages including, without limitation, lost profits, lost production, or lost revenues, arising out of this Agreement, except to the extent resulting from a Party's indemnification obligations under this Agreement.

8.4 No Waiver. A Party's failure at any time or times to require strict performance by the other Party of any provision of this Agreement will not waive, affect, or diminish any right of such Party thereafter to demand strict compliance and performance herewith or therewith. Any suspension or waiver of an Event of Default will not suspend, waive, or affect any other Event of Default whether the same is prior or subsequent thereto and whether the same or of a different type. No waiver is effective unless signed in a non-electronic form by the waiving Party.

ARTICLE 9 – MISCELLANEOUS**9.1 Notices**

(a) **Methods and Addresses.** All notices, demands, requests, or other communications required by this Agreement must be in writing and given as follows by: (i) established overnight commercial courier with delivery charges prepaid or duly charged; (ii) electronic mail; or (iii) certified mail, return receipt requested, postage prepaid. All notices must be addressed to the applicable addresses set forth below.

If to ADS:

Amazon Data
Services, Inc. 410
Terry Avenue
North Seattle,
WA 98109
Fax: 206-266-7010
Email: Infraenergy@amazon.com

With a copy to:

410 Terry Avenue North
Seattle, WA 98109-5210
U.S.A.
Attention: General Counsel (AWS)
contracts-legal@amazon.com,
infraenergy@amazon.com Attention: General Counsel
(AWS)

If to the City:

City of
Hermiston
Attn:

Amazon Confidential
Draft – August 15, 2023

Byron
Smith
City
Manager
180 NE 2nd St.,
Hermiston, OR
97838
Fax: 541-567-
5530
Email: bsmith@hermiston.or.us

With a copy to:
*By U.S. Mail and
email* Rich Rich
Tovey
City Attorney
180 NE 2nd St.
Hermiston, OR
97838
Email: rtovey@hermiston.or.us

(b) **Notices Given.** Notices will be deemed “given”: (i) when sent by electronic mail; (ii) when accepted by overnight commercial courier; or (iii) when deposited into the United States Postal Service.

9.2 **Severability.** If any court of competent jurisdiction or applicable Governmental Authority finds any part of this Agreement invalid or unenforceable, then that part is deemed modified to the extent necessary to render it valid and enforceable. If it cannot be so saved, it will be severed, and the remaining parts will remain in full force and effect.

9.3 **Assignment.** Except as provided in this Section 9.3, neither Party may assign this Agreement without the other Party’s prior written consent, which will not be unreasonably withheld. ADS may assign this Agreement to an Affiliate of ADS without the City’s consent.

9.4 **Binding Effect and Benefit.** This Agreement will be binding upon and inure to the benefit of the Parties, their successors and their permitted assigns.

9.5 **Entire Agreement.** This Agreement represents the entire agreement between and among the Parties with respect to the subject matter hereof, and supersedes

all prior agreements, understandings and commitments, whether oral or written, with respect thereto.

9.6 **Amendment.** This Agreement may be amended only by a written instrument signed by the Parties.

9.7 **Governing Law and Venue.** This Agreement will be governed by and interpreted in accordance with the laws of the State of Oregon, excluding its conflicts of law provisions. Disputes under or related to this Agreement will be resolved in the state or federal courts in the State of Oregon.

9.8 **Waiver of Jury Trial.** Each Party waives, to the fullest extent permitted by Applicable Law, any right it may have to a trial by jury in respect of any dispute arising out of or relating to this Agreement.

9.9 **Survival.** Sections 3.1, 4, 6, 7.4, 8.3, 9.7, and 9.8 will survive expiration or termination of this Agreement.

9.10 **No Third-Party Beneficiaries.** Nothing in this Agreement will provide any benefit to any third-party or entitle any third-party to any claim, cause of action, remedy, or right of any kind.

9.11 **Relationship of Parties.** The Parties are independent contractors, and nothing in this Agreement creates an employer-employee relationship, a partnership, joint venture, or other relationship between the Parties. Neither Party has authority to assume or create obligations of any kind on the other's behalf.

9.12 **Entire Agreement; Counterparts.** This Agreement, together with all incorporated exhibits and schedules and the NDA, constitute the complete and final agreement of the Parties pertaining to the respective subject matter and supersede the Parties' prior related agreements, understandings, and discussions. Each Party will accept electronic signatures for the execution of this Agreement and execution may be conducted in counterparts, each of which (including signature pages) is an original, but all of which together is one and the same instrument.

[SIGNATURE PAGE ON NEXT PAGE]

DRAFT

IN WITNESS WHEREOF, and intending to be legally bound, the duly authorized representatives of the Parties have caused this Agreement to be executed as of the date first written above:

CITY OF HERMISTON

AMAZON DATA SERVICES, INC.

By: _____
Byron Smith, City Manager

By: _____
Nat Sahlstrom
Vice President

ATTEST:

, City Recorder

APPROVED AS TO FORM:

Rich Tovey, City Attorney

DRAFT