

## **WATER SERVICE AGREEMENT**

This WATER SERVICE AGREEMENT (“**Agreement**”) is entered into as of this 18<sup>th</sup> day of February, 2025 (the “**Effective Date**”) by and between the CITY OF HERMISTON, OREGON, a municipal corporation with offices at 180 NE 2<sup>nd</sup> 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**”).
- B. ADS is developing new data center campuses in the City, the operation of which requires a reliable and sustainable source of potable and industrial water (“**IW**”) supply. The City desires to provide potable water to ADS data center campuses for IW use, plus additional volume of potable water with ADS commitment to replenish the aquifer for aquifer storage and recovery (the “**ASR**”).
- C. The City will implement infrastructure upgrades for the Aquifer Storage and Recover Improvements in two phases (“**Phase 1**” and “**Phase 2**”). Phase 1 will confirm the ASR feasibility and scope of Phase 2. The City and ADS will conclude Successful Completion of Phase 1 by mutual written consent, no later than April 1, 2027 (“**Phase 1 Completion Date**”). Potable water recovered directly from the ASR under this Agreement will be delivered to the property boundary of the ASR facility. Delivery of such water to individual ADS data center campuses may require additional infrastructure and will be covered under a separate agreement.
- D. At ADS’s request, the City and ADS desire to enter into an agreement that provides for water services for ADS data center campuses within the City of Hermiston, and contributes to the ASR, as described below:

- a. **Phase 1**

- i. The City will make potable water available for the ADS data center campuses for IW use, up to 1.08 million gallons per day (“mgd”) over a 12-hour peak period at 1,500 gallons per minute (“gpm”) by April 1, 2027.
- b. Phase 2** (Upon Successful Completion of Phase 1)
- i. The City will make potable water available to the ADS data center campuses for IW use, up to 3.24 mgd over a 12-hour peak period at 4,500 gpm not less than 36 months from Phase 1 Completion Date.
  - ii. ADS will make an initial contribution at a total volume of 1.2 billion gallons (“BG”) to the ASR by September 1, 2029 (“**Initial Contribution**”). The Initial Contribution will be made at the intervals as defined in Table 1.
  - iii. On-going contributions to the ASR (“**On-going Replenishment**”) will be at quantities specified in Table 1.
- c. Potable water delivered to the ADS data center campuses for IW use shall be filtered potable water or potable water recovered from the ASR upon Successful Completion of Phase 1.

Table 1 ADS Contributions to ASR

Year	ADS Contribution to ASR (1,000 gallons)	Rate (\$/1,000 gallons)
Initial Contribution		
2025-26	155,200	\$1.17
2026-27	244,000	\$0.85
2027-28	400,000	\$0.61
2028-29	400,000	\$0.63
On-going Replenishment		
2029-Beyond	200,000, or ADS IW consumption from previous year plus 100,000, whichever is greater	City of Hermiston then-current Water Rates

## **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 guaranteed City water supply services directly from the Aquifer Storage and Recovery System within twenty (20) years of the date the Aquifer Storage and Recovery Improvements were completed. Non-industrial uses from the Potable Water System shall not be considered a Latecomer.

(i) **“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.

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

(k) “**Successful Completion of Phase 1**” means delivery of a deep basalt well approximately 1,500-ft below ground surface capable of producing at least 1,000 gpm of potable water, that meets the Oregon Health Advisory Drinking Water Regulations and Rules and water quality requirements in Table 2 whichever are more stringent, and approval by the Oregon Water Resources Department of ASRLL #030.

*Table 2 Water Quality Requirements for Successful Completion of Phase 1*

Parameter	Units	Requirements
Ammonia	mg/l as N	<1
Chloride	mg/l as Cl	<130
Conductivity	µS/cm	<1300
Silica	mg/l as SiO <sub>2</sub>	<33
Sodium	mg/l as Na	<133
Sulfate	mg/l	<100
Total Alkalinity	mg/l as CaCO <sub>3</sub>	30-100
Total Hardness	mg/l as CaCO <sub>3</sub>	25-150
TOC	mg/l	<5
Turbidity	NTU	<4

(l) “**Phase 1 Completion Date**” means the date when ADS acknowledge Successful Completion of Phase 1 and provide notice to proceed with Phase 2 in writing to the City.

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, except Phase 2 Term, 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) **Phase 2 Term.** Phase 2 of this Agreement will be in full force and effect from the Phase 1 Completion Date and will remain in effect till the end of the Initial

Term (“**Phase 2 Term**”), unless specified in a mutually agreed upon amendment to the Agreement.

(c) **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.

(d) **Replenishment Terms.** On September 1 of each year after the Initial Contribution is fulfilled, On-going Replenishment will be in effect through August 31 of the subsequent year (“**Replenishment Term**”), unless ADS provides written notice to the City, by the end of Replenish Term, of its intent to pause water services and On-going Replenishment for the subsequent year.

## 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, provided that ADS shall be responsible to reimburse City for any costs incurred to-date and any costs associated with closeout of any active construction projects from the date of termination.

(c) **Termination by the City.** The City acknowledges the substantial investment to be made by ADS in the ASR Improvements, and that the operation of ADS data centers is dependent upon the delivery of utility services 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 ADS ceases operation of the data centers that receive potable water under this Agreement.

## ARTICLE 3 – WATER SERVICES

### 3.1 City Obligations.

(a) **Aquifer Storage and Recovery Improvements.** The City will design, engineer, construct, operate, and maintain the Aquifer Storage and Recovery Improvements in two phases – Phase 1 and Phase 2, in accordance with **Exhibit 1** (Scope of Work and Cost of Aquifer Storage and Recovery Improvements - Phase 1, and Cost of Aquifer Storage Improvements - Phase 2), 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 Aquifer Storage and Recovery Improvements.

(c) **Phase 1.**

1. Potable Water for ASR. The Phase 1 Improvements shall be installed and operational by June 30, 2026.
2. Potable Water for IW Use. The City will make potable water available for ADS data center campuses, up to 1.08 mgd over a 12-hour peak period at 1,500 gpm by April 1, 2027.

(d) **Phase 2 (Upon Successful Completion of Phase 1)**

1. Potable Water for ASR. The availability of Potable Water for ASR shall reach the quantities specified in Table 1 from 2025 through 2029 by September 1 of each year. The delivery of potable water to the aquifer shall reach the Initial Contribution of 1.2 BG by September 1, 2029. The City will make potable water available for replenishment up to 400 MG per year. On-going Replenishment will be of the quantities specified in Table 1, by September 1 of each year, unless specified in a mutually agreed upon amendment to the Agreement.
2. Potable Water for IW Use. The City will make potable water available to ADS data center campuses at 105 MG annually, or up to 3.24 mgd over a 12-hour peak period at 4,500 gpm not less than 36 months from Phase 1 Completion Date.

### 3.2 ADS Obligations

(a) **Phase 1.**

1. ADS will reimburse the City actual design, engineering and construction costs up to \$5,000,000 for costs incurred by the City to design and construct the Aquifer Storage and Recovery Improvements Phase 1 as described in **Exhibit 1** (Scope of Work and Cost of Aquifer Storage and Recharge Improvements – Phase 1) and City staff time associated with management and administration of the improvements up to \$100,000. ADS will reimburse the City no more than \$400,000 for additional necessary tasks that may be specified by a mutually agreed upon amendment to the Agreement. Under any circumstances, the total contribution made by ADS will not exceed \$5,500,000 unless specified in a mutually agreed upon amendment to the Agreement.
2. ADS will purchase potable water from the City for the Initial Contribution.

(b) **Phase 2.**

1. ADS will reimburse the City actual design, engineering and construction costs up to \$11,500,000 for costs incurred by the City to design and construct the Aquifer Storage and Recovery Improvements Phase 2 as described in **Exhibit 2** (Cost of Aquifer Storage and Recharge Improvements – Phase 2) and City staff time associated with management and administration of the improvements up to \$230,000. ADS will reimburse the City no more than \$920,000 for additional necessary tasks that may be specified by a mutually agreed upon amendment to the Agreement. Under any circumstances, the total contribution made by ADS will not exceed \$12,650,000 unless specified in a mutually agreed upon amendment to the Agreement.
  - a. Exact scope of Phase 2 will depend on the actual output of the well from Phase 1, and will be defined upon Successful Completion of Phase 1 in order to meet the instantaneous demand capacities guaranteed in 3.1(d)2.
2. ADS will reimburse City for the Initial Contribution at the quantities specified in Table 1.
3. ADS will purchase potable water from the City for On-going Replenishment at the quantities specified in Table 1, unless ADS does not receive any potable water for IW use for an entire year by September 1 of each year, or specified in a mutually agreed upon amendment to the Agreement.



(c) The ADS reimbursement amounts set forth in Section 3.2(a) 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 Aquifer Storage and Recovery Improvements are completed, the City will collect a connection charge from any and all Latecomers that connect to the Aquifer Storage and Recovery Improvements (“**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 Aquifer Storage and Recovery Improvements. For example, if the total cost of the Aquifer Storage and Recovery Improvements 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 and Aquifer Storage and Recovery System and the related connections to the Potable Water System and Aquifer Storage and Recovery System in a manner consistent with Prudent Industry Practices and in compliance with all Applicable Law.

3.5 **Water Shortage Emergency.** Obligations within this agreement assume normal system operating conditions. Nothing contained within this agreement shall supersede authorities granted to City relating to a duly declared Water Shortage Emergency pursuant to Hermiston Municipal Code 52.25-52.99.

3.6 **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 Rates.**

- (a) **Potable water for ASR.** For potable water delivered for the Initial Contribution, it will be billed at the specified rates in Table 1. Any additional potable water for replenishment beyond the Initial Contribution by September 1, 2029 will be billed at the specified annual rates in Table 1. After the Initial Contribution is fulfilled, potable water that contributes to On-going Replenishment 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).

- (b) **ASR recovered water for IW Uses.** For potable water recovered from the ASR and delivered to the ADS data center campuses before the Initial Contribution to ASR is fulfilled, it will be billed at the specified annual rates in Table 1. After the Initial Contribution is fulfilled, potable water recovered from the ASR and delivered to the ADS data center campuses will be billed at 125% of 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).
- (c) **Potable water for IW Uses.** For potable water that is not recovered from the ASR and delivered to the ADS data center campuses, it 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).

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 contributing to the ASR 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 aforementioned rate structure. City will provide ADS the meter readings of water service deliveries for ASR in the monthly invoices.

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 development of 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. The parties agree that this Agreement itself is not subject to the NDA.

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](mailto: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  
In Attn:  
Byron  
Smith  
City  
Manager  
180 NE 2<sup>nd</sup> St.,  
Hermiston, OR  
97838  
Fax: 541-567-  
5530  
Email: [bsmith@hermiston.or.us](mailto:bsmith@hermiston.or.us)

With a copy to:

*By U.S. Mail and  
email*

Rich Tovey  
City Attorney  
180 NE 2<sup>nd</sup> St.  
Hermiston, OR  
97838  
Email: [rtovey@hermiston.or.us](mailto: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]

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: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date Signed: \_\_\_\_\_

Date Signed: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
, City Recorder

APPROVED AS TO FORM:

\_\_\_\_\_  
Rich Tovey, City Attorney