

## **TERRITORY ALLOCATION AGREEMENT**

This Territory Allocation Agreement (the “Agreement”) is entered into by and between the City of Hermiston doing business as Hermiston Energy Services (“HES”), an Oregon municipal corporation, and Umatilla Electric Cooperative (“UEC”) an Oregon cooperative corporation, each hereinafter sometimes referred to as a “Party” or together as the “Parties.”

### **RECITALS**

A. HES and UEC are each engaged in the retail sale of electricity to customers within defined service territories approved by the Public Utility Commission of Oregon (the “Commission”). The respective service territories of HES and UEC include areas located adjacent to each other in Umatilla County, Oregon.

B. HES and UEC previously entered into a Customer Allocation Agreement that allows UEC to serve Amazon Data Services, Inc. (“Customer”) on certain property described as Lot 2, STAHL REPLAT, recorded in Record No. 2019-6940037, Book 16 Page 95, on 11-27-2019 in the office of County Records in Umatilla County, State of Oregon and currently designated as Tax Lot No. 600, Map No. 4N2824-00-00600 in Umatilla County, Oregon (“Property”) even though portions of that Property are in HES’ service territory.

C. The Commission approved the Customer Allocation Agreement in Order 22-249 on July 6, 2022.

D. UEC and HES have agreed to replace the Customer Allocation Agreement with this Agreement to permanently transfer all of the Property into UEC’s service territory, subject to Commission approval.

E. Customer intends to construct, own, and operate one or more industrial facilities and related ancillary facilities on Lot 1, STAHL REPLAT, recorded in Record No. 2019-6940037, Book 16 Page 95, on 11-27-2019 in the office of County Records in Umatilla County, State of Oregon and currently designated as Tax Lot No. 200 Map No. 4N2823-00-00200 in Umatilla County, Oregon (“Adjacent Property”). Customer has requested that UEC also provide utility service on the Adjacent Property even though the Adjacent Property is in HES’ service territory.

F. ORS 758.410 allows utilities to enter into agreements to allocate territory and customers and to designate which territories and customers are to be served by each utility.

G. UEC desires to serve, and HES has agreed to allow UEC to serve, the Customer on the Adjacent Property.

H. UEC and HES have agreed to permanently transfer the Adjacent Property into UEC’s service territory, subject to Commission approval.

I. The Parties believe that permantely allocating the Property and the Adjacent

Property to UEC as provided for in this Agreement will eliminate or avoid unnecessary duplication of utility facilities and will promote the efficient and economic use and development and the safety of operation of the utility systems of the Parties, while providing adequate and reasonable service to the Customer and other customers in the service territories of both Parties.

J. Accordingly, HES and UEC hereby desire to enter into this Agreement pursuant to ORS 758.410 to permanently transfer the Property and Adjacent Property into UEC's service territory so that UEC can serve the Customer and future customers on the Property and Adjacent Property as provided for in this Agreement, and to complete the transactions contemplated by this Agreement on the terms and conditions set forth herein.

## **AGREEMENT**

NOW, THEREFORE, in consideration of the mutual covenants, promises and releases set forth herein, and the recitals stated above which are incorporated into this Agreement as if fully set forth herein, the Parties agree as follows:

### **SECTION I TERRITORY ALLOCATION**

1.1 Effective Date. This Agreement shall become effective upon the execution of this Agreement by both Parties ("Effective Date"); provided, however, that Section 1.2 of this Agreement, and the replacement of the Customer Allocation Agreement with this Agreement, shall be effective and enforceable only upon approval of this Agreement by the Commission pursuant to ORS 758.415.

1.2 Allocation of Rights and Obligations. Subject to all terms and conditions of this Agreement:

- i. UEC shall have the right and obligation to provide retail electric service to the Customer and other customers on the Property and Adjacent Property, including the construction of any necessary utility improvements.
- ii. Except as provided in Section 1.3, HES shall have no right or obligation to provide retail electric service to the Customer or other customers on the Property and Adjacent Property.
- iii. This Agreement provides for a permanent adjustment to the respective service territories of HES and UEC by transferring the Property and Adjacent Property into UEC's service territory. Neither Party is transferring utility assets under this Agreement, and no monetary compensation will be paid to either Party.

1.3 Existing HES Facilities on Adjacent Property Serving Existing Load. HES has utility facilities that consists of overhead and underground electric distribution facilities and

equipment, serving an existing load (“Existing Load”) on the Adjacent Property as described in Exhibit A (“Existing HES Facilities”). The Parties Agree that HES may continue to serve the Existing Load served by the Existing HES Facilities on the Adjacent Property until the date Customer begins to develop the Adjacent Property. Following the time when HES’s service to the Existing Loads on the Adjacent Property ceases, it shall be UEC’s obligation to either remove or replace, at its sole cost, the Existing HES Facilities as may be needed. HES shall thereafter have no liability or obligation with respect to the Existing HES Facilities, including for repair, removal, or replacement, and UEC shall indemnify HES from and against all claims, damages, losses, or other costs arising with respect to the Existing HES Facilities.

1.4 Release of Claims. HES and UEC mutually agree to release and discharge one another, including their respective successors in interest, assignees, and their officers, directors, employees, shareholders, members and agents from all claims, demands, causes of action, suits, damages, liabilities, compensation, costs, expenses and losses, whether known or unknown, that arise from or are related to the permanent territory allocation of the Property and Adjacent property described herein, including, but not limited to: (a) any planning, design, and development activities related to this Agreement undertaken by UEC prior to Commission approval of this Agreement; and (b) provision of retail electric service to the Customer on the Property and Adjacent Property.

1.5 Sunset. Notwithstanding any other provision of this Agreement, if Customer does not commence construction on the Adjacent Property within thirty-six months from the Effective Date, this Agreement shall automatically terminate. Subject to Section 5.3, the Parties shall inform the Commission of such termination and apply to the Commission to reallocate the Property and Adjacent Property to return to HES’ service territory, as necessary.

1.6 Reservation. Nothing in this Agreement shall constitute an admission of liability or waiver of rights of either Party and each Party reserves all rights under applicable law to provide retail electric service in accordance with applicable Oregon law upon termination of this Agreement.

## **SECTION II HES REPRESENTATIONS AND WARRANTIES**

HES represents and warrants as follows:

2.1 Organization and Powers of HES. HES is an Oregon municipal corporation, duly organized and legally existing under the laws of the State of Oregon. HES has all necessary municipal power and authority to own, lease, and operate its properties and assets and to carry on its business as now conducted and as proposed to be conducted. HES has the power and authority to execute and deliver this Agreement and to consummate the transaction contemplated herein.

2.2 Agreement Authorized. This Agreement has been duly and validly authorized, executed and delivered in accordance with the requirements of applicable law and constitutes the

valid and binding obligation of HES enforceable in accordance with its terms, except as enforcement may be limited by Commission approval pursuant to ORS 758.415, applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and except that the availability of the equitable remedies of specific performance and injunctive relief are subject to the discretion of the court before which any proceeding may be brought.

2.3 Governmental Authorization. Except for the approval of the Commission pursuant to ORS 758.415, and approval by the Hermiston City Council, no declaration, filing or registration with, or notice to, or authorization, consent, or approval of, any governmental or regulatory body or authority is necessary for the execution and delivery of this Agreement by HES or the consummation by HES of the transactions contemplated by this Agreement.

2.4 Non-Contravention; Approvals. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby will not violate, conflict with, or result in a breach of any provision of, or constitute a default under, or result in the termination of any note, bond, mortgage, indenture, deed of trust, contract, lease or other instrument, obligation or agreement of any kind to which HES is now a party.

### **SECTION III REPRESENTATIONS AND WARRANTIES OF UEC**

3.1 Organization and Powers of UEC. UEC is an Oregon cooperative corporation duly organized and legally existing under the laws of the State of Oregon. UEC has all necessary corporate power and authority to own, lease and operate its properties and assets and to carry on its business as now conducted and as proposed to be conducted.

3.2 Authority Relative to Agreement. UEC has the power and authority to execute and deliver this Agreement and to consummate the transaction contemplated herein. This Agreement has been duly and validly authorized, executed and delivered in accordance with the requirements of applicable law and constitutes the valid and binding obligation of UEC enforceable in accordance with its terms, except as enforcement may be limited by Commission approval pursuant to ORS 758.415, applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and except that the availability of the equitable remedies of specific performance and injunctive relief are subject to the discretion of the court before which any proceeding may be brought.

3.3 Governmental Authorization. Except for approval of the Commission pursuant to ORS 758.415, no declaration, filing or registration with, or notice to, or authorization, consent or approval of, any governmental or regulatory body or authority is necessary for the execution and delivery of this Agreement by UEC or the consummation by UEC of the transactions contemplated by this Agreement.

3.4 Non-Contravention; Approvals. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby will not violate, conflict with or

result in a breach of any provision of, or constitute a default under, or result in the termination of any note, bond, mortgage, indenture, deed of trust, contract, lease or other instrument, obligation or agreement of any kind to which UEC is now a party.

#### **SECTION IV MUTUAL COVENANTS**

4.1 Press Releases. No press releases or other public announcements concerning the transactions contemplated by this Agreement shall be made by either Party without the consent of the other Party, which consent shall not be unreasonably withheld; provided, however, that nothing herein shall operate to prevent a Party from supplying such information or making statements as required by governmental authority or in order for a Party to satisfy its legal obligations (prompt prior notice of which shall in any such case be given to the other Party).

4.2 Conditions and Best Efforts. Subject to the terms of this Agreement and fiduciary obligations under applicable law, HES and UEC shall each use commercially reasonable efforts to effectuate the transactions contemplated by this Agreement and to fulfill all of the conditions of its obligations under this Agreement and will do all such acts and things as reasonably may be required to carry out its obligations hereunder and to consummate and complete this Agreement, including, without limitation of the foregoing, promptly making application for approval of this Agreement by the Commission in accordance with ORS 758.415 to 758.425. Each Party acknowledges and agrees to represent to the Commission that this Agreement satisfies ORS 758.415 because it will eliminate or avoid unnecessary duplicating of facilities and will promote the efficient and economic use and development and the safety of operation of the utility systems of the Parties while providing adequate and reasonable service to the Customer and future customers on the Property and Adjacent Property. Notwithstanding the foregoing, neither Party shall be required in connection with the Commission's approval to agree to any payment or agree to any conditions of approval that are unacceptable to such Party. Further, as a condition of approval of this Agreement, the Parties shall request the Commission to include in its order a condition that automatically reinstates the Customer Allocation Agreement in the event this Agreement is terminated for any reason.

#### **SECTION V TERMINATION**

5.1 Termination. In addition to the automatic termination provided for in Sections 1.4 and 1.5, this Agreement may be terminated and abandoned at any time:

- a. If the Parties agree in writing to terminate this Agreement by mutual consent;
- b. by either Party if the Commission determines in a final order not to grant

its approval of this Agreement pursuant to ORS 758.425, or within 30 days of a final order if the Commission approves the Agreement but imposes conditions that either Party finds unacceptable in its sole discretion; or

c. by either Party if any court of competent jurisdiction in the United States or any state will have issued an order, judgment, or decree (other than a temporary restraining order) restraining, enjoining, or otherwise prohibiting the transactions contemplated in this Agreement.

5.2 Effect of Termination. Any termination pursuant to Section 1.5 or this Section V will relieve both the Parties hereto of all of their obligations set forth herein and any liability with respect thereto; provided that the release of claims in Sections 1.3 and 5.3 shall survive termination and provided further that termination of this Agreement does not relieve either Party of liability for breach of this Agreement.

5.3 Effect of Termination on Customer Allocation Agreement. In the event of any termination pursuant to Section 1.5 or this Section V, the Customer Allocation Agreement shall be automatically reinstated and the Parties shall cooperate in good faith for Commission approval of the reinstated Customer Allocation Agreement and the reallocation of the Adjacent Property to HES's service territory, if necessary.

## **SECTION VI ASSIGNMENT**

6.1 Assignment. Neither party shall assign its rights under this Agreement to any third party without the written consent of the other Party to this Agreement, which consent shall not be unreasonably withheld.

6.2 No Discharge. No assignment of this Agreement shall operate to discharge the assignor of any duty or obligation hereunder without the written consent of the other Party.

## **SECTION VII MISCELLANEOUS**

7.1 Indemnification. From and after the Effective Date, HES shall defend, hold harmless, and indemnify UEC and its directors, officers, employees, members, agents, successors and assigns, from and against any third-party allegation or claim, or any loss, damage, settlement, cost, expense, and any other liability (including reasonable attorneys' fees incurred) arising from HES' performance of its obligations under this Agreement, except to the extent caused by the negligent act or omission or willful misconduct of UEC or its employees, contractors, and agents.

From and after the Effective Date, UEC shall defend, hold harmless, and indemnify HES and its council, directors, officers, employees, members, agents, successors and assigns, from

and against any third-party allegation or claim, or any loss, damage, settlement, cost, expense and any other liability (including reasonable attorneys' fees incurred) arising from UEC's performance of its obligations under this Agreement, except to the extent caused by the negligent act or omission or willful misconduct of HES or its employees, contractors and agents.

7.2 Jury Waiver. HES and UEC hereby irrevocably waive, to the fullest extent possible, all right of trial by jury in any action, proceeding, or counterclaim arising out of or in connection with this Agreement.

7.3 Amendment. This Agreement may be amended only by an instrument in writing executed by the Parties which expressly refers to this Agreement and states that it is an amendment hereto.

7.4 Section and Paragraph Headings. The section and paragraph headings contained in this Agreement are for reference purposes only and will not in any way affect the meaning or interpretation of this Agreement.

7.5 Waiver. Any of the terms or conditions of this Agreement may be waived at any time and from time to time, in writing, by the Party entitled to the benefit of such terms or conditions.

7.6 Choice of Law. This Agreement is subject to and shall be construed under the laws of the State of Oregon, exclusive of conflict of law provisions.

7.7 Prevailing Party Costs. If a Party commences an action against the other Party because of a breach by that Party of its obligations under this Agreement or any documents executed in consummation with the transaction contemplated by this Agreement, the prevailing party in any such action shall be entitled to recover from the losing Party its expenses, including reasonable attorneys' fees, incurred in connection with the prosecution or defense of such action, and any appeal thereof.

7.8 Notices. All notices, requests, demands and other communications given by UEC or HES shall be in writing and shall be deemed to have been given when telecopied with confirmed transmission, when hand delivered, or four business days after deposit into the United States mail, to the following addresses:

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<p>If to HES:</p> <p>Hermiston Energy Services  Attn: General Manager  215 E Gladys  Hermiston, OR 97838  Phone: 541.667.5035  Email: nrivera@hermiston.or.us</p> <p>With a copy to:  Stoel Rives LLP  Attn: Jason Johns  760 SW Ninth Ave., Suite 3000  Portland, OR 97205  Email: jason.johns@stoel.com</p>	<p>If to UEC:</p> <p>Umatilla Electric Cooperative  Attn: General Manager/CEO  750 W. Elm Ave.  P.O. Box 1148  Hermiston, OR 97838  Phone: 541.567.6414  Email:  Executive@umatillaelectric.com</p> <p>With a copy to:  Cable Huston LLP  Attn: Thomas M. Grim  1455 SW Broadway, Suite 1500  Portland, OR 97201  Email:  Legal@umatillaelectric.com</p>
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7.9 Integrated Agreement. This Agreement, and the exhibits hereto, when executed, constitute the entire agreement between the Parties hereto and supersedes all prior agreements and understandings, oral and written, between the Parties with respect to the subject matter hereof. Once the Commission has approved this Agreement, this Agreement shall replace the Customer Allocation Agreement in its entirety.

7.10 Execution. This Agreement may be executed electronically and in two or more counterparts, each of which will for all purposes be deemed to be an original and both of which will constitute one and the same instrument.

7.11 Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision shall be construed as nearly as possible to give effect to the original intent of the Parties.

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7.12 No Third-Party Beneficiaries. Nothing express or implied in this Agreement is intended or shall be construed to confer upon or give to a person, firm, corporation or municipality other than Customer and the parties hereto any rights or remedies under or by reason of this Agreement or any transaction contemplated herein.

HERMISTON ENERGY SERVICES

UMATILLA ELECTRIC COOPERATIVE

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

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

Its: \_\_\_\_\_

Its: \_\_\_\_\_

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

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

\_\_\_\_\_

**EXHIBIT A**

**EXISTING HES FACILITIES ON ADJACENT PROPERTY**

Existing Load Served: Irrigation Pivot, Account # 9109812001, HES Meter #90120, Grid #4N28E236280