BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

DOCKET UA 177

In the Matter of CITY OF HERMISTON, D/B/A HERMISTON ENERGY SERVICES, AND UMATILLA ELECTRIC COOPERATIVE Joint Application for Approval of Territory Allocation Agreement	)	**JOINT APPLICATION FOR APPROVAL OF TERRITORY ALLOCATION AGREEMENT**

City of Hermiston doing business as Hermiston Energy Services ("HES") and Umatilla Electric Cooperative ("UEC") (collectively the "Parties" and individually each a "Party") file this Joint Application ("Application") pursuant to ORS 758.410 through ORS 758.425 and OAR 860-025-0010 for an order from the Public Utility Commission of Oregon ("Commission") approving the Territory Allocation Agreement ("Agreement"), attached as **Exhibit A**. If approved, the Agreement will permanently transfer certain portions of HES's service territory to UEC.

I. Background and Applicable Facts

HES and UEC are each engaged in the retail sale of electricity within exclusive service territories approved by the Commission. The respective service territories of HES and UEC include areas located adjacent to each other in Umatilla County, Oregon.

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's service territory. The Customer Allocation Agreement did not permanently transfer the Property to UEC, it only allowed UEC to serve the Customer on the Property. The Commission approved the Customer Allocation Agreement in Docket UA 175, Order 22-249, on July 6, 2022. A description of the Property served by UEC under the Customer Allocation Agreement is attached as **Exhibit B.**

UEC and HES have agreed to replace the Customer Allocation Agreement with the Agreement to permanently transfer all of the Property into UEC's service territory, subject to Commission approval. The justification for this permanent transfer of the Property from HES to UEC is contained in the Agreement, attached as **Exhibit A.**

Customer also 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's service territory. HES has agreed to transfer the Adjacent Property to UEC, and UEC has agreed to accept the transfer of the Adjacent Property so it may construct any necessary utility facilities to serve the Customer on the Adjacent Property. The terms and conditions of the permanent transfer of the Adjacent Property from HES to UEC are contained in the Agreement, attached as **Exhibit A.**

/ / /

/ / /

/ / /

The Parties believe that permanently 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 the development and safety of operation, of the Parties' utility systems, while providing adequate and reasonable service to the Customer and other customers and facilities in the service territories of both Parties.

II. Legal Standard

ORS 758.410 provides the authority for HES and UEC to enter into the Agreement. Pursuant to ORS 758.415, and according to the terms of the Agreement, the Agreement shall become valid and enforceable when approved by the Commission. ORS 758.415 further states that the Commission shall approve the Agreement upon a finding that the Agreement will eliminate or avoid unnecessary duplication of facilities and will promote the efficient and economic use and development and the safety of operation of the Parties' utility systems, while providing adequate and reasonable service to all territories and customers affected thereby. Pursuant to ORS 758.425(1), unless a hearing is held according to the terms of ORS 758.420, the Commission may issue an order approving the Agreement on the basis of this Application.

III. The Joint Applicants

HES is a municipal utility serving approximately 5,500 meters, and contracts with UEC to operate, maintain, provide billing, and support for day-to-day operations of the utility.

UEC is an electric cooperative organized under ORS Chapter 62. UEC serves a large portion of the Columbia Basin and Blue Mountain country of Northeastern Oregon. UEC's territory is located west of Boardman in Morrow County and covers much of Umatilla County surrounding the cities of Hermiston and Pendleton and into the Blue Mountains.

/ / /

/ / /

IV. Correspondence and Pleadings

All notices and communications regarding this Application should be addressed to:

For HES:	**For UEC:**
Hermiston Energy Services Nate Rivera, General Manager 215 E. Gladys Avenue Hermiston, OR 97838 and Stoel Rives LLP Attn: Jason Johns 760 SW Ninth Avenue, Suite 3000 Portland, OR 97205 jason.johns@stoel.com	Umatilla Electric Cooperative Attn: General Manager/CEO 750 W. Elm Ave. P.O. Box 1148 Hermiston, OR 97838 executive@umatillaelectric.com and Cable Huston LLP Attn: Chad Stokes 1455 SW Broadway, Suite 1500 Portland, OR 97201 cstokes@cablehuston.com

V. Application Requirements under OAR 860-025-0010

As required by OAR 860-025-0010, the Parties submit the following information in support of this Application:

A. Copy of the Agreement.

The Agreement is included as **Exhibit A** to this Application. Staff or other parties may request documents or information related to the Agreement which may contain sensitive business information that the Parties and the Customer wish to keep confidential. Thus, the Parties have filed, along with this Application, a motion for a standard Commission protective order.

B. Maps of the Joint Applicants' Service Territories and Location of Customer.

Maps depicting the general location and boundaries of HES's service territory are on file with the Commission. Maps depicting the general location and boundaries of UEC's service territory are also on file with the Commission. Attached to the Agreement as **Exhibit C**

/ / /

is a map, drawn to appropriate scale, showing the Property and the Adjacent Property that will be permanently transferred from HES to UEC.

C. Description of Transfer and/or Allocation.

This Agreement provides for a permanent adjustment to both HES's and UEC's service territories by permanently transferring the Property and Adjacent Property from HES to UEC. Under the Agreement, except as provided below, UEC shall have the exclusive right and obligation to provide retail electric service to Customer and any additional customers and facilities on the Property and Adjacent Property, including the construction of any necessary utility improvements required to serve those customers and facilities.

D. Description of Equipment and Facilities Being Exchanged.

No facilities or equipment are being sold, exchanged, transferred, or leased pursuant to the terms of the Agreement. Neither Party has agreed, nor shall either Party be obligated, to pay any money or to provide any other compensation to the other Party or to any other person as consideration for the Agreement.

Notwithstanding the above, HES has utility facilities that consist of overhead and underground electric distribution facilities used to serve an existing load ("Existing Load") on the Adjacent Property as described in **Exhibit D** ("Existing HES Facilities"). The Parties Agree that HES may continue to serve the Existing Load using the Existing HES Facilities on the Adjacent Property until the date Customer begins to develop the Adjacent Property. At the time when HES's service to the Existing Load on the Adjacent Property ceases, it shall become UEC's obligation to either remove or replace, at its sole cost, the Existing HES Facilities as may be needed to serve customers and facilities in the future.

/ / /

/ / /

E. Facts showing that the contract will eliminate or avoid unnecessary duplicating facilities, and will promote the efficient and economic use and development and the safety of operation of the utility service systems of the parties to the contract, while providing adequate and reasonable service to all territories and customers affected thereby.

The Parties entered into the Agreement under ORS 758.410 to provide safe and reliable service to Customer and its facilities, and it would be inefficient and require duplicative facilities for both Parties to serve the Customer. Such split service would be more expensive to construct, would be more expensive to maintain, and could cause operational issues for the Customer and its facilities.

The proposed permanent allocation of the Property and Adjacent Property from HES to UEC set out in the Agreement will eliminate or avoid the need for unnecessary duplication of utility facilities and allow UEC to better serve the Customer and future customers and facilities. It will also give UEC the certainty it needs to invest in utility improvements to serve the Customer. The Agreement promotes the efficient, economic, and safe development and operation of the Parties' utility systems by allowing UEC to permanently serve loads on the Property and Adjacent Property. With the exception of the permanent transfer of the Property and Adjacent Property from HES to UEC, each Party will continue to serve all other existing customers and facilities within their respective service territories. Each Party has a proven record of providing safe and reliable service to existing customers.

VI. Conclusion

As set forth above, the permanent transfer of the Property and Adjacent Property as provided in the Agreement is an effective means of serving the Customer and other customers and facilities on the Property an Adjacent Property while avoiding unnecessary duplication of facilities and promoting safe, efficient, and economic service within the Parties' service

/ / /

territories. The Agreement is authorized under ORS 758.410 and meets the standard set forth in ORS 758.415 for Commission approval because it will: (i) avoid unnecessary duplication of facilities; (ii) promote the efficient and economic use and development, and the safety of operation, of the Parties' utility systems; (iii) provide adequate and reasonable service to the Customer and future customers on the Property and Adjacent Property; and (iv) have no impact on the Parties' other customers.

HES and UEC respectfully request the Commission issue an order approving the Agreement.

Dated this 27th day of February 2024.

STOEL RIVES LLP

/s/Jason Johns
Jason Johns, OSB No. 077000
760 SW Ninth Avenue, Suite 3000
Portland, OR 97205
Telephone (503) 294-9618
jason.johns@stoel.com

Attorney for Hermiston Energy Services

CABLE HUSTON LLP

/s/Chad M. Stokes
Chad M. Stokes, OSB No. 004007
1455 SW Broadway, Suite 1500
Portland, OR 97201
Telephone: (503) 224-3092
cstokes@cablehuston.com

Attorneys for Umatilla Electric Cooperative

HERMISTON ENERGY SERVICES AND
UMATILLA ELECTRIC COOPERATIVE

JOINT APPLICATION
FOR APPROVAL OF TERRITORY
ALLOCATION AGREEMENT

Exhibit A

Territory Allocation Agreement ("Agreement")

Exhibit A

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 requsted 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 facilties 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:

///

///

///

///

///

If to HES:	If to UEC:
Hermiston Energy Services Attn: General Manager 215 E Gladys Hermiston, OR 97838 Phone: 541.667.5035 Email: nrivera@hermiston.or.us With a copy to: Stoel Rives LLP Attn: Jason Johns 760 SW Ninth Ave., Suite 3000 Portland, OR 97205 Email: jason.johns@stoel.com	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 With a copy to: Cable Huston LLP Attn: Thomas M. Grim 1455 SW Broadway, Suite 1500 Portland, OR 97201 Email: Legal@umatillaelectric.com

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.

///

///

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: Council Manager	Its: General Manager/CEO
Date: 1-10-24	Date: 1/10/2024

EXHIBIT A

EXISTING HES FACILITIES ON ADJACENT PROPERTY

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

RESOLUTION NO. 2303

A RESOLUTION APPROVING A TERRITORY ALLOCATION AGREEMENT BETWEEN THE CITY OF HERMISTON DOING BUSINESS AS HERMISTON ENERGY SERVICES AND UMATILLA ELECTRIC COOPERATIVE AND SUPERSEDING HERMISTON CITY COUNCIL RESOLUTION NO. 2208 AND AUTHORIZING THE HERMISTON ENERGY SERVICES GENERAL MANAGER TO SIGN ON BEHALF OF THE CITY

WHEREAS, the City of Hermiston doing business as Hermiston Energy Services, (HES) and Umatilla Electric Cooperative, (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"). HES' and UEC's respective service territories include areas located adjacent to each other in Umatilla County, Oregon; and

WHEREAS, 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; and

WHEREAS, the Hermiston City Council approved the Customer Allocation Agreement through Resolution No. 2208 on February 14, 2022; and

WHEREAS, The Commission approved the Customer Allocation Agreement in Order 22-249 on July 6, 2022; and

WHEREAS, 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; and

WHEREAS, 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; and

WHEREAS, 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; and

WHEREAS, UEC desires to serve, and HES has agreed to allow UEC to serve, the Customer on the Adjacent Property; and

WHEREAS, UEC and HES have agreed to permanently transfer the Adjacent Property into UEC's service territory, subject to Commission approval; and

WHEREAS, The Parties believe that permanently 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; and

WHEREAS, 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.

NOW, THEREFORE, THE CITY OF HERMISTON RESOLVES AS FOLLOWS:

1. That the recitals stated above are incorporated as if fully set forth herein.

2. That the Agreement allocating to UEC the Service Territory on the Property is appropriate under the above stated circumstances and is approved.

3. That Hermiston Electric Services General Manager, Nate Rivera, is authorized to sign the Agreement and all documents to facilitate the allocation of the Service Territory Transfer to UEC for purposes of providing electric service to the Property.

4. That this Resolution supersedes City of Hermiston Resolution No. 2208.

5. That this Resolution is effective immediately upon its passage.

PASSED by the Common Council this 8th day of January, 2024.
SIGNED by the Mayor this 8th day of January, 2024.

Dr. David Drotzmann, MAYOR

ATTEST:

Lilly Alarcon-Strong, CMC, CITY RECORDER

HERMISTON ENERGY SERVICES AND
UMATILLA ELECTRIC COOPERATIVE

JOINT APPLICATION
FOR APPROVAL OF TERRITORY
ALLOCATION AGREEMENT

Exhibit B

A description of the Property served by UEC under the Customer Allocation Agreement

SERVICE AREA BOUNDARY TRANSFER

A Portion of Lot 2 of Stall Replat,
Township 4 North, Range 28 East,W.M.,
Southeast Quarter of Section 23,
City of Hermiston, Umatilla County, Oregon

Territory Allocation Agreement
Exhibit B

TRANSFER PROPERTY DESCRIPTION:

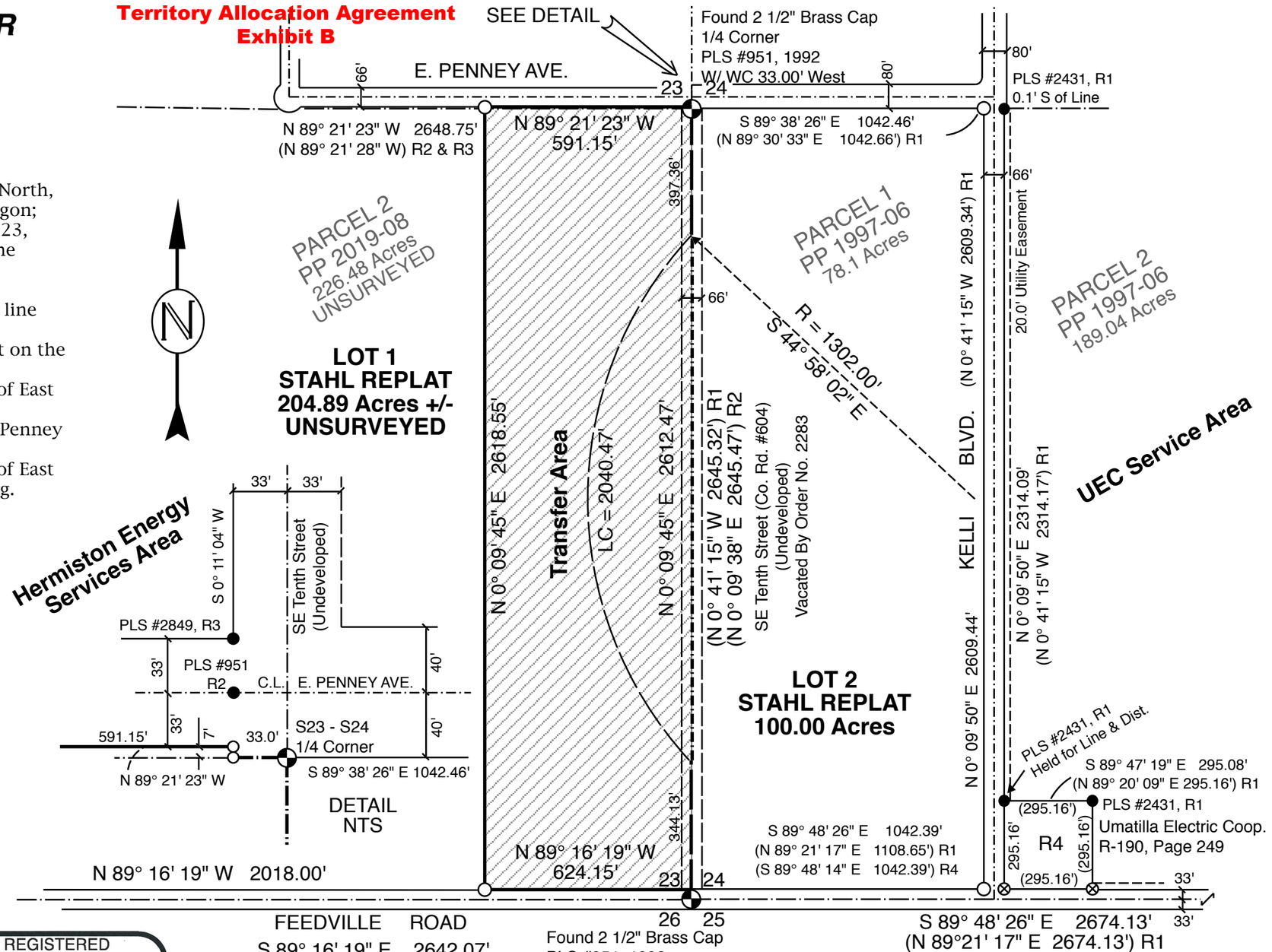
Beginning at the East Quarter Corner of Section 23, Township 4 North, Range 28, East of the Willamette Meridian, Umatilla County, Oregon;
Thence South 0° 09' 45" West along the East line of said Section 23, a distance of 2612.47 feet to a point being 33.00 feet North of the Southeast corner of said Section 23, said point being also on the North right of way line of Feedville Road;
thence North 89° 16' 19" West along the said North right of way line of Feedville Road, a distance of 624.15 feet;
Thence North 0° 09' 45 East a distance of 2618.55 feet to a point on the South right of way line of East Penney Avenue;
thence South 89° 21' 23" East along the said South right of way of East Penney Avenue a distance of 591.15 feet;
thence South 0° 11' 04" West along the said right of way of East Penney Avenue, a distance of 7.00 feet;
thence South 89° 21' 23" East along the said South right of way of East Penney Avenue, a distance of 33.00 feet to the Point of Beginning.

SURVEY RECORDS:

R1 - McKinnis for Cook, P.P. 1997-06, C.S. #97-064-B
R2 - Edwards for Cook, P.P. 2011-19, C.S. #C-1634-C
R3 - Posada for Cook, P.P. 2019-08, C.S. #19-034-B
R4 - Edwards for Umatilla Electric, C.S. #90-005-A
R5 - Best for Hermiston Foods, LLC, C.S. #18-008-B

LEGEND

- ○ Found Monuments - 5/8" x 30" Iron Rods W/ Plastic Caps Stamped - L.S. # 2431
- ⊕ FOUND SECTION MONUMENTS - As Noted
- ● Found monuments - As Noted
- -·-·- SECTION LINES
- ——— TRANSFER AREA BOUNDARIES
- (000) R0 Record Bearing Distance for noted Reference



REGISTERED PROFESSIONAL LAND SURVEYOR
OREGON
RONALD V. McKINNIS
JAN. 23, 1990
2431
Expires 12-31-20

0 400 800 1200

SCALE 1" = 400 Ft.
August, 2020 Rev. 08-11-20

ENGINEERING - LAND SURVEYING - WATER RIGHTS
R. V. McKINNIS ENGINEERING
79980 Prindle Loop Road
Hermiston, Oregon 97838
(541) -567-2017

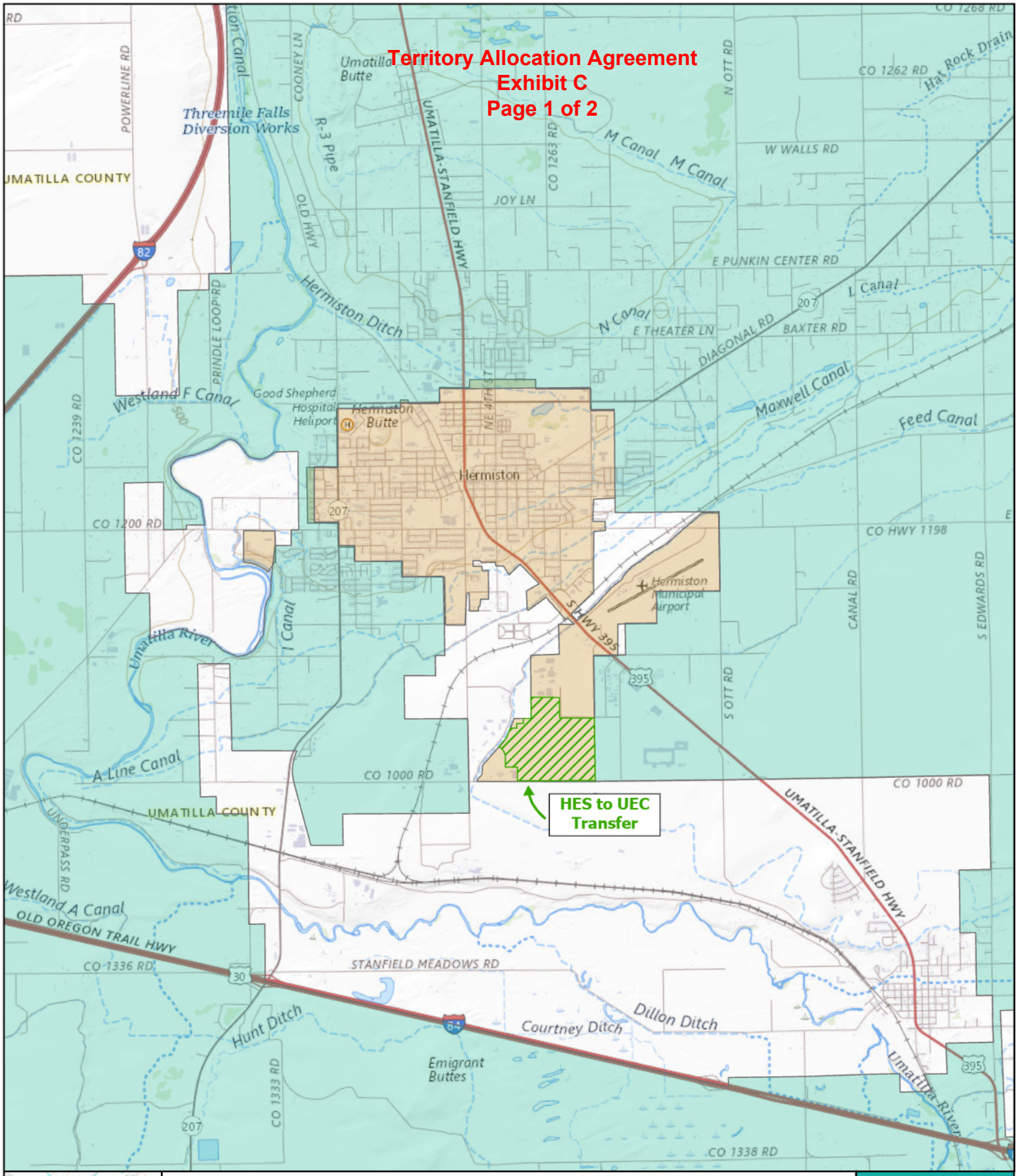
HERMISTON ENERGY SERVICES AND
UMATILLA ELECTRIC COOPERATIVE

JOINT APPLICATION
FOR APPROVAL OF TERRITORY
ALLOCATION AGREEMENT

Exhibit C

A map, drawn to appropriate scale, showing the Property and the Adjacent Property that will be permanently transferred from HES to UEC

Territory Allocation Agreement
Exhibit C
Page 1 of 2



HES TO UEC OVERVIEW

1 inch equals 1 mile

0 0.5 1 Miles

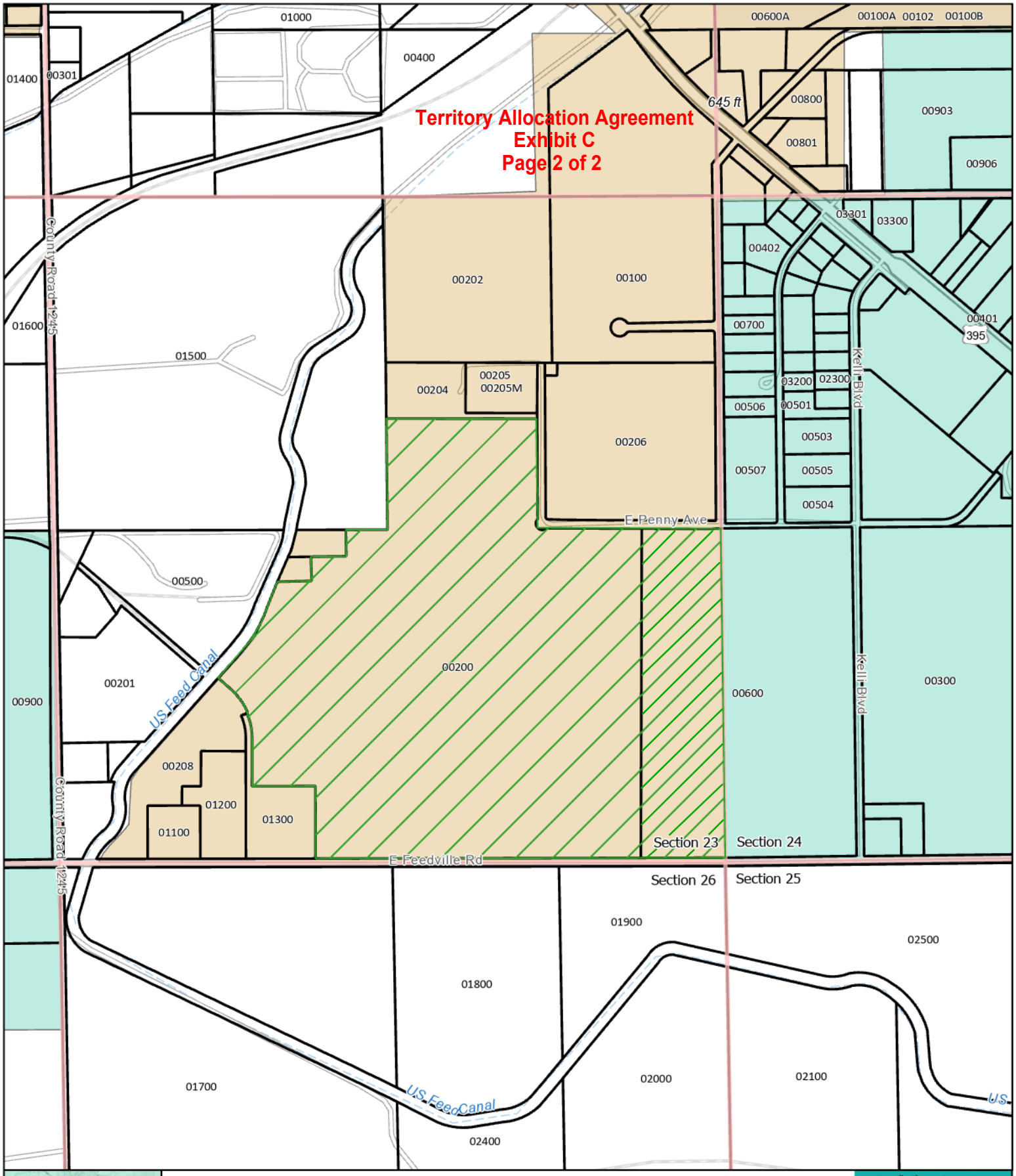
1983 North American Datum
Oregon State Plane
North FIP 3601 Feet

N

- UEC Service Territory
- HES Service Territory
- Transfer Area to UEC

Umatilla Electric Cooperative
750W. Elm Ave. Hermiston, OR 97838
UEC UMATILLA ELECTRIC COOPERATIVE
https://www.umatillaelectric.com/

Date: 1/30/2024 Sheet: 1 of 2


Territory Allocation Agreement
Exhibit C
Page 2 of 2
01000
00600A
00100A 00102 00100B
01400
00301
00400
645 ft
00800
00903
00801
00906
03301
03300
00402
00202
00100
01600
00700
00401
395
County Road 1245
01500
00205
00205M
00204
03200
02300
Kelli Blvd
00506
00501
00206
00503
00507
00505
00504
E Penny Ave
00500
00201
00900
US Feed Canal
00200
00600
00300
00208
01200
01100
01300
Section 23
Section 24
E Feedville Rd
Section 26
Section 25
01900
02500
01800
01700
02000
02100
02400
HES TO UEC CLOSE UP
Umatilla Electric Cooperative
750W. Elm Ave. Hermiston, OR 97838
1 inch equals 1,000 feet
0 500 1,000 Feet
1983 North American Datum
Oregon State Plane
North FIP 3601 Feet
N
HES Service Territory
HES Transfer to UEC
UEC Service Territory
PLSS Section
Umatilla County Tax Lot
Previous Transfer to UEC
UMATILLA ELECTRIC COOPERATIVE
https://www.umatillaelectric.com/
Date: 1/30/2024 Sheet: 2 of 2

HERMISTON ENERGY SERVICES AND
UMATILLA ELECTRIC COOPERATIVE

JOINT APPLICATION
FOR APPROVAL OF TERRITORY
ALLOCATION AGREEMENT

Exhibit D

Existing HES Facilities

Exhibit D

EXISTING HES FACILITIES ON ADJACENT PROPERTY

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