ARTICLE 26
BATTERY ENERGY STORAGE SYSTEMS

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26-101: Statement of Purpose

It is the purpose of this Article to provide a regulatory scheme for the permitting, construction and operation of battery energy storage systems (BESS) in Hodgeman County, subject to reasonable restrictions, which will preserve the public health and safety. No BESS shall operate in Hodgeman County without a valid and active conditional use permit.

The requirements of this Article shall not be construed or applied retroactively to require compliance by a BESS that obtained a valid Conditional Use Permit prior to the effective date of this Article. However, unless otherwise approved by the Board of County Commissioners, any amendment or material modification to an existing Conditional Use Permit or approved development plan, or any reissuance of a Conditional Use Permit that has expired, been terminated, or otherwise become invalid, shall be subject to and comply with all applicable requirements of this Article in effect at the time of such amendment, modification, or reissuance.

26-102: Definitions

The following definitions shall be used in the interpretation of this article.

1. **ACCESSORY BUILDING.** All buildings in the project boundary line of the project site housing the BESS that do not contain batteries.

2. **BATTERY ENERGY STORAGE SYSTEM (BESS):** One or more devices, assembled together, capable of storing energy in order to supply electrical energy at a future time, not to include a stand-alone 12-volt car battery an electric motor vehicle, or residential battery systems. A battery energy storage system is classified as a Tier 1, Tier 2, or Tier 3 Battery Energy Storage System as follows:

   A. Tier 1 battery energy storage systems are have an aggregate energy capacity less than or equal to 80 kWh. All Tier 1 battery energy storage systems located shall comply with all applicable building, fire, and zoning regulations as may be in effect in Hodgeman County.

   B. Tier 2 battery energy storage systems have an aggregate energy capacity between 81 and 600 kWh, *or* are comprised of more than one energy storage system technology in a physical container or similar enclosed area. All Tier 2 BESS in Hodgeman County require a conditional use permit.

   C. Tier 3 battery energy storage systems have an aggregate energy storage capacity greater than 600kWh or are comprised of more than one storage battery technology in a physical container or similar enclosed area. All Tier 3 BESS in Hodgeman County require a conditional use permit.

   D. Any uninterruptible power supply (UPS) systems and battery energy storage systems located within the footprint of a data center and used for backup power, power quality, load management, or grid protection ancillary to a data center. Such systems shall comply with the technical and safety standards of the Hodgeman County Zoning Regulations pertaining to BESS systems and shall be reviewed as part of the data center's conditional use permit, but shall not constitute a standalone Battery Energy Storage System and shall not be subject to the separate conditional use permit, payment in lieu of taxes, school donation, or impact fee provisions applicable to standalone BESS projects. Battery energy storage systems shall not be considered energy generation systems for purposes of the exclusion in this definition.

3. **BATTERY(IES):** A single cell or group of cells connected electrically in a series, in parallel, or a combination of both, which can charge, discharge, and store energy electrochemically. For the purposes of this Article, batteries used in consumer products are excluded from these requirements.

4. **CELL:** The basic electrochemical unit, characterized by an anode and a cathode, used to receive, store, and deliver electrical energy.

5. **COMMISSIONING:** A systematic process that provides documented confirmation that a BESS functions according to the intended design criteria and complies with applicable code requirements.

6. **DEDICATED-USE FACILITY.** A building, enclosed area, or container that is used for the primary intention of housing batteries and/or battery energy storage equipment, is classified as Group F-1 occupancy as defined in the International Building Code, and complies with the following:

    a. The building's only use is battery energy storage, energy generation, and its electrical grid-related operations.

    b. No other occupancy types are permitted in the building.

    c. Occupants in the rooms and/or areas containing battery energy storage systems are limited to personnel that operate, maintain, service, test, and repair the battery energy storage system and other energy systems.

    d. Administrative and support personnel are permitted in areas within the buildings that do not contain battery energy storage system, provided that the areas do not occupy more than 10% of the building area of the floor in which they are located, and a means of egress is provided from the administrative and support use areas to the public way that does not require occupants to traverse through areas containing battery energy storage systems or other energy system equipment.

7. **NEC:** National Electric Code.

8. **NFPA:** National Fire Protection Association.

9. **PROJECT BOUNDARY LINE**: The outer perimeter of the site upon which the entire BESS project is located, as established by the exterior property lines and encompassing the entire area included within the project site.

10. **START OF CONSTRUCTION:** The period beginning on the date of equipment and personnel mobilization, staking, site preparation, grading, excavation, construction of access roads, foundation work, or any other construction-related activities undertaken for development of the project.

26-103: Applicability

This Article applies to Tier 2 and Tier 3 BESS. Tier 1 BESS are governed by and subject to zoning regulations pertaining to residences and/or AG within Hodgeman County as determined by Zoning Administrator.

26-104: Development Plan

The information listed below shall be submitted with the conditional use permit application for Tier 2 and Tier 3 BESS. It shall be the duty of the County Clerk to determine when a conditional use application is complete and ready to schedule for a public hearing. All information listed below shall be submitted prior to the Zoning Board making its conditional use permit recommendation to be submitted to the Board of County Commissioners.

1. A Project map drawn at a scale of not less than 1" = 2,000' including the following:

    a. All development plan requirements under Article 12-103 of the Zoning Regulations.

    b. Project boundary showing the entire project boundary line and total acreage.

    c. Preliminary location of dedicated use facilities, accessory buildings, and enclosed areas.

d. Location of any temporary assembly areas used for construction of buildings in project boundary line of site.

e. Total square footage of all planned buildings, structures (including accessory buildings, battery energy storage system, dedicated-use facilities, and any other structure) in the footprint.

f. All public roads, access roads, and temporary access roads serving the Project.

g. Land identified as a Special Flood Hazard Area as defined by the Federal Emergency Management Agency.

h. All required setbacks and land use requirements in this section.

i. Attestation that Project shall be developed in compliance with requirements in this Article and those required by the Board of County Commissioners.

j. Prior to the start of construction, Applicant shall cause baseline water and soil testing to be conducted by a qualified third-party environmental professional at the cost to Applicant. Applicant shall comply with and incorporate any and all recommendations of study for mitigation or to ensure soil and water safety. Such environmental testing, including its frequency, constituents, and testing locations, shall be subject to mutual agreement between the Applicant and Hodgeman County. Except for any testing results that require immediate reporting to a governmental agency under applicable state or federal law, Developer will provide complete copies of all testing results to Hodgeman County.

k. Attestation that to the extent reasonably practicable, the Applicant shall give preference to local retailers, suppliers, contractors, and other businesses located within Hodgeman County and surrounding area when purchasing or obtaining materials, equipment, supplies, generators, construction services, and other goods and services necessary for the development, construction, operation, and maintenance of the BESS.

2. A general project introduction and plan of operation that describes the planned BESS project including identifying the preliminary location of the dedicated use facilities, accessory buildings, temporary construction sites, total acreage of project, miles of new access roads, anticipated construction schedule

3. A preliminary one-line electric diagram detailing the BESS layout, associated components, and electrical interconnection methods. A final one-line diagram including all NEC-compliant disconnects and overcurrent devices, shall be submitted for county review prior to the start of construction.

4. Other relevant information deemed appropriate by the applicant or as required by county staff and/or the Zoning Board or Board of County Commissioners.

26-105: Documents, Plans, Studies, Reports, and Other Permits

The information listed below shall be submitted with the conditional use permit application and used to evaluate compliance with the Zoning Regulations. The Zoning Board or Board of County Commissioners may require additional information not explicitly listed or require separate studies for the purpose of evaluating the proposed conditional use permit.

1. Documentation acceptable to the County that the Applicant has either executed lease, lease option, or purchase option agreements to use the land in the manner requested ***or*** is the owner of the land according to the deed on file with the Hodgeman County Register of Deeds. The Applicant may redact sensitive financial or confidential information.

2. Certified list of adjacent property owners adjacent to and/or owning property within 1000' of the project boundary line as set forth in the Count tax records on the date of application and a list of all occupied residences 1001' – 5280' from the project boundary line on the date of application. These lists of adjacent property owners shall be sent electronically in spreadsheet format and contain the property owner's name, mailing address, physical address of adjacent property, and parcel identification number (PIN) of adjacent property. Notice required by K.S.A. 12-757 shall be given to all property owners within 1000' of the project boundary line; said notice shall be given to

all occupied residences within 1001' – 5280' of the project boundary line in existence on date of application.

3. An expected economic impact report to the County which assumes the proposed project is approved and constructed as proposed on the conditional use permit application. The report shall be prepared by an independent third-party company or qualified four-year institution.

4. A written document from the Kansas Department of Wildlife and Parks (KDWP) or its successor indicating the applicant has contacted the agency regarding the proposed project. The document should state KDWP has been contacted by the applicant regarding the proposal and has reviewed or is currently reviewing the proposal for any concerns regarding threatened or endangered species.

5. A written plan specifying the intended water use needed for construction and to bring the project online, and shall also specify the anticipated annual water consumption of the BESS and all structures in the project boundary line. The plan should certify that the water use of the BESS will not negatively impact the surrounding region.

6. A written plan specifying the projected megawatt (MW) capacity of electricity needed for construction and to bring the project online, and shall also specify the anticipated annual net MW usage of the BESS and all structures in the project boundary line.

7. Preliminary location of anticipated utility lines and pipeline existing within the project boundary line of the BESS project.

8. Preliminary location of anticipated transformers, substations, connecting power lines and other structures to be used as part of the operation of the project (including the dimensions of such structures). Any changes in location of structures must comply with the setback rules set out in this Article. Applicant will notify the county in writing of any plan or location changes prior to commencement of construction.

9. Documented written request to either Southwest Power Pool ("SPP"), an independent third-party, or the applicable service provider requesting attestation as to the following:

a. Adequate capacity is available on the applicable supply lines and substation to ensure that the capacity available to serve other needs of the service area is consistent with the normal projected load growth envisioned by the provider, and

b. Utility supply equipment and related electrical infrastructure are sufficiently sized and can safely accommodate the proposed use, and

c. Any system designed for cooling and operation of the facility (electricity, water, or other means) will be adequate and will not negatively impact the surrounding region, and

d. The use will not cause severe electrical interference or fluctuations in the line voltage on and off the operating premises, and Applicant shall provide to the Board of County Commissioners with written verification that the electrical work has passed a third-party final inspection once construction is complete.

10. Stormwater management plan. Provide a plan showing how rainwater and runoff from the site will be collected and drained so that adjacent properties and roadways are not flooded. The plan shall identify any planned retention basin (pond, ditch, etc.)The plan shall explain how standing water will be mitigated from occurring on the constructed site and how the project will prevent chemicals, petroleum products, battery electrolytes, and other contaminant substances from leaving the site boundaries or into the ground. The plan shall identify the release rate for detention and retention basins for a 10-year, 2-hour storm and at a minimum, the detention and retention facilities shall limit the release rate for the 10-year, 2-hour storm to the predevelopment natural runoff rate. . The developer shall comply with all KDHE requirements related to stormwater management and reporting. The developer shall pay for the cost of third-party engineers and inspections.

The stormwater management system shall be evaluated for the 100-year storm event. The analysis shall demonstrate that detention facilities, emergency spillways, major drainageways, and designated overflow routes can safely accommodate the 100-year event without flooding occupied structures or causing adverse impacts to adjacent property, public infrastructure, or property downstream of the outfall. Stormwater plans and

supporting analyses shall be prepared and sealed by a professional engineer licensed in the State of Kansas.

Prior to the start of construction, the Developer shall obtain all required authorization from the Kansas Department of Health and Environment (KDHE) under the applicable NPDES Construction Stormwater General Permit, including submittal of a Notice of Intent (NOI) where required. The owner/operator shall develop, implement, and maintain a site-specific Stormwater Pollution Prevention Plan (SWPPP) and associated erosion and sediment control measures throughout construction in accordance with KDHE requirements. Permit coverage shall be maintained until final stabilization is achieved and all applicable KDHE requirements for termination of coverage have been satisfied.

11. Estimated cost for construction to bring all structures in the project boundary
line into operation.

12. Prior to the start of construction, Applicant shall cause baseline water and soil testing to be conducted by a qualified third-party environmental professional at the cost to Applicant. Applicant shall comply with and incorporate any and all recommendations of study for mitigation or to ensure soil and water safety. Such environmental testing, including its frequency, constituents, and testing locations, shall be subject to mutual agreement between the Applicant and Hodgeman County. Except for any testing results that require immediate reporting to a governmental agency under applicable state or federal law, Developer will provide complete copies of all testing results to Hodgeman County.

13. Prior to the start of construction, the Developer shall provide the County with a construction staging plan that identifies location of parking, trailers, and temporary buildings to be used in construction of the project. The Developer shall consult with Hodgeman County Emergency Management Director, Hodgeman County Road & Bridge, and Hodgeman County Communications Director in development of construction staging plan to ensure adequate parking, alleviate traffic congestion, and adequate emergency response.

26-106: Additional Topics Required in Application for Conditional Use Permit
In addition to strict conformance to all performance standards and development plan requirements as detailed in the Hodgeman County Zoning Regulations, the development plan shall address and shall attest to the Applicant's conformity with the following:

1. Setbacks. BESS dedicated use facilities and all associated structures such as generators, HVAC, battery backup, accessory uses shall be set back 200 feet from all property lines adjoining a public road or a non-participating property. Any air fan chillers associated with the project shall be setback no less than 2,250 feet from the exterior wall of the nearest non-participating residence in existence at the time of the CUP application. Setbacks shall not apply to interior lot lines within the project boundary line or to property lines shared with a participating landowner. Setbacks shall not apply to above-ground transmission facilities and similar interconnection infrastructure.

2. Generators.

Any generators associated with the BESS project shall meet the following requirements.

a. The owner/operator shall provide documentation of the manufacturer-required testing for each generator in the project boundary line. Each generator shall be tested at regular intervals in accordance with the recommended manufacturer requirements. This generator testing is limited to Monday—Friday between the hours of 9:00 a.m. and 5:00 p.m.

b. Generators must be enclosed in a level 3 sound attenuated enclosure or other enclosure.

c. Onsite generators must meet or exceed EPA emission standards for backup generators. However, should generators be used as prime application without utility power provided to the site, the generators must be Tier 4 factory certified or NSPS factory certified as applicable for non-emergency use.

d. Including the testing done in accordance with the manufacturer recommended testing, no generator shall be operated for greater than

60 hours (3600 minutes) per calendar year. Generator use during planned brownouts, in which power supplied to residential customers in Hodgeman County is reduced, shall be included in this 60-hour limit. Generator use during emergencies, unplanned utility power outages, or other circumstances involving the loss or imminent loss of electrical service shall not apply to this limit.

3. **Fire Suppression and Emergency Responders.** The Applicant shall coordinate with the Jetmore Fire Department, Hodgeman County Rural Fire Department, Hodgeman County Emergency Management Director, Hodgeman County Sheriff, and provider of emergency communications and dispatch services for Hodgeman County to ensure there is adequate radio coverage for emergency responders within the building based upon the existing coverage levels; the application shall include written confirmation from the Jetmore Fire Department, Hodgeman County Rural Fire Department, Hodgeman County Emergency Management Director, and provider of emergency communications and dispatch services for Hodgeman County.

The Applicant must comply with the National Fire Prevention Association (NFPA) standard 855 in effect on the date of application for conditional use permit. The Applicant must complete a hazard mitigation analysis, utilize fire suppression designs and equipment appropriate to the battery technology employed, conduct fire and explosion hazard testing in accordance with UL 9540A to the extent applicable to the battery technology as determined under NFPA 855 and the equipment's listing, develop emergency planning, and conduct annual training of maintenance staff. The Applicant shall be required to train first responders in battery firefighting techniques and standards including addressing specific hazards such as fire, explosion, arc flash, shock, and toxic chemicals.

The Applicant shall coordinate with the Jetmore Fire Department, Hodgeman County Rural Fire Department, Hodgeman County Emergency Management Director, and provider of emergency communications and dispatch services for Hodgeman County to ensure an adequate fire suppression plan. The application shall include written confirmation from Jetmore Fire Department, Hodgeman County Rural Fire Department, Hodgeman County Emergency Management Director, and provider of emergency communications and dispatch services for Hodgeman County of initial consultation. This confirmation shall not be unreasonably withheld. The applicant shall

coordinate with the Jetmore Fire Department, Hodgeman County Rural Fire Department, Hodgeman County Emergency Management Director, and provider of emergency communications and dispatch services for Hodgeman County to develop an adequate fire suppression plan and the estimated time for necessary infrastructure and/or equipment to be built or obtained for adequate fire suppression plan. The fire suppression plan shall demonstrate that the Project site has sufficient on-site fire suppression capacity, including stored water, water towers, firefighting foam, or other approved suppression methods, to contain and control a fire for a minimum of forty-five (45) minutes, allowing sufficient time for additional firefighting personnel and resources to arrive on site.

The cost of such infrastructure, equipment, mitigation of toxic chemicals, and training of emergency staff shall be assumed by the Applicant. Prior to issuance of a certificate of occupancy, the approved site plan shall be updated to accurately depict the final as-built location of all buildings, structures, equipment, access points, and other relevant improvements to ensure that first responders have accurate and current information necessary for an adequate and coordinated emergency response.

The Applicant shall coordinate with the Hodgeman County Sheriff's Office to ensure an adequate plan for law enforcement response. Prior to issuance of a certificate of occupancy, the approved site plan shall be updated to accurately depict the final as-built location of all buildings, structures, equipment, access points, and other relevant improvements to ensure that first responders have accurate and current information necessary for an adequate and coordinated emergency response.

4. Landscaping.

The Applicant shall submit a landscaping and screening plan to Hodgeman County for approval, which may include fencing, berms, landscaping, or any combination thereof, or other screening measures acceptable to Hodgeman County. The final landscaping and screening requirements shall be incorporated into the Conditional Use Permit. In no event shall a perimeter fence consist of barbed wire.

5. Noise.

The following noise propagation studies must be conducted and submitted with application for conditional use permit.

a. A sound modeling study that demonstrated compliance with the maximum sound levels that is specific to the proposed site topography, layout and building type, scale, height and construction proposed. This study must show noise conditions at the site prior to the project development and must provide model-predicted noise conditions resulting from the proposed project post-development. The sound modeling shall measure the noise or projected noise from the project boundary line.

b. The sound modeling study must include recommendations for sound mitigation measures, if they are necessary for the use to comply with maximum sound levels. These mitigation measures, if applicable, must be reflected on the development plan and incorporated into the plan for approval of permit.

c. Any noise that emanates from all activity associated with the BESS is limited to a maximum sound level of (i) 60 dBA measured at the property line of the project, and (ii) 55 dBA in daytime and 50 dBA in nighttime, as those terms are defined in these regulations, measured at any sensitive receptor. Such levels are measured at the project boundary line. The maximum sound level in this section does not apply to:

    i. Demolition and construction work on buildings, structures, landscaping, and the testing of generators, operation of emergency equipment such as electrical generators during unplanned outages, water pumps, or similar devices during times of utility service outages or emergencies.

    ii. Force majeure.

d. Upon issuance of a Certificate of Occupancy for a BESS, the Developer shall, at its sole cost and expense, obtain and submit to the County an independent sound study demonstrating compliance with the sound limits established in this Article. Such sound study shall be conducted and submitted to the County at each of the following times: (a) upon

issuance of the Certificate of Occupancy; (b) six (6) months following issuance of the Certificate of Occupancy; and (c) one (1) year following issuance of the Certificate of Occupancy. Each sound study shall be conducted by a qualified acoustical professional and shall evaluate sound levels generated by the BESS at the project boundary line and other locations necessary to demonstrate compliance with the sound limits established in this Article.

Following submission of the sound study conducted one (1) year after issuance of the Certificate of Occupancy, no additional periodic sound study shall be required unless requested by the County. Upon request from County and at Applicant's sole cost and expense, the Applicant shall obtain an additional sound study conducted by a qualified acoustical professional. If the additional sound study demonstrates that the BESS is not in compliance with the sound limits established in this Article, the Developer shall immediately undertake such mitigation measures as are reasonably necessary to bring the BESS into compliance. The Developer shall provide documentation to the County demonstrating completion of the required mitigation measures and, upon request of the Hodgeman County Board of County Commissioners shall obtain a follow-up sound study demonstrating compliance.

6. Parking.

Parking lots for Data Centers Must comply with Hodgeman County Zoning regulations and shall have approval from the Hodgeman County Engineer and Hodgeman County Board of County Commissioners.

A minimum of 1 parking space per employee on the largest shift is required, plus an additional 3 visitor spaces. Parking shall be compliant with the Americans with Disabilities Act (ADA).

7. Water.

A completed water study by a third-party which provides a baseline for the quality of groundwater, affirms there is enough water for the project and explaining how project could affect current water users, groundwater, and surface water. The study must describe where the water will come

from/source of water, how much water is expected to be used, how water will be made efficient, and contingency plan if water supplies are interrupted.

A written plan detailing the risk of groundwater contamination and the planned mitigation measures should any groundwater contamination occur.

An attestation that the Applicant will immediately (within 12 hours of discovery) notify the County of occurrence of groundwater contamination and shall work with the County to mitigate the contamination at cost to the Applicant.

8. Utility Lines and Circuitry.

All electrical lines and circuitry must comply with existing NEC, NFPA, and fire codes pertaining to BESS as may be currently in effect and adopted by Hodgeman County.

9. Signage.

All signage shall be in compliance with ANSI Z535 and shall include the type of technology associated with the BESS, any special hazards associated, the type of fire suppression system installed in the areas of BESS, and 24-hour emergency contact information, including a call-back phone number.

Disconnect and emergency shutoff information, or other applicable emergency response procedures as documented in the fire suppression plan, shall be clearly displayed on a light-reflective surface. A clearly visible warning sign concerning voltage shall be placed at the base of all pad-mounted transformers and substations.

10. Lighting.

The requirements of this section shall not apply to temporary lighting used for construction, demolition, or emergency activities, or to lighting required by federal or state worker safety regulations. Temporary construction lighting shall be directed downward and shielded where practicable consistent with construction and worker safety requirements, and shall be removed upon completion of construction.

Prior to the commencement of construction, applicant will demonstrate planned compliance with the following requirements and upon certificate of occupancy shall meet the following requirements:

a. All exterior lighting fixtures shall be LED unless otherwise approved.

b. All exterior lighting fixtures shall be shielded and directed downward so that no light is emitted above the horizontal plane of the exterior perimeter fence.

c. Lighting shall be designed to prevent light trespass onto adjacent properties and public rights-of-way.

d. No exterior lighting shall exceed 0.5 footcandles measured at the project boundary line of the project.

e. Lighting fixtures shall have a correlated color temperature of no more than 3,000 Kelvin.

f. Up-lighting, floodlighting directed upward, laser lighting, and decorative lighting visible from adjacent properties are prohibited.

g. Operational Restrictions.

    i. Non-essential exterior lighting, including parking lot and decorative lighting, shall be reduced by at least fifty percent during the nighttime.

    ii. Lighting in areas not actively occupied shall utilize motion sensors, timers, or other automatic controls.

    ii. Emergency and safety lighting required by law are exempt from these operational restrictions.

h. Unless otherwise approved on a case-by-case basis or necessary in the case of an emergency, no exterior lighting fixtures shall exceed thirty-five (35) feet in height.

i. Prior to beginning construction the applicant shall submit a preliminary lighting plan prepared by a licensed engineer showing:

i. Fixture locations and mounting heights;

ii. Fixture specifications, including lumen output and color temperature;

iii. Methods for controlling light spill, light glare, and light trespass;

iv. Procedures for dimming and curfew compliance.

j. The owner or operator shall provide annual certification from a licensed engineer demonstrating compliance with all lighting requirement herein. The County may require additional testing upon receipt of citizen complaint regarding light trespass.

k. Notwithstanding any other lighting standards or limitations contained herein, illuminated identification signs located at the primary entrance to the Project and used solely to identify the owner, operator, tenant, or principal use of the Project shall not be subject to the maximum illumination or footcandle limitations otherwise applicable to exterior site lighting.

11. Height.

The height of any structure within a BESS development shall not exceed 80 feet, unless approved by variance or waiver, measured to the top of the parapet or main roofline. Rooftop mechanical equipment, screen walls, cooling equipment, penthouses, antennas, lightning protection, exhaust stacks, solar equipment, and similar appurtenances shall not count toward this height requirement. This 80-foot heigh limit excludes transmission lines.

The specific standards contained herein shall satisfy and supersede any height-equals-setback rule that may be required under Article 18 or elsewhere in these Regulations.

12. **Vegetation.**

Areas within 10' on each side of Tier 2 or Tier 3 BESS and equipment shall be cleared of combustible vegetation and other combustible growth. Single specimens of trees, shrubbery, or cultivated ground cover such as green grass, ivy, succulents, or similar plants used as ground cover shall be permitted to be exempt, provided that they do not form a means of readily transmitting fire. Removal of trees on County-owned property shall be minimized; should tree removal on County-owned property be required notice must be given to the Hodgeman County Planning and Zoning Administrator of the number of trees to be removed. Applicant shall assume the cost of tree removal and, no later than thirty (30) days after removal of tree, shall make a payment of $1000.00 to Hodgeman County for each tree removed.

26-107: Time Restrictions for Conditional Use Permit

Construction authorized under a Conditional Use Permit and Development Plan shall commence within one (1) year after the date the permit and Development Plan is approved by the Board of County Commissioners. If construction has not commenced within that one-year period, the Applicant may request an extension by submitting a written request to the Board of County Commissioners before the permit expires. The request shall state the reasons construction has not commenced and provide an anticipated date for the start of construction.

The Board of County Commissioners may, in its discretion, grant up to four (4) successive one-year extensions. As a condition of each extension, the Applicant shall pay the following nonrefundable extension fee to Hodgeman County within seven (7) days after the Board approves the extension and, in all events, before expiration of the then-current permit period:

1. First extension: $100,000.00.
2. Second extension: $200,000.00.
3. Third extension: $300,000.00.

4. Fourth extension: $400,000.00.

If the written request is not approved before expiration of the then-current permit period, or if the applicable extension fee is not timely paid, the Conditional Use Permit shall expire by its terms. The written request shall provide reason construction has not commenced and estimated timeline for construction to commence. The extension request is not intended to subject the CUP to revocation or modification so long as the request and extension payment are timely. No more than four (4) one-year extensions shall be granted under this provision. If the Applicant fails to comply with the time limitations set forth herein, the conditional use permit shall automatically terminate and shall be considered revoked without any formal action required.

26-108 Operational Requirements.

1. **Hazardous Materials.** Lubricants and/or hazardous material located on the premises shall be kept and transported in accordance with all local, state, and federal regulations. The project must adhere to the Tier II Reporting Guide for Hodgeman County, Kansas under which the KDHE and Local Emergency Planning Committee (LEPC) require Tier II reporting.

2. **Electromagnetic Interference.** Applicant shall conduct a microwave beam path survey and take such other actions necessary to comply with FCC requirements regarding electromagnetic interference. The applicant shall have an initial consultation with the Hodgeman County Communications Director. Applicant shall provide documentation indicating compliance with minimum FCC regulations. The application shall include written confirmation from Hodgeman County Communications Director of initial consultation. This confirmation is not to be unreasonably withheld Applicant shall create an emergency plan that covers response in the event of unforeseen electromagnetic interference and submit it to the Hodgeman County Communications Director prior to commencing operations. Once the BESS is operational, Applicant shall provide a twenty-four hour call-back number to the Hodgeman County Communications Director to immediately address any interference with Hodgeman County Communications including prevention of faulty alarms requiring emergency response.

3. **Extraordinary Event Response.** Upon an occurrence of an extraordinary event, the Applicant or Operator shall notify the Zoning Administrator of such event and, if the event is deemed to be a possible threat to public safety immediately notify the Hodgeman County Sheriff. Extraordinary events include damaged storage containers, fire, explosion, collector-feeder line

failure when such failure threatens public health, safety, property or the environment, injured worker or citizen, livestock, or kills or damages to threatened or endangered species. In the event of any extraordinary endangered species mortality, the Applicant or Operator shall notify Kansas Department of Wildlife, Parks and Tourism and the U.S. Fish and Wildlife Service as required by law.

4. Loss of Use. If a BESS or any component thereof within the project boundary line, causes a loss of use of any residential dwelling, business, agricultural operation, livestock operation, or other property, the Applicant shall be responsible for the reasonable and documented costs resulting from such loss of use. This obligation shall apply to any loss of use caused by a fire, explosion, thermal event, release of hazardous materials, structural damage, evacuation order, or any other event attributable to the BESS that renders property wholly or partially unusable.

a. Uninhabitable Residences: If an occupied residential dwelling is rendered uninhabitable as a result of a catastrophic event involving the BESS, the Applicant shall, at no cost to the affected occupants, provide or pay for suitable alternative housing for each person residing in the affected dwelling for the duration of the period the dwelling is uninhabitable. The Applicant shall additionally provide or reimburse the reasonable cost of three (3) meals per day for each person displaced from the dwelling for the period the dwelling is uninhabitable.

b. If a business, agricultural operation, livestock operation, or other property is rendered unusable or substantially impaired as a result of an event involving the BESS, the Applicant shall be responsible for the reasonable and documented costs of temporary relocation, alternative facilities, temporary accommodations, and other reasonable expenses necessary to address the loss of use.

c. If a business, agricultural operation, livestock operation, or other property is rendered unusable or substantially impaired as a result of an event involving the BESS, the Applicant shall be responsible for the reasonable and documented costs of temporary relocation, alternative facilities, temporary accommodations, and other reasonable expenses necessary to address the loss of use.

d. Prior to commencement of construction and as a continuing condition of the Conditional Use Permit, the Applicant shall obtain adequate loss of use insurance to cover all issues addressed in this section. Proof of insurance shall be provided to County from the insurance provider of Applicant. The financial assurance shall be structured so that funds are readily available to address the immediate needs of persons affected by such a catastrophic event.

e. Compliance with this section shall not relieve the Applicant of any other obligation imposed by federal, state, or local law, nor shall payment of the costs identified herein constitute a waiver of any other remedy available to an affected person or property owner.

5. Inspections and Enforcement.

For the lifetime of the project, the Applicant and all Operators and/or Assignees shall permit emergency management, zoning officials, road and bridge officials, and county commissioners to enter into the project for purpose of inspections and/or ensuring compliance with these regulations. Upon request of the Board of County Commissioners, the Applicant shall pay for any and all inspections by third-parties to ensure compliance.

26-109: Agreements and Requirements

Each of the following agreements shall be executed on or before the date the Board of County Commissioners considers approval of the applicant's conditional use permit application.

1. A Road Use Maintenance Agreement (RUMA) may include, but shall not be limited to, such issues as:

a. Designation of the public roads used for transportation routes for construction and maintenance of the BESS and all structures in the project boundary line.

b. Prior to the start of construction the applicant shall obtain an oversized/overweight permit required by Hodgeman County for transporting components of the BESS that are over the legal weight, width, or length limits. A proposed route shall be submitted on the oversized/overweight permit for transportation routes by the applicant. The transportation route shall be approved by the Road and Bridge Department Superintendent.

c. Where an access road crosses a stream or drainage way, it shall be designed and constructed so runoff from the upper portions of the watershed can readily flow to the lower portion of the watershed. Where an access road crosses a stream or drainage way identified as a Special Flood Hazard Areas, the applicant shall obtain a floodplain development permit from the state and county, if applicable.

d. The hiring and cost of a licensed professional engineer selected by Hodgeman County who shall conduct all inspections on each BESS with respect to the use and maintenance of public roads to transport equipment and personnel, foundation, structural assembly, mechanical and electrical aspects of the BESS construction.

2. A Decommissioning Agreement pertaining to improvements may include, but shall not be limited to, such issues as:

a. Removal of all BESS equipment from the site to a depth of 4', both above and below ground;

c. Map of all remaining electric and/or utility lines remaining after removal of BESS equipment;

d. Testing and necessary cleanup done by a 3rd party environmental professional agreed upon by Developer and County to determine quality of water and environmental testing; plan for cleanup for soil and water contamination including certification that all cleanup will be

done at cost to Applicant, the decommissioning agreement shall detail what type of environmental testing will be done prior to construction and after construction as well as the type of remediation that is required;

e. If dedicated use building or any accessory building or structure is unfit and/or unsafe for another use as determined by the Hodgeman County Zoning Administrator, removal of said structures and re-seeding of native grass or drought resistant grass in disturbed areas;

f. Removal of access roads and replacement of topsoil;

g. Timeline for removal;

h. Financial assurance in the form of a bond, irrevocable letter of credit, or escrow account in an amount not less than an amount sufficient to cover the estimated cost of decommissioning the facility as determined by the Board of County Commissioners who may choose to employ a neutral third party to determine such amount; the Applicant shall reimburse the County for the expense of such study;

i. Liability of successors or assignees of applicant.

3. A Payment in Lieu of Tax Agreement (PILOT):

Should the Project be exempt from ad valorem property taxation, the Applicant shall enter into a Payment In Lieu of Taxes (PILOT) agreement with Hodgeman County which adequately compensates the County for governmental services provided during any period the project is exempt from ad *valorem* property taxation. Should the project become subject to ad valorem property tax exemption after issuance of the conditional use permit, the Applicant shall negotiate in good faith to enter into a PILOT agreement with payment effective as of date of tax exemption.

4. School Donation Agreement.

The Applicant shall enter into a School Donation Agreement requiring an annual payment for the benefit of Hodgeman County Schools USD 227 for the lifetime of the Project. The annual payment shall be calculated using the

greater of (a) the amount calculated on a per-square-foot basis or (b) the amount calculated on a per-megawatt (MW) basis, as established in the Conditional Use Permit.

5. Impact Fee/Community Contribution Agreement

To alleviate impacts upon the County, the Developer shall enter into an agreement to make a one-time Community Impact Payment to the County in the amount of $7.00 per square foot of the combined square footage of all planned buildings in the footprint within thirty (30) days of the Start of Construction. The Developer shall make the County's payment into the County General Fund and said funds may be used for public safety, infrastructure, or other governmental purposes. The agreement shall include specific plan, procedure, and required documentation to ensure that the planned square footage of the buildings and structures in the project at the start of construction accurately reflects the actual square footage of the data center upon completion of the project. To the extent permissible by Kansas law, this agreement shall include a provision that the Applicant and its assignees may not consent to or petition for annexation into a City pursuant to K.S.A. 12-520c without the written consent of Hodgeman County.

6. Agreement for Citizen Benefit.

Each calendar year the data center is in operation, the Developer shall make $100,000.00 with 2% annual escalator available to benefit the citizens and organizations of Hodgeman County. Half (50%) of each annual payment shall be made directly to the Hodgeman County Foundation or similar administering non-profit for disbursement within the County; Half (50%) of each annual payment shall be made directly to the Hodgeman County Health Center. Hodgeman County will support the applicant in identifying a local partner to help administer the program, if requested by the applicant.

7. Bi-Annual Reporting Agreement:

An agreement which requires the applicant to provide a bi-annual report due on January 1st and on July 1st of each year to the County identifying the following:

a. Electrical storage capacity

b. Net Electrical consumption (MW)

c. Gallons of water usage

d. Square footage of all buildings and structures in the footprint

e. Disclosure of total hours of emergency generator use and attestation that generator use complied with these regulations

f. Attestation and records showing distribution of $100,000.00 for Citizen Benefit

g. Attestation that all water use is in compliance with limits and regulations of Kansas Division of Water Resources

h. Proof of loss of use insurance provided to County directly form Applicant/Operator's insurance carrier.

8. Good Neighbor Water Agreement.

Agreement to follow state and local water regulations during droughts, emergencies, or other water shortages.

26-110: Permits

1. Building Permit for BESS, including all structures in project boundary line

a. $1.00 per square foot of all planned dedicated-use and accessory buildings.

b. Third-party inspections shall be paid for by developer.

c. Entrance culvert fee is the cost of the culvert and any incidental costs incurred by the County.

d. All development, construction, installation, operation, and improvement of the Project shall be undertaken and completed in strict accordance with the Approved Development Plan, all applicable building, construction, fire, electrical, mechanical, plumbing, life-safety, environmental, and other codes and standards identified or incorporated therein, and all applicable terms, conditions, obligations, and requirements contained in any agreement executed between the County and the Developer, Owner, or Operator relating to the Project. At cost to the Applicant, the County may require a third-party consulting firm to be onsite to monitor all stages of construction.