ARTICLE 25
DATA CENTERS

Sections

25-101 Statement of Purpose
25-102 Definitions
25-103 Development Plan
25-104 Documents, Plans, Studies, Reports, and Other Permits
25-105 Additional Topics Required in Application for Conditional Use Permit
25-106 Time Restrictions for Conditional Use Permit
25-107 Agreements and Requirements
25-108 Permits

25-101: Statement of Purpose

It is the purpose of this Article to provide a regulatory scheme for the construction and operation of data centers in Hodgeman County, subject to reasonable restrictions, which will preserve the public health and safety. This article applies to data centers as defined herein which shall be subject to the conditional use permit process. No data center 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 Data Center 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.

25-102: Definitions

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

1. **DATA CENTER:** A facility used primarily for the storage, management, processing, and transmission of digital data, which houses computer or

network equipment, systems, services, appliances and other associated components related to digital data operations. The facility may also include air handlers, power generators, water cooling or air cooled and related storage facilities (if applicable), utility substations, and other utility infrastructure to support sustained operations at the data center.

2. **DATA CENTER ACCESSORY USE:** Ancillary uses or structures secondary and incidental to a Data Center use, including but not limited to: office space not located in the above-defined data center or in the data center principal building as defined herein, administrative, logistical, fiber optic, storage, and security buildings or structures; sources of electrical power such as on-site generators used to provide temporary power when the main source of power is interrupted; electrical substations; utility lines, domestic and non-contact cooling water and wastewater treatment facilities; water holding facilities; pump stations; water towers; environmental controls (air conditioning or cooling towers; fire suppression, and related equipment), and security features, provided such Data Center Accessory Uses/structures are located on the same tract or assemblage of adjacent parcels developed as a unified development with a Data Center. Accessory use shall not include energy generation systems used or intended to be used to supply power to the Data Center during normal operations.

   Data Center Accessory Uses shall include uninterruptible power supply (UPS) systems and battery energy storage systems located within the project boundary line of the data center and used for backup power, power quality, load management, or grid protection ancillary to the data center. Such systems shall comply with the technical and safety standards including 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. **DATA CENTER ELECTRICAL SUBSTATION:** A facility used for the transformation or transmission and/or switching of voltages to distribution voltages which switches circuits and distributes usable/consumable electric power, specifically serving Data Center users.

4. **DATA CENTER PRINCIPAL BUILDING:** A building that contains the office and/or data storage functions of a Data Center.

5. **DAYTIME:** For the purposes of noise regulation, that period of a day beginning at 7:00 a.m. and ending at 10:00 p.m., each day of the week.

6. **FOOTCANDLE:** Enough light to saturate a one-foot square with one lumen of light.

7. **FOOTPRINT:** Total ground area of all buildings and structures on a lot, including anything with a roof such as porches or accessory structures. The footprint area is measured at ground level from the outside surface of exterior walls, or from the edge of the roof if there are no exterior walls. This shall include all buildings and structures located within the property boundaries of the data center site, including the data center principal building, data center accessory uses and structures, and substations.

8. **NIGHTTIME:** For purposes of noise regulation, that period of a day beginning at 10:00 p.m. and ending at 7:00 a.m., each day of the week.

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

10. **SENSITIVE RECEPTORS:** Schools, preschools, day care centers, licensed in-home daycares, hospitals, long term care facilities, retirement and nursing homes, community centers, places of worship, playgrounds, parks (excluding trails), campgrounds, prisons, dormitories, and any non-participating residence including single and/or multifamily use residences. All such facilities in existence at the time of the application for conditional use permit shall be considered sensitive receptors.

11. **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 the development of the project.

25-103: Development Plan

The information listed below shall be submitted with the conditional use permit application. 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 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 project boundary line, the entire estimated footprint and estimated total acreage.

c. Preliminary location of data center principal building(s), data center accessory use(s), and data center electrical substation.

d. Preliminary location of any temporary assembly areas used for construction of data center principal building(s), data center accessory use(s), and data center electrical substation.

e. Total square footage of all planned buildings, structures (including accessory buildings, substations, principal building, and any other buildings or structures) 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.

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. Engineering plan reflecting the preliminary project design which is stamped by engineer.

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 Data Center.

2. A general project introduction and plan of operation that describes the preliminary location of planned data center principal building(s), data center accessory use(s), and data center electrical substation(s), project boundary line, operation and maintenance plan for facility, method of cooling (ie: water cooling, closed loop water, recycled water, air cooling, etc.), estimated range of gallons of water demand to bring project online/initially fill any closed loop cooling system, estimated annual use of water, estimated source of needed water, estimated annual net power demand (megawatt (MW)) use of project in first year and in later operating years, temporary construction sites, if developed on leased land or land that is under an option the number of participating property owners along with memoranda or copy(ies) of lease(s) or option(s) showing their consent to land use, total acreage of project, miles of new access roads, anticipated construction schedule, other relevant information deemed appropriate by the applicant or as required by county staff and/or the Zoning Board or Board of County Commissioners.

25-104: 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 agreements or a purchase option agreement 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. A certified list of property owners adjacent to and/or owning property within 1000' of the project boundary line as set forth in the County 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 and occupied residences 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 method of cooling the data center and all the intended structures in the footprint. This plan should specify the estimated range of water use for construction and to bring the project online, and shall also specify the estimated range of annual water consumption of the data center and all structures in the footprint. The plan should certify that 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.

6. 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.

7. 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, Hodgeman County Sheriff, and Hodgeman County Communications Director in development of construction staging plan to ensure adequate parking, alleviate traffic congestion, and adequate emergency response.

8. Unless otherwise disclosed through SB 98 process by the Kansas Fusion Center Oversight Board, a written plan specifying the following:

a. Power demand (megawatt (MW)) usage of electricity needed for construction and to bring the project online;

b. The anticipated annual net MW usage inclusive of the data center and anticipated structures in the footprint;

c. How the data center shall source the needed MW for data center and anticipated structures in the footprint;

d. Written confirmation that the project shall be designed, constructed, and maintained in compliance with all applicable electrical standards and requirements necessary to protect the continued reliable operation of the electric power grid.

9. A written plan indicating the source of utilities for cooling system and for standard utilities such as office space and bathroom facilities.

10. 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.

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.

11. The following noise propagation studies must be conducted and submitted with application for conditional use permit. Noise emanated from the data center shall be governed by this section.

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 data center 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, water pumps, or similar devices during times of unplanned utility service outages or emergencies.

   ii. Force majeure.

d.

Upon issuance of a Certificate of Occupancy for a Data Center, 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 Data Center 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 Data Center 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 Data Center 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.

12. 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 and how it will prevent such substances from entering 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.

13. Estimated cost for construction to bring all structures in the footprint into operation.

25-105: 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. **Cooling System.** Unless otherwise approved by the County in an effort to reduce water consumption, no data center shall be cooled by any evaporative, adiabatic, or other water-consumptive cooling system, or by any once-through or open-loop water cooling system. Liquid cooling of computer equipment, including direct-to-chip cooling, shall be permitted only where the cooling fluid circulates within a sealed, closed-loop system in which heat is ultimately rejected through air-cooled or other non-water-consumptive heat rejection systems, such that water is consumed only for the initial fill and periodic maintenance of the system. Unless otherwise agreed to by the County due to project design and specifics, all equipment necessary for cooling, ventilating, or otherwise operating the facility must be sited in a way to minimize visibility of the equipment from public streets and/or adjacent properties.

2. **Setbacks.** Data center buildings and all associated structures such as generators, HVAC, battery backup, accessory uses (excluding roads, fencing, landscaping, points of ingress and egress onto the property for the provision of water, fiber, electricity or other similar utility services), and shall be 200' from all public roads and non-participating landowner's property lines. Any 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 footprint or to property lines shared with a participating landowner. Setbacks shall not apply to above-ground transmission facilities and similar interconnection infrastructure.

3. Generators.

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.

4. 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, Hodgeman County Sheriff, and provider of emergency communications and dispatch services for Hodgeman County.

The Applicant shall coordinate with the Jetmore Fire Department, Hodgeman County Rural Fire Department, and Hodgeman County Emergency Management Director to ensure an adequate fire suppression plan for the project. The application shall include written confirmation from the Jetmore Fire Department, Hodgeman County Rural Fire Department, and Hodgeman County Emergency Management Director of a preliminary 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 be approved by the Jetmore Fire Department, Hodgeman County Rural Fire Department, and Hodgeman County Emergency Management Director and shall be in effect prior to the commencement of commercial operations. The cost of such infrastructure or equipment needed for the fire suppression plan to come into effect shall be assumed by the Applicant. 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.

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.

5. 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.

6. Parking.

a. 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.

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

7. Water.

A completed water study by a third-party which affirms there is enough water for the project and explaining how the 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, and a 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. Lighting.

The requirements of this section related to Lighting 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.

9. Height.

The height of any structure within a Data Center 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 height 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.

10. Loss of Use.

If a data center 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 data center 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 data center, 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 data center, 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 data center, 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.

11. 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.

25-106: Time Restrictions for Conditional Use Permit

The start of construction for construction of project authorized under a Conditional Use Permit and Development Plan for a data center use shall commence within one (1) year after the date the permit and Development Plan are 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 and Development plan 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 thirty

(30) 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.

25-107: 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 data center and all structures in the footprint.

b. Prior to the start of construction the applicant shall obtain an oversized/overweight permit required by Hodgeman County for transporting components of the data center 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.

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

a. Removal of all computer equipment;

b. Removal of backup generators and fuel storage;

c. Removal of battery storage systems;

d. Environmental testing and cleanup for soil contamination from diesel generators or fuel tanks, chemical leaks from cooling systems, and battery storage contamination. Testing and necessary cleanup shall be done by a 3rd party environmental professional agreed upon by the Developer and County;

e. If primary data center or any ancillary 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 capacity installed (MW)

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 the limits in this Article

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 from 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.

25-108: Permits

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

a. $1.00 per square foot.

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.