# TAX ABATEMENT AGREEMENT

This Tax Abatement Agreement (hereinafter "Agreement") is entered into by and between Freestone County, Texas (hereinafter "County") and Avant Prairie ESS, (hereinafter "Owner") on the 19th day of February, 2025 ("Effective Date").

**WHEREAS**, the County is authorized to enter into Tax Abatement Agreements pursuant to Chapter 312 of the *Texas Property Tax Code* (the "Tax Code"), and

**WHEREAS,** the County has adopted Tax Abatement Guidelines which provide criteria governing tax abatement agreements to be entered into by the County as contemplated by the Texas Property Tax Code; and

**WHEREAS,** the County has adopted a resolution stating that it elects to be eligible to participate in tax abatement in accordance with the Texas Property Tax Code; and

**WHEREAS**, by Order passed February 19th, 2025, the County Commissioners Court has established County Reinvestment Zone No. 009 ("Reinvestment Zone") in accordance with Section 312.401 of the Texas Property Tax Code; and

**WHEREAS**, the Premises is located within the Reinvestment Zone; and

**WHEREAS**, the County Commissioners Court finds that the improvements and additions proposed by the Owner will benefit the economy of the County and the State of Texas, help stabilize the Texas power grid, and increase the local tax base; and

**WHEREAS,** a copy of this Agreement has been furnished, in the manner prescribed by the Texas Property Tax Code, to the presiding officers of the governing bodies of each of the taxing units in which the Owner's the Premises is located; and

**WHEREAS**, the Commissioners Court finds that the Owner's project is feasible and practicable and would be of benefit to the land included in the Zone, and the taxing units with jurisdiction over the land after expiration of this Agreement.

**NOW, THEREFORE**, in consideration of the recitals set forth above and the mutual obligations and promises set forth below, and for other good and valuable consideration, the adequacy and receipt of which are hereby acknowledged, the County and Owner agree as follows:

1. Premises. As used herein "Premises" refers to the portion of the real property utilized for the Project out of the real property described in Exhibit "A" which is attached hereto and incorporated herein. Owner may own the real property, or it may have leasehold or easement rights in the real property as a lessee or grantee. Owner will be the owner of all personal property, fixtures, equipment and related improvements that it installs on the Premises pursuant to this Agreement.

2. General Project Description. Development and construction/installation of facilities and equipment for, and the operation of an approximately 200-megawatt battery energy storage system/facility. A more specific identification of the additions to the Premises to be made by Owner is attached as Exhibit "B" hereto and incorporated by reference herein (hereafter "Project").

3. Definitions. As used in this Agreement, the following terms shall have the meanings set forth below:

a. "Additions and Improvements" means the personal property, fixtures, improvements and equipment installed or constructed on the Premises by the Owner for the Project.

b. "Premises" means the land tract(s) leased, under easement, or owned (or proposed to be leased, under easement or owned) described in Exhibit "A" attached hereto and incorporated herein for all purposes.

c. "Taxable Value" means the appraised value, for property tax purposes, as certified by the Freestone County Appraisal District.

d. "Start Date" means the date the Abatement Period starts, which is January 1 of the calendar year immediately following the Completion Date, unless otherwise specified herein.

e. "Completion Date" means the date that the construction and installation of the Project is substantially complete as certified by Owner to the County.

f. "Projected Capital Investment" means the level of capital investment proposed in the Owner's Application for Tax Abatement. Owner has projected a Capital Investment of approximately **$90,000,000**.

g. "Actual Capital Investment" for purposes of this Agreement shall be the actual cost of the Project on the Completion Date as certified by the Owner to the County. Owner shall provide the County and the Appraisal District with all reasonably requested information as to the actual cost of the Project. Actual cost as used herein relates to the design, acquisition, construction and installation of components of the Project that will add taxable value to the tax rolls of Freestone County and does not include permit fees, main office overhead, or capitalized interest. The Actual Capital Investment must be reported by Owner with the Certificate of Completion to the County. Any item that is separately excluded from property taxation by state law does not count towards the Capital Investment of the Owner.

h. "Force Majeure" means any contingency or cause beyond the reasonable control of a party including, without limitation, acts of God and the public enemy, pandemics, epidemics, strikes, lockouts or other industrial disturbances, inability to obtain material or equipment or labor, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, high water washouts, inclement weather, arrests and restraint of rulers and people, interruptions by government or court

orders, present or future orders of any regulatory body, civil disturbances, explosions, breakage or accident to equipment, any laws, rules, orders, acts or restraint of government or governmental body or court, or the partial or entire failure of fuel supply or any other event that is beyond the reasonable control of the party claiming Force Majeure.

i. "Reinvestment Zone" means County Reinvestment Zone No. 009 created by the Order of the Freestone County Commissioners court dated February 19th, 2025.

j. "Base Year" means the 2025 tax year.

k. "Term of Abatement" or "Abatement Period", unless terminated sooner as provided elsewhere herein, means the period from and after the Start Date during which 100% tax abatement for County ad valorem taxes is granted, which period shall last 10 years.

l. "Abatement Year" means a tax year included in the Abatement Period.

m. "Secured Party Lender" means any entity providing financing, tax equity financing, power purchase commitments, or hedge commitments for the Project and/or who have liens or security interests on the Additions and Improvements, and any assignees thereof.

4. Term of Agreement. This Agreement becomes effective upon the Effective Date and unless terminated sooner as provided elsewhere herein, shall terminate at the expiration of the Abatement Period.

5. Zero Base Year Value. The Base Year value for the proposed Improvements is agreed to be zero.

6. Projected Completion Date. Owner anticipates that it shall complete the Project by December 31, 2027, delays for force majeure excepted. The Commissioners Court, by majority vote, can, in its sole discretion, extend the Completion Date for good cause. If the Project is not completed within the Completion Date (or extended Completion Date if applicable), force majeure excepted, the County may terminate this Agreement.

7. Grant of Abatement. Subject to the terms and conditions of this Agreement, and payment to the County of Payments in Lieu of Taxes by the Owner as addressed below, County hereby grants the Owner an abatement of all County property and ad valorem taxes as follows:

Abatement Schedule

| Abatement Year | Abatement Percentage |
|---|---|
| 1 | 100% |
| 2 | 100% |
| 3 | 100% |
| 4 | 100% |
| 5 | 100% |
| 6 | 100% |
| 7 | 100% |
| 8 | 100% |
| 9 | 100% |
| 10 | 100% |

8. Payment in Lieu of Taxes. A tax abatement of 100% of the taxable value of the Project over the 10 year Abatement Period has been granted, and in return the County shall receive from the Owner Payments in Lieu of Taxes (hereinafter "PILOT" or "PILOTS") instead of actual unabated tax revenues.

The annual PILOT payment to the County shall be no less than the following amounts for each year of the Abatement Period (10 years):

| Abatement Period Year | PILOT |
|---|---|
| 1 | $152,097.75 |
| 2 | $152,097.75 |
| 3 | $152,097.75 |
| 4 | $152,097.75 |
| 5 | $152,097.75 |
| 6 | $152,097.75 |
| 7 | $152,097.75 |
| 8 | $152,097.75 |
| 9 | $152,097.75 |
| 10 | $152,097.75 |

The PILOT payment must be paid on or before each January 31 following the Abatement Period Year with respect to which the payment is made. The PILOT payment shall never be less than the amounts stated above, regardless of any failure to construct capacity at the promised level or any decrease in the capacity of the Project. However, if the capacity of the Project is increased above a

200-megawatt (MW ac) energy storage system/facility , the PILOT payment shall be increased each tax year after such increase by the amount of $760.49 for each MW ac of energy storage system/facility added that exceeds 200 MW ac.

For clarification, this is a tax abatement agreement, and the **Owner must meet the requirements for tax abatement to retain the 100% abatement of property taxes**. However, this Tax Abatement Agreement provides for a different method of benefiting the County directly. Instead of receiving unabated taxes the County receives the PILOT payment. Failure to timely pay the PILOT payment shall be a breach of this Agreement.

The Owner shall pay a non-refundable up-front payment f $10,000 to the County within 30 days of full execution of this Agreement. The payment shall be applied as a credit against the first PILOT payment.

9. No Sale or Assignment to Tax Exempt Entity.

a) If a sale, lease, or allocation of the Project or its output is made to an entity exempt from property taxation, and such results in a portion of the Project becoming exempt from property taxation, the County may terminate this Tax Abatement Agreement and the Abatement granted hereunder. If this occurs, the Owner must repay the County any taxes abated related to the portion of the Project that has become exempt from year 1 to when the portion of the Project became tax exempt. Payment will be made no less than 30 days after the sale, lease or allocation occurs. Owner will receive a credit for PILOTS already paid.

b) Alternatively, if Owner wishes to elect to keep the tax abatement agreement in place for the rest of the Project that is not exempt from property taxation under Section 9(a) above, the Owner may elect to pay in a lump sum the present value of taxes that will be lost to the County with regard to the exempt portion of the Project over the 20 year period after the portion of the Project becomes exempt using a calculation reasonably agreed to by the parties in writing, but if unable to be agreed to, resolved by binding mediation to take place in Freestone County, Texas before a mediator selected by the County from the approved list of mediators maintained by the Federal District Court in Waco. Owner will receive a credit for any PILOTS already paid.

c) If title to, use of, or an interest in the lease of the Premises or the Additions and Improvements, or any part thereof, shall be taken under the exercise of the power of eminent domain by any governmental unit or agency, or by any person, firm or corporation acting under governmental authority or statutory authority, other than a taxing unit that assesses or could assess ad valorem taxes against the Additions and Improvements, a local or county governmental entity having taxing jurisdiction over the subject property or another party acting under such governmental entity's authority, and Owner does not contest the condemnation up to including the final, non-agreed judgment of a state district court (or County Court-at-Law if applicable); then Owner shall pay as a first and priority obligation to the County out of the condemnation proceeds the same payment as would have been paid to the County under 10(a) above if the transfer was an agreed sale to a tax exempt entity. Owner will be given a credit for PILOTS already paid.

10. Unabated Taxes. Owner shall pay all unabated taxes, if any, when due. Failure to do so may result in termination of this Agreement. If Owner protests the Taxable Value of the property, the Owner shall pay the taxes due to the County on the portion of the Taxable Value not protested after application of the Abatement Percentage. Once the value is determined the abatement percentage is applied and the Owner shall pay the taxes due, if any, on the taxable value not abated within 30 days.

Taxes assessed prior to the beginning of the Abatement Period are not abated and shall be paid by Owner prior to such taxes becoming delinquent, subject to the right of Owner to timely and properly protest such taxes in accordance with Tax Code, Chapter 42 or its successor. Owner shall notify County in writing of any such protest, and keep the County informed of the results thereof. If the protest is denied, Owner shall have the right to appeal the matter to state district court but shall pay the portion of the tax required by Tax Code, Section 42.08 or its successor.

Nothing herein shall prevent the County from enforcing the collection of taxes owed to the County in any manner provided under the Texas Property Tax Code, including placing a lien on the Additions and Improvements. The County shall be entitled to recover any penalties, interest, court costs and attorney's fees allowed under the Texas Property Tax Code, and this includes for the collection of previously abated taxes that must be repaid under any provision of this Agreement.

11. Insurance. Owner shall keep the Additions and Improvements insured. In the event of a substantial loss the Owner may select either to rebuild, during which time the abatement would be stayed, or terminate this Agreement by paying the County all abated owner property taxes to that date, with a credit for PILOTS already paid.

12. Owner's Obligations. Owner shall, subject to events of Force Majeure and casualty where applicable:

a. Acquire enforceable leases, easements, or fee simple rights for the portion of the Premises desired by Owner for the Project;

b. Install and construct the Additions and Improvements to be completed by 2028 (subject to extension rights provided herein);

c. Provide the Appraisal District with documentation and information reasonably requested for each Tax Year that will assist in determining the Taxable Value. This information shall be provided no later than April 15, subject to extension as allowed by law.

d. Comply with all certification and reporting requirements set forth in this Agreement;

e. Comply with the terms of this Agreement;

f. In good faith consider, to the extent reasonable and logistically practical, contracting with companies and businesses located within the County that are economically competitive and qualified to provide goods and services for the Project. Nothing herein requires the Owner to contract with local vendors as a condition of abatement

g. Comply with applicable federal, state and local laws in its operations

13 Default, Remedies and Recapture.

13.1 Upon breach by Owner of any material obligation under this Agreement, the County shall notify Owner in writing, and Owner shall have sixty (60) days from receipt of the notice in which to cure any such breach. If the breach cannot reasonably be cured within a sixty (60) day period, and Owner has diligently pursued such remedies as shall be reasonably necessary to cure such default, then the County shall extend the period in which the breach must be cured for an additional sixty (60) days. If Owner fails to cure the breach within the time provided as specified above or, as such time period may be extended by agreement, then the County, at its sole option, shall have the right to terminate this Agreement by written notice to Owner.

However, if the breach of this Agreement is caused by an event of Force Majeure, the cure period shall be extended as reasonably appropriate to cure the breach, subject to the Owner providing to the County a plan of action to cure the breach that is of a reasonable duration. The time to cure shall not extend the Abatement Period. A breach of this Agreement caused by an event of Force Majeure that is incapable of being cured shall not give rise to the recovery of previously abated taxes, however, the County may terminate this Agreement as to any future abatement.

13.2 In the event of a breach by Owner, the County, in addition to any notice to Owner, shall promptly provide written notice of such breach to any Secured Party Lender to the extent known to the County. For a Secured Party Lender to be entitled to this notice, the Owner or the Secured Party Lender must have notified the County in writing of the Secured Party Lender's interest in the Project. Any Secured Party Lender shall have the right to cure such breach in accordance with the provisions of this Agreement, provided that no cure period shall commence until receipt of written notice of breach from County by such Secured Party Lender. Owner and its Secured Party Lender shall provide written notice of any assignment of a financing obligation or security interest or lien. Absent such notice of assignment, notice to the last known Secured Party Lender shall be effective.

13.3 Termination by the County because of an uncured breach automatically terminates the tax abatement granted herein, and the Owner will not be entitled to any abatement from that date forward. If the nature of the breach resulted in the Owner receiving tax abatement in one or more previous years to which the Owner was not entitled, the County may recover from the Owner the taxes that should have been paid in those years but for the abatement, subject to a credit for PILOTS paid by the Owner to the County.

14. Miscellaneous Terms and Conditions.

14.1 Attorney's Fees. If on account of any breach or default by either party of its obligations under the terms, conditions, or covenants of this Agreement, it shall be necessary for

the other party to employ an attorney or attorneys to enforce or defend any of the rights or remedies hereunder, and should the party prevail, the party shall be entitled to any reasonable attorney's fees, costs, or expenses it incurs in connection herewith.

14.2 Severability. If any provision of this Agreement is held to be illegal, invalid, or unenforceable under the present or future laws effective while this Agreement is in effect, such provision shall be automatically deleted from this Agreement and the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected thereby, unless such would destroy a material benefit of the bargain to either party.

14.3 Texas Law to Apply. This Agreement shall be construed under and in accordance the laws of the State of Texas without regard to conflicts of law principles, and all obligations of the parties created hereunder are performable in Freestone County, Texas, and venue of all disputes shall lie in a court of competent jurisdiction in Freestone County, Texas.

14.4 Prior Agreements Superseded. This Agreement constitutes the sole and only agreement of the parties hereto and supersedes any prior understandings or written or oral agreements between the parties respecting the subject matter hereof.

14.5 Amendments. No amendment, modification or alteration of the terms hereof shall be binding unless the same shall be in writing, dated subsequent to the date hereof and duly executed by the parties hereto.

14.6 Rights and Remedies Cumulative. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by either party shall not preclude or waive its rights to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

14.7 No Waiver. No waiver by a party in any event of default, or breach of any covenant, condition or stipulation herein contained shall be treated as a waiver of any subsequent default or breach of the same or any other covenant, condition or stipulation hereof.

14.8 Assignment. This Agreement shall be binding on and inures to the benefit of the parties to it and their respective heirs, executors, administrators, legal representatives, successors, and assigns. This Agreement may be assigned by Owner upon written notice to the County and written assumption of the obligations hereunder by such assignee. Such assignment is subject to approval of the County, which shall not be unreasonably withheld or delayed. The approval of the County shall be deemed to have occurred if the County fails to take action with respect to any such assignment within thirty (30) days after receipt of notice of such assignment. In addition, the Owner, without approval of the County, may assign, transfer, mortgage or pledge this Agreement in whole or in part to create a security interest for the benefit of a "Secured Party Lender" provided however, that any rights of the Secured Party Lender or third-party assignee or purchaser are subject to the same provisions as set forth in this Agreement. The County will provide a Secured Party Lender who is known of a copy of any Owner Default Notice. The County does not subordinate its right to collect property taxes to any security interest or assignment. Further, an assignment does not re-start the time to cure under a notice of default.

14.9 No Conflicts. Owner represents and warrants that no member of the Commissioners Court has an interest in the Premises subject to this Agreement and the Premises is not owned or leased by any member of the Commissioners Court.

14.10 No Joint Venture. The County, by approving the application and this Agreement, assumes no liability or responsibility therefore or for any defect in any additions made to the Premises. The relationship between County and Owner at all times shall not be deemed a partnership or joint venture for purposes of this Agreement.

14.11 Other Abatements. It is further understood that this is not a joint agreement between taxing units and, Owner shall not be entitled to any additional abatement from County above what is granted herein under any other law by virtue of entry into this Agreement. Should Owner receive or be adjudged entitled to any additional abatement from the County of any form of tax under the law by virtue of entry into this Agreement, the amount of the abatement under this Agreement shall, to the extent allowed by law, be reduced by the amount of such additional abatement.

14.12 Approvals. Assuming Owner is not in breach of this Agreement, any approvals required to be obtained from the County under this Agreement shall not be unreasonably withheld, denied or delayed by the County.

14.13 Notices. All notices required by this Agreement shall be addressed to the following, or other such other party or address as either party designates in writing, by certified mail, postage prepaid, or by hand or overnight delivery:

If intended for Owner, to:

Joshua Richardson
Development Engineering Manager
8000 IH-10 West, Suite 1201
San Antonio, Texas 78230

If intended for County, to:

Hon. Linda Grant
118 East Commerce St, Room 205
Fairfield, Texas 75840

14.14 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

14.15 Recitals. The determinations recited and declared in the preambles to this Agreement are hereby incorporated herein as part of this Agreement.

14.16 Exhibits. All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

14.17 Authorizations.

a. This Agreement was entered into by Owner pursuant to authority granted by one or more of its officers to execute this Agreement on behalf of Owner.

b. This Agreement was authorized by the minutes of the Commissioners Court of Freestone County, Texas authorizing the County Judge, or designee, to execute the Agreement on behalf of Freestone County, Texas.

14.18. Negotiation Costs. To show its commitment to the community and that it intends to be a good corporate neighbor, and in recognition of the expense incurred by the County in coming to a mutually acceptable agreement, Owner agrees to reimburse the County for its reasonable and necessary attorney's fees and publication costs incurred in negotiation of this Agreement, not to exceed $15,000.

14.19. Road Repair and Usage. The Road Use Agreement is attached as Exhibit "C" and incorporated herein and is part and parcel of the consideration for this Agreement.

14.20 Set-Backs. All physical, above-ground facilities shall be located at least 100 feet from any permanent residential structure which was in existence as of the initial date of this Agreement, whether or not occupied. The foregoing setback (i) may be relaxed or waived in writing by the applicable owner of the parcel of land over which such residential structure is located, and (ii) shall not apply to structures on property over which Owner has a leasehold or easement interest. Notwithstanding the foregoing or anything herein to the contrary, County hereby acknowledges and agrees that it shall not be a breach of this Agreement if, once any such facilities are installed, a residential structure is thereafter installed causing such facilities to be located within the aforementioned setback. The provisions in this paragraph are not applicable to roads or fences.

14.21 Decommissioning. Owner agrees to comply with the requirements of Chapter 302 of the Texas Utilities Code.

14.22. Right to Inspect, Obtain Information. The County, acting through its officers or a designated agent or employee, shall have reasonable access to the Additions and Improvements to verify that the Additions and Improvements are made in accordance with this Agreement; provided that any inspection will be made at a mutually agreeable time after the County has given not less than 4 working days prior written notice and will be conducted in such a manner so as not to unreasonably interfere with the construction and operation of the Project; and all such inspections shall comply with Owner's safety procedures and will be accompanied by Owner's designated personnel.

14.23. Conflict with Guidelines. To the extent this Agreement modifies or varies from any requirement or procedure set forth in the Guidelines, those Guidelines are deemed amended for purposes of this Agreement only.

14.24. Annual Certification. On or before January 31 of each calendar year that this Agreement is in effect, Owner shall certify to the County its compliance with all material provisions of this Agreement. This annual certification shall be by an individual who is an authorized officer of Owner.

15. Battery Energy Safety Covenants. During the term of the tax abatements described above:

15.1 Owner agrees to provide during the term of this Agreement at least four (4) hours of first responder training on how to respond to a fire or other emergency at the facility.

15.2 Owner agrees that the facility shall contain a supervisory control and data acquisition (SCADA) or other similar system to monitor the battery storage system at the facility.

15.3 Owner agrees that the facility shall have a self-contained fire-suppression system.

15.4 Owner agrees that equipment at the facility will be equipped to reduce the risk of harmful leakage.

15.5 Owner agrees to create a safety plan, including notification of nearby residents/institutions, in the event of a fire or emergency at the facility.

15.6 Owner agrees that the facility will be inspected and maintained regularly.

[signature page follows]

**EXECUTED** in duplicate originals this ____ day of _____, 2025.

**FREESTONE COUNTY, TEXAS**

By: _____
Hon. Linda Grant
Freestone County Judge

**ATTEST:**

By: _____
County Clerk

**EXECUTED** in duplicate originals this the ____ day of _____, 2025.

AVANT PRAIRIE ESS

By: _____

Print Name: _____
Title: _____

EXHIBIT A

Description of Premises

**Owner**: Kent R. Phillips & Jennifer R. Phillips
**Legal Description**: J.M. Hallmark A-268
**Acreage**: 36.85
**Parcel ID**: 11434






EXHIBIT B

Description of Additions and Improvements (the "Project")

BATTERY ENERGY STORAGE SYSTEM, TRANSMISSION LINES, SCADA SYSTEM, AND OTHER RELATED EQUIPMENT.

EXHIBIT C

Road Use Agreement

**IN THE COMMISSIONERS COURT**
**OF**
**FREESTONE COUNTY, TEXAS**

**A RESOLUTION AND ORDER APPROVING A ROAD USE AGREEMENT BETWEEN FREESTONE COUNTY, TEXAS AND AVANT PRAIRIE ESS**

WHEREAS, Freestone County, Texas (the "County" or "Freestone County") is familiar with the energy storage project contemplated by Avant Prairie ESS (the "**Project**") in the portion of the County described on Exhibits A and B, attached hereto and incorporated herein by reference ("**Project Area**");

WHEREAS, Avant Prairie ESS ("**Avant Prairie ESS**") contemplates making certain improvements to the real property located within the Project Area consisting of a solar powered electric power generating facility, and possible battery storage (the "**Improvements**");

WHEREAS, with the exception of statutory requirements, such as §240.907, Texas Transportation Code, §181.044 Texas Utilities Code, there are no applicable Freestone County rules or ordinances that would require Avant Prairie ESS to obtain zoning approval, a permit, or an authorization for the ownership, construction, operation or maintenance of the Project and its Improvements within the Project Area. There are no presently existing Freestone County rules, ordinances, or other zoning rules or regulations affecting the proposed ownership, construction, operation, or maintenance of Improvements within the Project Area;

WHEREAS, no part of the Project Area is located within the city limits of any towns within Freestone County, and no part of the Project Area is located within the extraterritorial jurisdiction of any city within the County.

WHEREAS, the ownership, construction, operation, maintenance, and decommissioning of the Improvements will require access to, egress from, encroachments into, crossings of, and possibly upgrades to one or more roads maintained by Freestone County, or other county owned or maintained rights-of-way, and, or county held right-of-way easements located in Freestone County, Texas (collectively and as more fully described herein, the "**Road Usage**");

WHEREAS, by its dedication, use, and/or maintenance of the roads and as the owner and holder of County rights-of-way and right-of-way easements in the County, the Commissioners Court of Freestone County has the authority on behalf of the County to permit the Road Usage;

WHEREAS, Avant Prairie ESS seeks the County's permission for such Road Usage and Freestone County, Texas, has agreed to grant said permission.

NOW, THEREFORE,

BE IT ORDERED BY THE COMMISSIONERS COURT OF FREESTONE COUNTY, TEXAS:

1. That the findings and recitals in the preamble to this Order are found to be true and correct and are hereby RATIFIED, APPROVED and ADOPTED, and the following terms shall be referred to herein as the "**Agreement**" between the County and Avant Prairie ESS.

2. Avant Prairie ESS shall repair any material damages that pose a safety risk or are otherwise severe damage to County roads caused by Avant Prairie ESS or Avant Prairie ESS's contractors or suppliers during the course of constructing, repairing or maintaining the Improvements, and with respect to non-material or minor repairs shall by the end of construction of the Improvements return such roads to as good or better than the condition such roads were in prior to their use by Avant Prairie ESS or Avant Prairie ESS's contractors or suppliers. Obligations in this Agreement regarding damages or damage repairs do not include ordinary wear and tear.

a. Prior to the commencement of any work, or in advance of any subsequent modifications, Avant Prairie ESS will provide to the County a map identifying those roads (the "**Designated Roads**") which will be utilized during the construction of the Improvements to develop, install, or construct the Improvements, and any points of access to property, or the location of any transmission or collection lines to be installed in the public right of way, with such map of the Designated Roads to be approved by the County in its reasonable discretion. If, during the construction of the Improvements, Avant Prairie ESS proposes that one or more additional county-maintained roads be added to the list of Designated Roads, Avant Prairie ESS shall submit a written notice identifying such additional roads to the County, and the County shall not unreasonably withhold, delay, or condition its consent to adding such roads to the list of Designated Roads.

b. Avant Prairie ESS will coordinate with the Commissioner or Road Administrator responsible for the roads to be used by Avant Prairie ESS during the construction of the Project.

c. Avant Prairie ESS will have a pre-construction survey completed for all Designated Roads (the "**Pre-Construction Survey**"), which will include the then-current condition of the Designated Roads and recommendations for any preparations or modifications that will be necessary for Avant Prairie ESS's intended use of the Designated Roads. In addition, the County will provide

Avant Prairie ESS, if available, with copies of any plans, cross sections and specifications relevant to the Designated Roads. Copies of all Pre-Construction Survey documentation shall be provided to the County. All costs associated with the Pre-Construction Survey shall be borne solely by Avant Prairie ESS.

d. It is understood by Avant Prairie ESS that no county roads other than the Designated Roads may be used for ingress or egress to the Project Area during the construction period. Any truck operated by an individual under contract, supervision and control of Avant Prairie ESS, or its general contractor for the Project that is found to be operating a truck on any road not identified as a Designated Road may be fined. County may assess Avant Prairie ESS a fine in the amount of $1,000 for each truck using a non-designated road. In connection with any such fines, County shall: (1) provide reasonable evidence of the authorized party's violation to Avant Prairie ESS (a photograph of the violation shall be deemed reasonable evidence), and (2) notify Avant Prairie ESS of the assessment of the fine with 24 hours of the violation. Any fine that does not comply with clauses (1) and (2) of the previous sentence shall automatically be deemed waived and not owed by Avant Prairie ESS. Avant Prairie ESS shall be liable for damage it, its contractors or suppliers cause to the undesignated road. For a Designated Road damage shall be presumed to have been caused by vehicles traveling to and from the Project unless specifically proven otherwise. On reasonable request by Avant Prairie ESS to add additional Designated Roads, County will not unreasonably withhold its consent to any such additions. The County's consent must be in writing and approved by the Commissioners Court.

e. Where prudent engineering and design suggests appropriate, Avant Prairie ESS, will, at its sole cost and with the consent and approval of the County, prepare any roads in advance of the introduction of heavy or wide loads as necessary to sustain heavy or wide load trucks or where necessary in advance prepare access points from County Roads. For purposes of this Agreement, the term "heavy or wide loads" are defined as any load exceeding 54,000 pounds in gross weight or 36,000 pounds per axle, and any load more than 12 feet in width.

f. Maintenance and Repair of Designated Roads.

    i. *During the Construction of the Improvements.* It is understood that maintenance of the Designated Roads shall be performed by Avant Prairie ESS during the construction of the Improvements, and such maintenance shall include all work necessary to maintain the Designated Roads in a condition materially consistent with the Pre-Construction Survey.

ii. *After Completion of the Construction of the Improvements.* Within thirty (30) days after all construction work for the Improvements has been completed, Avant Prairie ESS will have a post-construction survey completed for all Designated Roads (the "**Post-Construction Survey**"), which will include the then-current condition of the Designated Roads and a comparison of the then-current condition of the Designated Roads with the condition of the Designated Roads at the time of the Pre-Construction Survey and recommendations for restoring the Designated Roads to a condition equal to or better than their condition as of the time of the Pre-Construction Survey. Copies of all Post-Construction Survey documentation shall be provided to the County. All costs associated with the Post-Construction Survey shall be borne solely by Avant Prairie ESS. Avant Prairie ESS and the County shall cooperatively review the findings of the Post-Construction Survey and, within thirty (30) days after Avant Prairie ESS provides the Post-Construction Survey, Avant Prairie ESS and the County shall agree on a schedule of work to be performed by Avant Prairie ESS to cause the restoration of the Designated Roads. Avant Prairie ESS shall commence such work within thirty (30) days after the parties agree on the schedule of work and shall complete such work within sixty (60) days thereafter.

g. All pre-construction preparation of the Designated Roads by Avant Prairie ESS, including the widening of roads pursuant to subsection (i) below, shall have the prior approval of the County and property owners affected by any widening (to the same extent that the consent of the affected property owners would be required if the County widened or changed the course of a County road), and shall be done in accordance with the standards and specifications for road repair generally used by the County for other county roads. If this covenant for road preparation or repair by Avant Prairie ESS cannot be performed by Avant Prairie ESS or in the event Avant Prairie ESS fails to perform this covenant within 30 days of a demand that it do so from the County (or in a longer commercially reasonable time period agreed to with County consent not to be unreasonably withheld), then the County may perform the road repair required of Avant Prairie ESS pursuant to this section and Avant Prairie ESS agrees to reimburse the County for its reasonable and necessary costs in repairing such roads. The County's cost for such repairs shall be determined using the applicable rates used by Federal Emergency Management Administration ("**FEMA**") for equipment and personnel and the County's actual cost of materials. Avant Prairie ESS agrees to pay the cost of any such repairs within 30 days of the date Avant Prairie ESS is billed for such services by the County; if Avant Prairie ESS fails to timely pay the cost of such repairs, the County shall be permitted to access the Financial Assurance in the manner described in subsection (l) below.

h. Avant Prairie ESS may not widen or change the course of any County road without the consent of the County and any affected property owners (to the same extent that the consent of the affected property owners would be required if the County widened or changed the course of a County road), which consent from the County shall not be unreasonably withheld, conditioned, or delayed so long as Avant Prairie ESS is not in default in its obligations under this Agreement. As a condition to granting such consent the County may require Avant Prairie ESS to take any other precautions and covenants which may be commercially reasonably necessary to protect and maintain the roadway and its continued access by the public and the rights of adjoining property owners. Avant Prairie ESS agrees to obtain any necessary permission or right from private property owners prior to using any private property for the delivery of goods or supplies used for the Improvements or for access to the site where any of the Improvements are being constructed.

i. Any roads constructed upon private property by Avant Prairie ESS will not, and shall not hereafter, become the responsibility of the County unless the County receives from the landowner a dedication of sufficient right of way, and the Commissioners Court, in its sole discretion, finds the road serves a sufficient public purpose and affirmatively accepts the road as a County Road.

j. Any County owned culverts or bridges, if any, that must be replaced or repaired in the Project Area as result of the construction of the Project and heavy loads associated with the Project will be replaced or repaired by Avant Prairie ESS, subject to supervision and approval of the County.

k. To more fully implement the terms of Section 2 of this Agreement, Avant Prairie ESS agrees to, prior to the commencement of significant construction activities for the project, establish a fund in an amount equal to $100,000.00, to be placed on escrow with the County Treasurer of Freestone County, Texas, ("**Financial Assurance**"). This Financial Assurance shall be made available to be applied to any costs incurred by Freestone County for the maintenance or repair of roads, bridges, culverts or other road infrastructure due to damage under paragraphs 2(f) and 2(h) of this Agreement which Avant Prairie ESS fails to reimburse within the time required by this paragraph (l). If Avant Prairie ESS fails to timely comply with the requirements of paragraphs 2(f) or 2(h), the County will first give notice to Avant Prairie ESS of the noncompliance, and Avant Prairie ESS will have thirty (30) days in which to cure its noncompliance (or in a longer commercially reasonable time period consented to by the County, not to be unreasonably withheld). Failure to cure the noncompliance will authorize the County to access the Financial Assurance to the extent of the actual costs of repairs incurred by the County, as documented by actual receipts for material, labor or equipment use rates, as based on FEMA publications, as noted above. Upon any withdrawal from the Financial Assurance, Avant Prairie ESS shall immediately cause the Financial Assurance to be restored or reissued, if necessary, so that the amount of

$100,000 will be available to the County under this paragraph. Failure to provide the Financial Assurance or to cause the Financial Assurance to be restored or reissued to the original amount when and if necessary, shall constitute a material breach of this Agreement, and the rights and permissions granted to Avant Prairie ESS in this Order may be suspended by the County until the Financial Assurance is provided, restored, or reissued, as the case may be. At the conclusion of all construction and commencement of commercial operations of the Project, the Financial Assurance may be withdrawn or released back to Avant Prairie ESS.

l. Avant Prairie ESS agrees to defend, indemnify and hold harmless Freestone County and its officers, representatives and employees against any and all losses, damages, claims, expenses and liabilities for physical damage to the property of Freestone County or to any person, including reasonable attorney's fees arising out of the Project with respect to (1) operations of Avant Prairie ESS, or any of its contractors or subcontractor for any intentional act or omission on the part of Avant Prairie ESS, or its agents, representatives, employees, or its general contractor or sub-contractors and all employees of such companies actually performing work related to the Project, and (2) any negligent, careless or reckless act or omission on the part of Avant Prairie ESS, or its contractors and subcontractors, and (3) any breach of this Agreement. This indemnity agreement shall survive after the conclusion of all construction and the commencement of commercial operations of the Project for a period of one (1) year.

m. Avant Prairie ESS agrees to provide insurance at all times during construction and such insurance will include: (1) Worker's compensation insurance in compliance with the laws of the State of Texas (2) Commercial General Liability insurance with minimum limits of $1,000,000.00 per occurrence and a $2,000,000 aggregate limit, and (3) Automobile Liability insurance with a combined single limit of $1,000,000. Certificates of Insurance will be provided upon request to the County. Freestone County will be identified as an additional insured on all insurance policies related to the Project. Limits can be achieved by any combination of primary and excess policies.

3. The Commissioners' Court hereby grants permission to Avant Prairie ESS, and its successors and assigns, during the planning and construction phases of its Project and Improvements, and thereafter during the operation and maintenance phase of the Project and Improvements until said Project and Improvements are completely abandoned, to use all County roads for the Road Usages described herein, including but not limited to, access and egress to and from the Avant Prairie ESS Project Area (except that access, ingress, and egress by construction vehicles during the initial construction of the solar project will be limited to the Designated Roads).

4. That the permission granted in Ordering Paragraph 3 includes the installation, operations, maintenance, repair, and decommissioning of the solar power

Project and Improvements, which expressly includes the collection and transmission lines and related facilities within the rights of way of said County roads and right-of-way easements held by the County, and an authorization to require upgrade of such roads where necessary and conduct geo-technical and other preliminary construction analysis of such roads and rights-of-way. Avant Prairie ESS must provide the County with notice and a map identifying the location of such Improvements in the Project Area with reference to the Designated Roads before Project construction work on such roads begins. If any County roads must be upgraded in connection with such construction work, Avant Prairie ESS will perform such upgrade work at its cost. The County may inspect such road upgrade work and Avant Prairie ESS will perform additional work if needed to cause the upgrades to meet the same or better road standards as in effect at the commencement of Project construction (such standards being those agreed to by all parties). Avant Prairie ESS must repair any damage to the County roads caused by its installation, maintenance or repair activities in accordance with Ordering Paragraph 2 of this Agreement.

[remainder of this page blank – signature page follows]

PASSED AND APPROVED at this public hearing of the Freestone County Commissioners' Court, at which a quorum was present, on _____, 2025.

_____
Hon. Linda Grant, County Judge
Freestone County, Texas

_____ _____
Commissioner Precinct 1 Commissioner Precinct 2

_____ _____
Commissioner Precinct 3 Commissioner Precinct 4

ATTEST:

_____
County Clerk Date of Execution: _____

Accepted:

Avant Prairie ESS

By: _____
Name, Title: _____
Date of Execution: _____

EXHIBIT A – Depiction of the Project Area


75
Fairfield
45
75
84
84
45
45
75


75
41
41
471

EXHIBIT B – Parcel included in the Project Area

**Owner**: Kent R. Phillips & Jennifer L. Phillips
**Legal Description**: J.M. Hallmark A-268
**Acreage**: 36.85
**Parcel ID**: 11434