

THE STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

**ROADWAY USE AND MAINTENANCE AGREEMENT
(BYPASS BESS LLC)**

THIS ROADWAY USE AND MAINTENANCE AGREEMENT (the “Agreement”) is entered into by and between Fort Bend County, Texas (the “County”), a body politic acting herein by and through its Commissioners Court, and Bypass BESS LLC, a Delaware limited liability company (the “Project Company”). The County and the Project Company may be individually referred to as a “Party” or collectively as the “Parties.”

WHEREAS, the Project Company is currently developing property¹ located within the jurisdiction of the Town of Thompsons and County which will require use of certain public roads maintained by the County through an Interlocal Agreement with the Town of Thompsons, (hereinafter defined as “County Roads” as described in Exhibit A attached hereto and incorporated herein for all purposes) for delivery, access and egress to and from that certain property for a battery storage facility to be constructed by the Project Company, (the “Project Company’s Facility”); and

WHEREAS, the Project Company agrees to use the primary route shown in Exhibit B attached hereto and incorporated herein for delivery, access and egress to and from the Project Company’s Facility when feasible, prior to use of other County Roads; and

WHEREAS, the Project Company is applying for and/or has obtained a Development Permit and a Right of Way Permit (collectively, the “Permits”) to develop the Project Company’s Facility that may cause incremental damage to County Roads by use of vehicles, cranes, or other means of delivery, access and egress during the construction phases of developing the Project Company’s Facility; and

WHEREAS, the Parties desire to enter into this Agreement to memorialize the terms in which the Project Company will address incremental damage to the County Roads and comply with the terms of the Permits to be issued by the County.

NOW, THEREFORE, in consideration of the covenants and conditions contained in this Agreement, the County and the Project Company agree as follows:

1. Project Company’s Responsibilities. The Project Company agrees to:

 A. Prior to the beginning of the Construction Phase (as defined below), remit a letter of credit or surety bond in the amount of \$750,000 to cover any costs of

¹ Aypa NTD: Note that Bypass BESS does not yet own the property where the project will be constructed.

repairing the County Roads, if necessary; and

B. Use commercially reasonable efforts to minimize the disruption to public roadways and “Repair” the County Roads to their pre-existing condition prior to the delivery, access and egress to and from the Project Company’s Facility, in a manner as described below to the extent of damages caused by the Project Company during the Construction Phase (as defined below):

- (I) For Graveled County Roads –
 - (a) Light grading using motor grader;
 - (b) Repair of potholes that are caused by the Project Company and were not existing prior to on-site construction activities, as determined by video documentation and/or an initial site-walk with authorized representatives of both Parties (the “Video Documentation”). The Video Documentation shall be completed and submitted to the County prior to the start of the Construction Phase;
 - (c) Washboard conditions caused by Project Company;
 - (d) Importing and installing of aggregate (crushed concrete) as necessary to make such repairs
 - (e) Usage of brush skid steer attachment for track-out’
 - (f) Usage of water truck for dust suppression, as needed; and
 - (g) Maintenance as needed to match pre-existing conditions.
- (II) For Chip Seal and Asphalt County Roads –
 - (a) Repair of potholes that are caused by the Project Company and were not existing prior to on-site construction activities, as determined pursuant to review of the Video Documentation;
 - (b) Importing aggregate (crushed concrete) as necessary;
 - (c) Applying Cold Mix asphalt and hand tamping as required;
 - (d) Usage of brush skid steer attachment for track-out;
 - (e) Maintenance as needed to match pre-existing conditions.

Project Company may implement pre-finish repairs to permit continuing traffic through the Construction Phase, with final or topping repairs to be implemented upon completion of Construction Phase.

C. Commence and thereafter diligently continue performance of all Repairs within the following timelines:

- (I) Within twenty-four (24) hours of the Project Company’s receipt of notification of the need to Repair provided by the County for

notifications received Monday through the close of business Thursday;

- (II) Within seventy-two (72) hours of the Project Company's receipt of notification of the need to Repair provided by the County for notifications received between the close of business on a Thursday and the opening of business on the following Monday, and those notifications received during a County holiday; and
- (III) As soon as commercially reasonable to perform emergency repairs, as reasonably determined by County.

D. Request approval of Commissioners Court for approval for non-emergency roadway closures to the County Roads. Emergency closures, as determined within the sole discretion of the County's Road Commissioner or his designee, may be approved by such Road Commissioner or his designee; and

E. Notify the office of the County's Road Commissioner by electronic mail at least four (4) hours prior to the repair of potholes performed on behalf of the Project Company; and

F. Reimburse the County for the cost of repairs performed by the County if the Project Company does not commence the necessary repair work within the deadlines prescribed above payable at the follow rates:

- (I) \$35 per man hour; and
- (II) \$85 per equipment hour.
- (III) Material at cost

G. Submit a picture of the defect and the remediated area with the name of the County Road & Bridge inspector and the date of the inspection by email to Scott.Wieghat@fortbendcountytexas.gov and brent.mccauley@fortbendcountytexas.gov to close out the Repair. Project Company email address: BypassBESS@aypa.com and legal@aypa.com.

2. County's Responsibilities. In exchange for the Project Company's commitments made in accordance with Section 1 above and satisfaction of all other requirements for receipt of the Permits, the County agrees:

A. To issue such Permits for the development of the Project Company's Facility;

B. To grant permission to use the County Roads for delivery, access and egress to and from the Project Company's Facility by vehicle, crane, or other means of delivery, access and egress during the construction phases of the Project Company's Facility, being February 1, 2024 through December 1, 2025 ("Construction Phase"),

which phase may be extended by Project Company by providing notice to the County;

C. To grant permission to maintain the County Roads during the Construction Phase;

D. To promptly repair damages to the County Roads caused by natural weather conditions, including flooding and hurricanes and to maintain the County Roads following the Construction Phase;

E. Provide written acknowledgment of receipt of email provided by Project Company to close-out Repairs within five (5) calendar days of such receipt; and

F. Release Project Company or Project Company's contractors from any bonds or other assurance securing the Project Company's performance under this Agreement for successfully completed Repairs within forty-five (45) calendar days of completion of the last item submitted for approved close-out during the Construction Phase.

3. Third Party Agreements. In the event that other third parties execute roadway use and maintenance agreements (or similar agreements) with the County prior to completion of the Construction Phase that apply to all or a portion of the County Roads, the Parties will use reasonable efforts to allocate responsibility for damage and subsequent repairs to County Roads between the Project Company and such other third parties; provided, however that the County shall have the right to make the final determination of responsibility between Project Company and such other third parties, which determination shall be made in the County's reasonable discretion.

4. Notice. Any notice required to be sent under this Agreement must be in writing and may be served by depositing same in the United States Mail, addressed to the Party to be notified, postage pre-paid and registered or certified with return receipt requested, or by delivering the same in person to such Party via a hand-delivery service, Federal Express or any courier service that provides a return receipt showing the date of actual delivery of same to the addressee thereof. Notice given in accordance herewith shall be effective upon receipt at the address of the addressee. For purposes of notice, the addresses of the Parties shall be as follows:

If to County, to:

Fort Bend County Engineering
Attention: County Engineer
301 Jackson Street
Richmond, Texas 77469

With a copy to:

Fort Bend County
Attention: County Judge
401 Jackson Street
Richmond, Texas 77469

If to Project Company, to:

Bypass BESS LLC
c/o Aypa Power Development LLC
Attn: ERCOT Development
11801 Domain Blvd,
Suite 450
Austin, TX 78758
BypassBESS@aypa.com

With a copy to:

legal@aypa.com

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IN WITNESS WHEREOF, the Parties have executed this Agreement and caused this Agreement to be effective on the date executed by County.

FORT BEND COUNTY:

KP George, County Judge

Date

Attest:

Laura Richard, County Clerk

Approved:

J. Stacy Slawinski, P.E., County Engineer

PROJECT COMPANY:

Bypass BESS LLC,
a Delaware limited liability company

By: _____

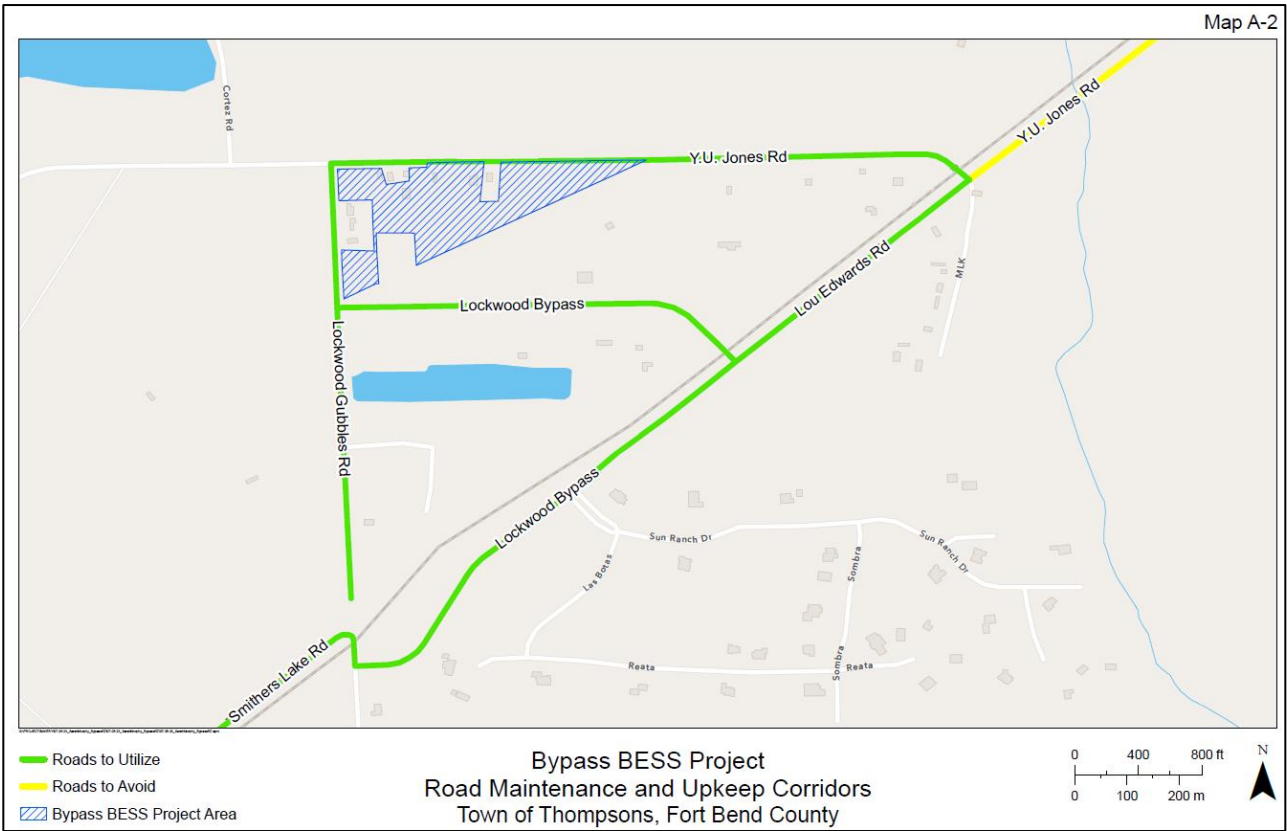
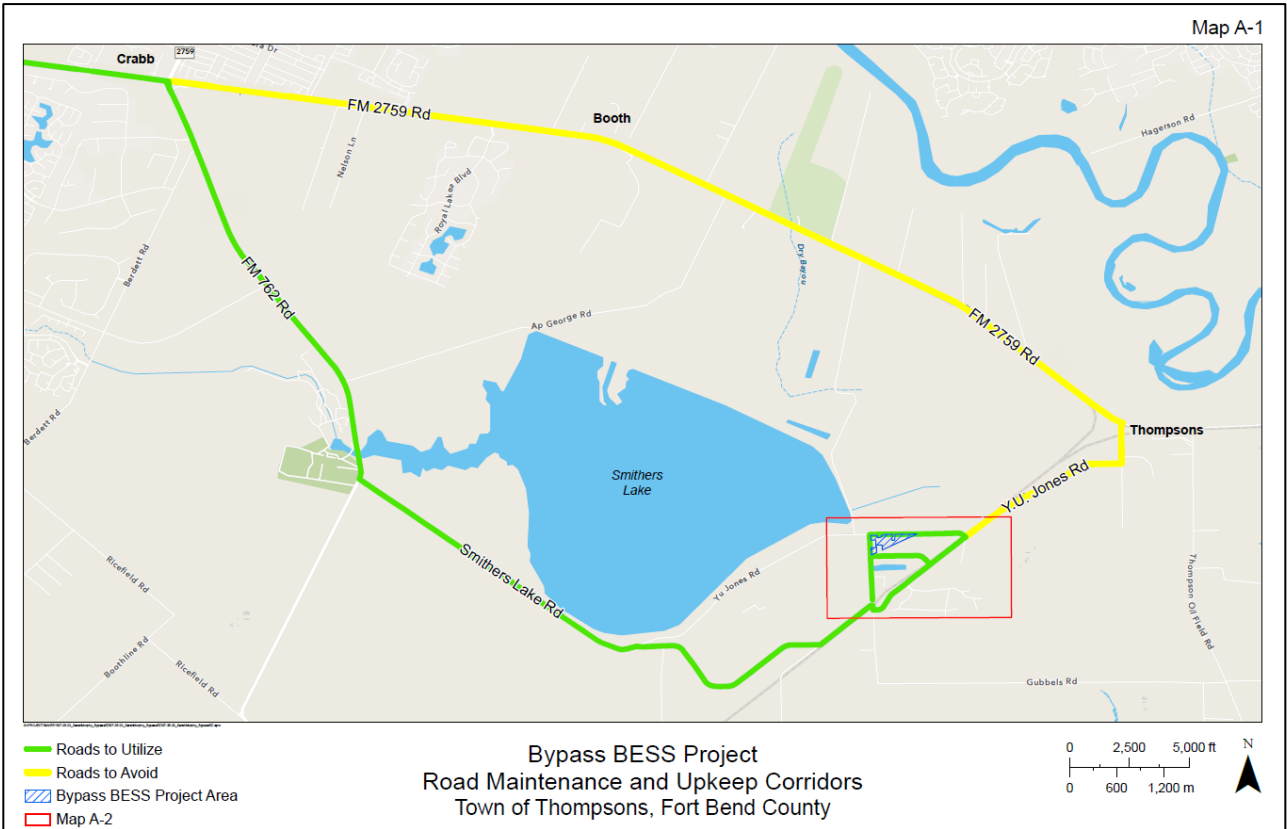
Name: Sam Littlefield

Title: EVP Development

EXHIBIT A
Road Maintenance and Upkeep Corridors

- Lockwood Gubbles Road from YU Jones Road to the Deadend
- Lockwood Bypass Road from Lockwood Gubbles Road to south of railroad tracks at Lou Edwards Road, approximately 29.482334, -95.615476
- YU Jones Road from FM 2759 to Lou Edwards Road @ Lockwood Bypass (to include Railroad Crossing)
- YU Jones Road from Lou Edwards Road (to include Railroad Crossing) to Lockwood Gubbles Road
- Lockwood Bypass Road (south of railroad tracks) from Lockwood Road to Lou Edwards Road
- Lou Edwards Road from Lockwood Bypass to YU Jones Road
- Smithers Lake Road from FM 762 to Lockwood Road (as shown in Exhibit B).

EXHIBIT B
Primary Delivery Route










2023-11-10_Bypass BESS Road Agreement_v2 from County

Final Audit Report

2023-11-20

Created:	2023-11-20
By:	Sarah Murphy (SMurphy@aypa.com)
Status:	Signed
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