

HOPKINS COUNTY

**SECOND AMENDMENT TO
CHAPTER 381 ECONOMIC DEVELOPMENT
PROGRAM AND AGREEMENT**

This **SECOND AMENDMENT TO CHAPTER 381 ECONOMIC DEVELOPMENT PROGRAM AND AGREEMENT** (hereinafter referred to as the “Second Amendment”) is made and entered into by and between **HOPKINS COUNTY**, a Texas political subdivision (hereinafter referred to as the “County”), and **PINE FOREST HYBRID I, LLC**, a Delaware limited liability company (hereinafter referred to as the “Developer”):

RECITALS:

WHEREAS, on or about September 7, 2021, the County and Developer entered into the original Chapter 381 Economic Development Program and Agreement (hereinafter referred to as the “Original Agreement”, and as amended by the First Amendment and this Second Amendment, the “Agreement”) regarding financial assistance for the construction of a battery storage facility generally located on an approximately 2,155-acre tract of land in the Hopkins County, Texas; and

WHEREAS, on or about December 13, 2022, the County and Developer entered into the First Amendment of the Original Agreement (hereinafter referred to as the “First Amendment”); and

WHEREAS, the County and Developer now desire to amend the terms of the Agreement to better address the mutual obligations of the parties.

NOW, THEREFORE, for and in consideration of the agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the County and Developer agree as follows:

SECTION 1. FINDINGS INCORPORATED.

The foregoing recitals are hereby incorporated into the body of this Second Amendment and shall be considered part of the mutual covenants, consideration and promises that bind the parties.

SECTION 2. AMENDMENT TO ORIGINAL AGREEMENT AND FIRST AMENDMENT.

1. **Amendment to Agreement.** County and Developer hereby amend the Original Agreement and First Amendment as follows:

- (a) Section 2 of the Agreement is amended to specify that the Agreement shall be effective as of the Effective Date and shall continue thereafter until December 31, 2035, unless terminated sooner under the provisions of the Amended Agreement, except that the term of the Agreement shall continue beyond December 31, 2035, solely for the purpose

of allowing Developer and the County to complete their obligations in Section 5(a) with respect to the final Program Grant Payment and PILOT.

(b) Section 3(h) of the Agreement is amended to specify that

1. Nameplate Capacity—Storage means the total or overall two-hour storage capacity of the energy storage system included in the Project and Improvements on the Site (as designated in AC units per hour), which is calculated by multiplying the Rated Power Capacity by two as reported to the Electric Reliability Council of Texas ("ERCOT") and published in ERCOT's "Battery Energy Storage Projects Co-Located with Solar Projects GIS Report".

2. Rated Power Capacity is the maximum instantaneous power discharge capability (in megawatts [MW]) that the Project and Improvements can achieve, starting from a fully charged state

(c) Section 3(l) of the Agreement is amended to specify that the word "Project" means those expenditures consisting of the construction of a battery storage facility located on the Property.

(d) Section 4(a) of the Agreement is amended to read that the Developer covenants and agrees to make a capital investment (excluding intangible personal property) toward the Project of at least \$160 million for a battery storage generation facility in the form of improvements, new business personal property, and new business equipment, but excluding inventory, to be situated on the Property. Developer covenants and agrees to cause mechanical completion of the Project by December 31, 2025.

(e) Section 4(b) of the Agreement is amended to read that the Developer covenants and agrees to provide to the County a certificate of completion for the Project representing that the Project is mechanically complete by December 31, 2025, and that the capital investment (excluding intangible personal property) exceeded \$160 million.

(f) Section 4(d) of the Agreement is amended to read that the Developer covenants and agrees by December 31, 2026, and through the Term of the Agreement to employ and retain a minimum of two full-time Employment positions working on the Property. Annual compliance verifications shall be delivered to County beginning on December 31, 2026. There are no other amendments to the remainder of Section 4(d).

(g) Section 4(d)(2)(e) of the Agreement is amended to read that beginning with tax year 2026 and for each year during the Term of this Agreement, Developer shall pay by January 31st of each year all of the ad valorem taxes due for the previous year on the Personalty and Property attached to the Project. By way of example only, the ad valorem taxes for tax year 2026 shall be paid on or before January 31, 2027. There are no other amendments to the remainder of Section 4(d)(2)(e).

(h) Section 4(g) of the Agreement is amended to read that for the Tax Years 2026 through 2035, Developer agrees to pay, as the “PILOT”, an amount equal to \$695.00 multiplied by the greater of 400 Megawatt Hours AC or the actual installed Nameplate Capacity—Storage in Megawatt Hours AC as reported by Developer to the County in the certificate of completion and as reported by ERCOT. Each PILOT payment shall be due on January 31 of each calendar year following the calendar year for which the reimbursed ad valorem tax applies. By way of example the PILOT for tax year 2026 shall be due and payable on January 31, 2027. Developer’s payment of each PILOT shall be accomplished by County withholding the amount of the PILOT from the Program Grant Payment owed to Developer for the applicable year. In the event that an annual PILOT exceeds the Program Grant Payment, Developer shall remit payment to County for the difference within 30 days of receipt of County’s billing. The remainder of Section 4(g), including the table included in the First Amendment, is hereby deleted.

(i) Paragraph 2 of Section 5(a)(1) of the First Amendment is amended to read that, in the event, during the Term of the Agreement, Developer satisfies the requirements of this Agreement, beginning with tax year 2026 and for each tax year thereafter through tax year 2035, the County shall make a Program Grant Payment to Developer of 100% of County Ad Valorem Taxes minus the PILOT for the corresponding tax year. The County covenants and agrees to provide each respective Program Grant Payment to Developer within thirty (30) days following receipt of the latter of: (1) ad valorem taxes paid to the County for the Property and Personalty for the tax year to which the respective Program Grant Payment corresponds; and (2) County’s receipt of the Annual Compliance Verification. The remainder of Paragraph 2 of Section 5(a)(1), including the table included in the First Amendment, is hereby deleted.

(j) Replacement of Exhibit A. Exhibit A to the Agreement is hereby replaced by the new Exhibit A attached to this Second Amendment.

SECTION 3. MISCELLANEOUS PROVISIONS.

The following miscellaneous provisions are a part of this Second Amendment:

- (a) **Amendments.** The Agreement, as amended by the First Amendment and this Second Amendment, constitutes the entire understanding and agreement of the parties as to the matters set forth in the Agreement. No alteration of or amendment to the Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.
- (b) **Fee Related to Amendment.** Within fifteen (15) days after the Effective Date, Developer shall remit to County a fee of \$15,000.00 which shall be used to offset soft costs incurred by County related to this Second Amendment.

- (c) **Applicable Law and Venue.** The Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Hopkins County, Texas. Venue for any action arising under the Agreement shall lie in the state district courts of Hopkins County, Texas.
- (d) **Binding Obligation.** This Second Amendment shall become a binding obligation on the signatories upon execution by all signatories hereto. County warrants and represents that the individual executing this Second Amendment on behalf of County has full authority to execute this Second Amendment and bind County to the same. Developer warrants and represents that the individual executing this Second Amendment on Developer's behalf has full authority to execute this Second Amendment and bind it to the same.
- (e) **Caption Headings.** Caption headings in this Second Amendment are for convenience purposes only and are not to be used to interpret or define the provisions of the Second Amendment.
- (f) **Counterparts.** This Second Amendment may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.
- (g) **Effective Date.** The effective date (the "Effective Date") of this Second Amendment shall be the date of the latter to execute this Second Amendment by the County and Developer.
- (h) **Original Agreement and Amendment.** All of the terms, conditions, and obligations of the Original Agreement and First Amendment remain in full force and effect except where specifically modified by this Second Amendment.
- (i) **Severability.** The provisions of this Second Amendment are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this Second Amendment is for any reason held by a court of competent jurisdiction to be contrary to law or contrary to any rule or regulation have the force and effect of the law, the remaining portions of the Second Amendment shall be enforced as if the invalid provision had never been included.
- (j) **Time is of the Essence.** Time is of the essence in the performance of the Agreement.
- (k) **Form 1295 Certificate.** The Developer agrees to comply with Texas Government Code, Section 2252.908 and in connection therewith, the Developer agrees to go online with the Texas Ethics Commission to complete a Form 1295 Certificate and further agrees to print the completed certificate and execute the completed certificate in such form as is required by Texas Government Code, Section 2252.908 and the rules of the Texas Ethics Commission and provide to the County, at the time of delivery of an executed counterpart of this Second Amendment, a duly executed completed Form 1295 Certificate.
- (l) **Undocumented Workers Provision.** The Developer certifies that Developer does not and will not knowingly employ an undocumented worker in accordance with Chapter 2264 of the Texas Government Code, as amended. If during the Term of the Agreement, Developer

is convicted of a violation under 8 U.S.C. § 1324a(f), Developer shall repay the amount of any public subsidy provided under this Second Amendment to Developer plus three percent (3.0%), not later than the 120th day after the date the County notifies Developer of the violation.


- (m) **Non-Boycott of Israel Provision.** In accordance with Chapter 2270 of the Texas Government Code, a Texas governmental entity may not enter into an agreement with a business entity for the provision of goods or services unless the agreement contains a written verification from the business entity that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the agreement. Chapter 2270 of the Texas Government Code does not apply to a (1) a company that is a sole proprietorship; (2) a company that has fewer than ten (10) full-time employees; or (3) the contract has a value of less than One Hundred Thousand Dollars (\$100,000.00). Unless Developer is not subject to Chapter 2270 of the Texas Government Code for the reasons stated herein, the signatory executing this Second Amendment on behalf of Developer verifies that Developer does not boycott Israel and will not boycott Israel during the Term of the Agreement.
- (n) **Prohibition on Contracts with Certain Companies Provision.** In accordance with Section 2252.152 of the Texas Government Code, the Parties covenant and agree that Developer is not on a list maintained by the State Comptroller's office prepared and maintained pursuant to Section 2252.153 of the Texas Government Code.
- (o) **Report Second Amendment to Comptroller's Office.** County covenants and agrees to report this Second Amendment to the State Comptroller's office within fourteen (14) days of the Effective Date of this Second Amendment, in accordance with Section 381.005 of the Texas Government Code, as added by Texas House Bill 2404, 87th Tex. Reg. Session (2021) (effective September 1, 2021).
- (p) **Verification Against Discrimination of Firearm or Ammunition Industries.** Pursuant to Texas Government Code Chapter 2274, (as added by Texas Senate Bill 19, 87th Tex. Reg. Session (2021) (effective September 1, 2021)) unless otherwise exempt, if the Developer employs at least ten (10) fulltime employees and the Agreement has a value of at least \$100,000 that is paid wholly or partly from public funds of the County, the Developer represents that: (1) the Developer does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) the Developer will not discriminate during the Term of the Agreement against a firearm entity or firearm trade association.
- (q) **Verification Against Discrimination Developer Does Not Boycott Energy Companies.** Pursuant to Texas Government Code Chapter 2274, (as added by Texas Senate Bill 13, 87th Tex. Reg. Session (2021) (effective September 1, 2021)) unless otherwise exempt, if the Developer employs at least ten (10) fulltime employees and the Agreement has a value of at least \$100,000 that is paid wholly or partly from public funds of the County, the Developer represents that: (1) the Developer does not boycott energy companies; and (2) the Developer will not boycott energy companies during the Term of the Agreement.

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IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed.

COUNTY:

HOPKINS COUNTY, TEXAS,
A Texas political subdivision

By: 
Robert Newsom, County Judge
Date Signed: 5-13-24

ATTEST:


Tracy Smith, County Clerk

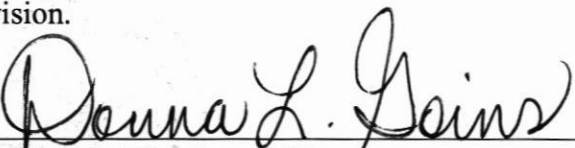


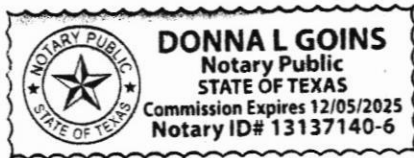
STATE OF TEXAS

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COUNTY OF HOPKINS

This instrument was acknowledged before me on the 13th day of May, 2024, by Robert Newsom, County Judge of Hopkins County, Texas, a Texas political subdivision, on behalf of said political subdivision.


Notary Public, State of Texas



DEVELOPER:

PINE FOREST HYBRID I, LLC,
A Delaware limited liability company,

By: _____

Date: _____

STATE OF TEXAS

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COUNTY OF TRAVIS

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This instrument was acknowledged before me on the ____ day of _____
_____, 2024, by _____, _____ of Pine Forest Hybrid I, LLC, a Delaware
limited liability company, on behalf of said Delaware company.

Notary Public, State of Texas

NEW EXHIBIT A

The Property includes the real property parcels listed below and which are also depicted below.

Landowner	ID_or_APN	Legal_Desc
BAIN JOE E JR TRUST	R000022163	ABS: 1016, TR: 14, SUR: WAGGONER DAVID
BAIN JOE E JR TRUST	R000022188	ABS: 1016, TR: 31, SUR: WAGGONER DAVID
BAIN JOE E JR TRUST	R000022187	ABS: 1016, TR: 29-01, SUR: WAGGONER DAVID

