

WHEN RECORDED RETURN TO:

Town of Queen Creek
Attn: Town Clerk
22358 S. Ellsworth Road
Queen Creek, Arizona 85142

**FIRST AMENDMENT TO DEVELOPMENT AGREEMENT AND
INTERGOVERNMENTAL AGREEMENT**

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THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT AND INTERGOVERNMENTAL AGREEMENT (this “**First Amendment**”) is dated effective as of October ____, 2023 (the “**First Amendment Effective Date**”), by, between and among PINAL COUNTY, ARIZONA, a political subdivision of the State of Arizona (“**County**”), TOWN OF QUEEN CREEK, ARIZONA, an Arizona municipal corporation (the “**Town**”), and LG ENERGY SOLUTION ARIZONA, INC., a Delaware corporation, successor (by conversion) to ES AMERICA, LLC, a Delaware limited liability company (“**Employer**”). County, Town and Employer are sometimes referred to in this First Amendment collectively as the “**Parties**,” or each individually as a “**Party**.”

RECITALS

1. **Recitals.** As background to this First Amendment, the Parties recite, state and acknowledge the following, each of which is a material term that is included within this First Amendment.

A. County, Town and Employer are parties to that Development Agreement and Intergovernmental Agreement dated as of April 19, 2022, and recorded in the Official Records of Pinal County Recorder as Fee Number 2022-046997, pursuant to which Employer wishes to locate, construct and operate a production facility on approximately three hundred (300) acres of real property within the corporate limits of Queen Creek, Arizona, in Pinal County (the “**Site**”) (the “**Agreement**”). Capitalized terms not otherwise defined in this First Amendment shall have the meaning set forth in the Agreement.

B. Employer is designated in the Agreement as ES AMERICA, LLC, a Delaware limited liability company. On April 4, 2023, ES America, LLC was converted from a Delaware limited liability company to a Delaware corporation, changing its name from “ES America, LLC” to “LG Energy Solution Arizona, Inc.”, as evidenced by the Certificate of Conversion and the Certificate of Incorporation filed with the Delaware Secretary of State on April 4, 2023.

C. The Agreement contemplates that Employer’s estimate aggregate commitment to the Required Improvements is a projected cost of \$2,800,000,000. Employer,

pursuant to this First Amendment, is committing to construct a larger manufacturing and related facilities. Specifically, Employer's current estimated projected cost for the Project is Three Billion Dollars (\$3,000,000,000.00), a portion of which is due to increased construction costs, supply chain issues, and inflation, but a significant portion is attributable to increasing the size of the manufacturing facility for the Project.

D. County and Employer have completed the process relating to the selection of the Training Facility Site, the conceptual design of the Workforce Training Facility, and shared the proposed selection of the design-build contractor to design and construct the Workforce Training Facility. County, Central Arizona College, a public agency ("**CAC**"), and the Arizona Commerce Authority ("**ACA**") entered into an Intergovernmental Agreement dated January 17, 2023 with respect to the construction and/or operation of the Workforce Training Facility ("**Training Facility IGA**"). The Workforce Training Facility, together with the furniture, fixtures and equipment funded by County pursuant to this First Amendment, shall be owned by CAC. The functionality of the Workforce Training Facility and such furniture, fixtures and equipment, shall be owned by CAC, creating a public benefit that shall be enhanced for the period following the use by Employer as described in this First Amendment.

E. In consideration of Employer's commitment to construct a larger Project, and the enhanced public benefit resulting from the Workforce Training Facility, County has agreed to provide additional financial consideration for the construction and equipping of the Workforce Training Facility, as set forth in this First Amendment.

F. In connection with negotiation of the Agreement, and as referenced in Section 6.5 thereof, Town provided Employer with a letter dated February 27, 2022, regarding "Project Alpha Water and Wastewater Utilities Rates" (the "**Rate Letter**"). The Rate Letter provided water usage and wastewater service rates based on the then-projected annual water usage at buildout of 645,685,000 gallons (the "**Original Water Demand**") and the then-projected annual wastewater demand at buildout of 327,770,000 gallons (the "**Original Wastewater Demand**").

G. Additionally, during the preliminary design, planning and implementation stages of the Project, and the increase in size of the manufacturing facility, the Parties came to realize that, given the scope, complexity of the Project and construction supply chain challenges, certain timelines originally presented in the Agreement need to be adjusted accordingly. The Parties – confirming their commitment to the Project -- now desire to modify the Agreement in the manner set forth in this First Amendment.

2. Agreements. In consideration of the mutual covenants and agreements contained herein, Employer, County and Town agree as follows:

A. Confirmation of Dates. Pursuant to Section 1(t) of the Agreement, the Parties confirm that the Effective Date is April 19, 2022. Pursuant to Section 4.1 of the Agreement, the Parties confirm that the Site Acquisition Date is May 16, 2022, which is the date of issuance and recordation of the Partial Patent for the Site (recorded with the Pinal County Recorder as Fee Number 2022-057973).

B. The following definitions in Section 1 of the Agreement are deleted in their entirety and replaced with the following:

(m) [Intentionally deleted]

(z) “**Employment Objective Date**” means December 16, 2033.

(tt) “**Project**” means a facility consisting of over one million square feet, under roof, of manufacturing and appurtenant management, distribution, office and administrative space and more specifically described on Exhibit A, to be constructed at a projected cost of Three Billion Dollars (\$3,000,000,000.00).

C. Section 4.2 of the Agreement is deleted in its entirety and is replaced with the following:

4.2 Required Improvements. Upon Employer’s acquisition of the Site, Employer shall cause the Required Improvements to be designed and constructed in accordance with the requirements of this Agreement, including but not limited to the Approved Plans. For avoidance of doubt, the rights and obligations of Employer in this Agreement are personal to Employer, and shall remain rights and obligations of Employer notwithstanding Employer’s election to proceed with (a) the design, construction and/or ownership of the Required Improvements (and/or applicable portion of the Site) in its own name or through a build-to-suit, sale-leaseback, or other similar structure where Employer leases, but does not own in fee title, the Required Improvements and/or Site (or portions thereof), with any such Transfer having been completed (and approved, if required) in compliance with Section 12.2 of this Agreement; and/or (b) a lease of a portion of the Site for design, construction, and/or operation of other facilities and uses that are not part of the Required Improvements (the Parties expressly acknowledge that Employer currently anticipates that the Required Improvements shall be constructed on a portion, but not all, of the Site); provided, however, in all circumstances Employer’s right to claim the benefits of this Agreement requires full and timely compliance of all terms and conditions of this Agreement, whether performed by Employer or for the benefit of Employer by a permitted third party. Subject to Force Majeure, Employer shall:

(i) Commence (or cause to be Commenced) Construction of the Required Improvements on or before June 16, 2024;

(ii) Complete (or cause to be Completed) Construction of the Required Improvements on or before ninety (90) months after Commencement of Construction of the Required Improvements; and

(iii) begin its manufacturing operations within the Required Improvements on or before (6) months after Completion of Construction of the Required Improvements.

For the avoidance of doubt, Employer shall be deemed to begin its manufacturing operations within the Required Improvements at the start of production of any product, including prototypes, samples, and products for quality assurance and testing. The foregoing dates are all subject to delays to the extent caused by (a) Force Majeure, and

(b) delays by Town and/or County in performing their obligations under this Agreement or, as to Town, the PADA.

D. Section 5.4(b) of the Agreement is deleted in its entirety and is replaced with the following:

(b) On or before August 31, 2025, and on or before August 31 of each year thereafter until the Employment Objective is achieved, County shall make an Employee Education Incentive payment to Employer in an amount equal to the sum of (i) the product of multiplying \$3000 by the number of Full-Time Employees who are Pinal County residents trained and employed by Employer, plus (ii) the product of multiplying \$1500 by the number of Full-Time Employees who are non-Pinal County residents trained and employed by Employer. The foregoing information shall be certified by Employer in a certification (the “**Annual Employment Certification**”) from Employer’s director, human resources officer or other management representative reasonably acceptable to County, and in a form reasonably satisfactory to County. The Annual Employment Certification shall cover the twelve-month period ending on June 30 of the same year. County confirms that any reports that Employer may deliver to the State of Arizona pursuant to the Arizona Competes Grant shall be a form reasonably satisfactory to County for purposes of this Section. The Annual Employment Certification shall be accompanied by Employer’s estimate of the Full-Time Employees for the upcoming 12-month period (commencing July 1 of such year); such estimate shall be provided by Employer solely for County’s planning and budgeting purposes, and shall not be binding on Employer.

E. Section 5.4(d) of the Agreement is deleted in its entirety and is replaced with the following:

(d) The Annual Employment Certification shall be submitted to County no later than July 31, 2025 and no later than July 31 of each year thereafter. If the Employment Objective is achieved prior to the next June 30 following achievement of the Employment Objective, the Annual Employment Certification for that year shall be submitted to County following the date that the Employment Objective is achieved. County shall reimburse Employer the Employee Education Incentive amount based on the most recently submitted Annual Employment Certification no later than thirty (30) days after receipt of the Annual Employment Certification.

F. Sections 5.5 of the Agreement is deleted in its entirety and replaced with the following:

(a) Pursuant to Section 134 of the Workforce Innovation and Opportunity Act of 2014 (Public Law No. 113-128) funds authorized by the Governor of Arizona may be used by County for employment and training activities for, among other things, emerging employment opportunities that are responsive to in-demand industry sectors or occupations. County shall use such funds (together with funds from such other sources as identified by County as required to perform its obligations under this Agreement) to construct or cause to be constructed (at the expense of County and at no expense to Employer except as otherwise provided herein), a workforce training facility

(the “**Workforce Training Facility**”). The Workforce Training Facility shall be located at the Central Arizona College Superstition campus, at a site selected by Employer and County with an address of 805 South Idaho Rd, Apache Junction, Arizona (the “**Training Facility Site**”). For avoidance of doubt, this Agreement does not constitute an encumbrance on the Training Facility Site. County has entered into an Intergovernmental Agreement dated January 17, 2023 with Central Arizona College, a public agency (“**CAC**”), and the Arizona Commerce Authority (“**ACA**”) with respect to the construction and/or operation of the Workforce Training Facility (“**Training Facility IGA**”). Prior to the execution of this First Amendment County shall negotiate an amendment to the Training Facility IGA (the “**Training Facility IGA Amendment**”) in the form attached hereto as Exhibit H. Employer shall be a third-party beneficiary under the Training Facility IGA Amendment as set forth therein. Employer consents to the Training Facility IGA Amendment which shall be executed concurrently with the execution of this First Amendment. County shall cooperate to assist Employer in negotiating a lease or license agreement with CAC with respect to the use of the Workforce Training Facility and the installation, maintenance and removal of Employer’s training furniture, fixtures and equipment at the Training Facility Site (the “**Training Facility Usage Agreement**”) consistent with the Training Facility IGA Amendment. The funds expended by County to cause the construction, operation and maintenance of the Workforce Training Facility (including the FF&E, as hereafter defined), plus the amounts paid by County for the Employee Education Incentive, shall not exceed \$17,400,000, as set forth in the further provisions of this Section 5.5.

(b) The Workforce Training Facility shall be designed and constructed in accordance with the following process:

(i) County and Employer executed that Confirmation of Information and Notice to Proceed dated May 24, 2023 (“**Confirmation of WFTF Information**”), which (A) memorialized the conceptual design elements relating to the Workforce Training Facility (“**Conceptual Design Elements**”), (B) based on the Conceptual Design Elements, set forth a preliminary basic floor plan, design layout, approximate square footage, room sizes, room usages, maximum occupancy and orientation of the Workforce Training Facility, (collectively, the “**Basic Floor Plan**”), (C) included a preliminary cost estimate to design and construct the Workforce Training Facility (“**Preliminary Cost Estimate**”), including the estimated cost of certain furniture, fixtures and equipment listed therein (the “**FF&E**”), in each case consistent with the Basic Floor Plan, and (D) set forth an estimate of annual operations and maintenance costs for the Workforce Training Facility (the “**O&M Costs**”; such estimate is referred to as the “**Estimated O&M Costs**”) during the Initial Occupancy Period, as hereafter defined).

(ii) Based on the information contained in the Confirmation of WFTF Information, Employer notified County to proceed with the next step in the design, procurement and construction of the Workforce Training Facility by requesting ACA to issue a design-build request for proposals to design and construct the Workforce Training Facility (“**Training Facility RFP**”). Following Employer’s election, County caused ACA to issue the Training Facility RFP.

(iii) County, CAC and ACA reviewed the responses to the Training Facility RFP and jointly identified a design-builder (the “**Design-Builder**”) to design and construct the Workforce Training Facility, which has been shared with Employer. ACA thereafter awarded the contract to the Design-Builder. If the amount negotiated with, and ultimately agreed to, with the Design-Builder to design and construct the Workforce Training Facility (excluding the cost of FF&E) exceeds \$8,300,000 (such excess referred to herein as a “**Bid Overage**”; the foregoing amount of \$8,300,000 is the “**Design/Construction Amount**”), and if additional funds are not available from third parties to fund the Bid Overage, County, through ACA, and following consultation with Employer, will authorize one or more deductive or additive bid alternates or value engineering savings (collectively “**Bid Alternates**”) and/or request that funds be reallocated from the Employee Education Incentive Amount to pay for the costs to design and construct the Workforce Training Facility (excluding the cost of FF&E) in order to fund the Bid Overage. In addition to the Design/Construction Amount, County, through ACA, shall pay \$500,000.00 toward the cost of the FF&E required to equip the Workforce Training Facility in accordance with the Training Facility RFP (“**FF&E Amount**”).

(iv) Concurrent with the execution of this First Amendment, County and Employer shall execute a Notice to Commence in the form attached hereto as Exhibit I, pursuant to which Employer directs, and County agrees, to fund the construction of the Workforce Training Facility, consistent with this Agreement. County through ACA shall cause the Design-Builder to diligently issue one or more contracts for the design and construction of the Workforce Training Facility (including equipping the same with FF&E) and diligently complete construction of the Workforce Training Facility in accordance with Applicable Laws so that the Workforce Training Facility is available for use by Employer on or before September 30, 2024. The Training Facility IGA Amendment requires CAC to make available to Employer at no charge to Employer, alternative temporary classroom space reasonably acceptable to Employer if the Workforce Training Facility is not completed and available for use by September 30, 2024. If requested by Employer, County shall work with CAC to further amend the Training Facility IGA Amendment in order to make available to Employer, at no charge to Employer (and at no cost to County) alternative temporary classroom space reasonably acceptable to Employer at such earlier time periods as Employer may request (which Employer currently estimates may be within the period from June 1, 2024 until September 1, 2024). If the County is not able to negotiate such an amendment to the Training Facility IGA Amendment, the County will work to provide training space for the period from June 1, 2024 until September 1, 2024 at no cost to the Employer at a location other than the Superstition Campus that is reasonably acceptable to the Employer.

(c) From and after issuance of the Certificate of Occupancy for the Workforce Training Facility until the Employment Objective Date, the Workforce Training Facility (excluding the FF&E) shall be maintained in good condition and repair as required by the Training Facility IGA Amendment; provided, however, that after the end of the Initial Occupancy Period (as hereafter defined), County shall only be obligated to fund the maintenance and repair of the Workforce Training Facility (excluding the FF&E) to the

extent required by Section 5.5(e)(iii). Employer shall have priority use of the Workforce Training Facility for a 5-year period of time commencing upon the date of issuance of the Certificate of Occupancy for the Workforce Training Facility (the “**Initial Occupancy Period**”) and any use of the Workforce Training Facility during the Initial Occupancy Period is subject to Employer’s prior approval, the more specific terms of which shall be set forth in the Training Facility Usage Agreement in accordance with the Training Facility IGA Amendment. Employer shall be responsible to cause the FF&E to be maintained (and replaced to the extent applicable) in good condition and repair during the Initial Occupancy Period.

(d) Employer shall not be charged usage fees for the Workforce Training Facility during the Initial Occupancy Period (or for any alternative temporary facility provided pursuant to Section 5.5(b)(iv)). County shall contribute to the operations and maintenance costs of the Workforce Training Facility (other than the FF&E) during the Initial Occupancy Period pursuant to the further provisions of this Section 5.5. After the Initial Occupancy Period, Employer shall continue to have priority use of the Workforce Training Facility so long as Employer pays the reasonably allocable share of the cost of operation and maintenance of the Workforce Training Facility, as more fully set forth in the Training Facility IGA Amendment and the Training Facility Usage Agreement.

(e) The aggregate Employee Education Incentive amounts paid by County plus the amounts paid by County for the construction and operation of the Workforce Training Facility pursuant to this Section 5.5 shall not exceed Seventeen Million Four Hundred Thousand Dollars (\$17,400,000). This amount shall be allocated between the Employee Education Incentive amounts, the Actual Construction Costs, the FF&E Amount and the O&M Costs according to the further provisions of this Section 5.5(e), but subject to the limitations set forth in Sections 5.5(b)(iii) and 5.5(e)(iii).

(i) So long as Employer satisfies the requirements in Section 5.4, the aggregate payment of Employee Education Incentive amounts shall not be less than Eight Million One Hundred Thousand Dollars (\$8,100,000), the “**Unadjusted Employee Education Incentive Amount**.” This amount may be adjusted upward or downward pursuant to this Section 5.5(e).

(ii) County shall pay CAC the O&M Costs during the Initial Occupancy Period, subject to the further provisions of Section 5.5(e)(iii).

(iii) County shall pay for the cost of designing and constructing the Workforce Training Facility, including the cost of preparing the conceptual design. The amount paid by County for the cost of designing and constructing the Workforce Training Facility (excluding the cost of FF&E) shall be the lesser of: (x) the costs of designing and constructing the Workforce Training Facility (“**Actual Construction Costs**”) or (y) Eight Million Three Hundred Thousand Dollars (\$8,300,000) (the “**Capped Construction Costs**”).

(A) If the Actual Construction Costs are less than Eight Million Three Hundred Thousand Dollars (\$8,300,000), the difference between the Actual Construction Costs and \$8,300,000 shall first, be added to the FF&E Costs (if the FF&E Costs exceed \$500,000), and second to the Unadjusted Employee Education Incentive Amount. If the Actual Construction Costs are greater than the Capped Construction Costs, then first, the FF&E Costs shall be reduced by such amount (to the extent the actual FF&E Costs are less than \$500,000), and then second, the Unadjusted Employee Education Incentive Amount shall be reduced by an amount equal to the shortfall, and such amount(s) shall be added to the Capped Construction Costs such that the Capped Construction Costs equal the Actual Construction Costs.

(B) If the FF&E Costs are less than \$500,000, then the amount by which the actual FF&E Costs are less than \$500,000 shall first be added to the Actual Construction Costs, if the Actual Construction Costs exceed the Capped Construction Costs, and second, any balance shall be added to the Unadjusted Employee Education Incentive. If the FF&E Costs are more than \$500,000, then the amount by which the actual FF&E Costs are more than \$500,000, then first, the Capped Construction Costs shall be reduced by such amount (to the extent the Actual Construction Costs are less than the Capped Construction Costs, and second, any balance shall be added to the Unadjusted Employee Education Incentive.

(C) County has allocated, and the \$17,400,000 aggregate amount paid by County as referenced above includes, \$500,000 for O&M Costs for the Initial Occupancy Period. County shall pay CAC Five Hundred Thousand Dollars (\$500,000) for O&M Costs within thirty (30) calendar days after the issuance of a Certificate of Occupancy for the Workforce Training Facility. If the aggregate O&M Costs are more than \$500,000 for the Initial Occupancy Period, County will be responsible to pay CAC the excess O&M Costs as set forth in the Workforce Training Facility Amendment, and the Unadjusted Employee Education Incentive Amount shall be reduced by an amount equal to the excess. If the aggregate O&M Costs for the Initial Occupancy Period are less than \$500,000, the amount by which the actual O&M Costs are less than \$500,000 shall, at Employer's option, be either (1) added to the Unadjusted Employee Education Incentive, or (2) used by County, as County's sole obligation to fund the maintenance and repair of the Workforce Training Facility after the expiration of the Initial Occupancy Period. If Employer elects the option in the foregoing clause (1) to add amounts to the Unadjusted Employee Education Incentive, then County shall have no duty to fund the maintenance and repair of the Workforce Training Facility after the expiration of the Initial Occupancy Period.

(D) Following the reallocations in subparagraphs (A), (B) and (C) above, if after the Initial Occupancy Period the aggregate sum of the O&M Payments, the FF&E Costs, the Actual Construction Costs and the Unadjusted Employee Education Incentive Amount exceeds \$17,400,000, then the

amount of the excess shall reduce the Unadjusted Employee Education Incentive Amount and in no event shall the County's Actual Construction Costs, the O&M Payments, the FF&E Costs and the Unadjusted Employee Education Incentive Amount exceeds \$17,400,000.

(iv) The foregoing reallocations, as they relate to the Employee Education Incentive Amount, as applicable, shall result in the Employee Education Incentive Amount. County shall provide Employer at least twenty (20) days' prior notice before County reallocates any portion of the Employee Education Incentive or any amounts described in this Section 5.5, in each case where such reallocation is expressly permitted pursuant to this Agreement.

G. Section 6.4 of the Agreement is deleted in its entirety and is replaced with the following:

6.4 Water and Wastewater Infrastructure. Concurrently with Employer's construction on the Site of the Required Improvements; in coordination in phasing, scheduling and scope with Employer's Contractor(s); and in accordance with the milestone dates set forth on Exhibit E (the "**Infrastructure Schedule**") (subject to delays by Force Majeure Events to the extent permitted by ASLD), Town at its cost and expense shall design and construct within public rights-of-way those public water and wastewater infrastructure improvements which are more specifically described on Exhibit F ("**Water and Wastewater Improvements**"). The Water and Wastewater Improvements may be performed as part of Town's Capital Improvement Program.

H. Section 6.5 of the Agreement is deleted in its entirety and is replaced with the following:

6.5 Project Utility Rate. Recognizing the increase beyond what was originally contemplated by the Parties in the Rate Letter as the demands for the Project upon the Town's water and wastewater system, Town and Employer shall work cooperatively and in good faith and enter into separate utility agreements that establish water and wastewater utility rates and costs for water acquisition and additional infrastructure to provide the capacity for the increase demands of the Project (collectively, the "**Utility Agreements**").

(a) With respect to water, Employer's obligation for costs for such water rights or credits shall not exceed the water rights or credits required to serve such increases beyond the Original Water Demand that was originally contemplated by the Parties as the demand for the Project.

(b) Town expressly determines that it is in the best interest of Town to waive the application of Article 16-11 (Sustainable Water Allocation Regulations) of the Town Municipal Code, and any successor provision of the Town Municipal Code, as to the Site, and Town therefore waives Article 16-11 such that it shall not apply to the Site. In the Utility Agreements, and subject to the terms to be specified therein, Town shall guaranty capacity in Town's wastewater collection and treatment system and potable water system for wastewater generated by the Project

and for potable water demand of the Project, as applicable, at no greater than the rates specified in the Rate Letter for the Original Water Demand and the Original Wastewater Demand (subject to adjustment as specified in the Rate Letter) and at rates to be agreed upon by the Parties for water and wastewater service volumes beyond the Original Water Demand and the Original Wastewater Demand.

I. Section 6.8 of the Agreement is deleted in its entirety and is replaced with the following:

6.8 Job Reimbursement.

(a) Town shall reimburse Employer with a one-time payment of \$250 per employee, for employee education and training assistance (“**Town Education Incentive**”). Such payment, together with the Employee Education Incentive, represents a reimbursement to Employer of a portion of the costs incurred by Employer to provide the training described in Section 5.4(c).

(b) Commencing on August 31, 2024, and on August 31 of each year thereafter until the Employment Objective is achieved, Town shall make Town Education Incentive payments to Employer in an amount equal to the product of \$250 multiplied by the number of persons employed and trained by Employer (and for which Employer did not receive a previous Town Education Incentive payment). The foregoing information shall be certified by Employer in an Annual Employment Certification in a form reasonably satisfactory to Town. Town confirms that any reports that Employer may deliver to the State of Arizona pursuant to the Arizona Competes Grant shall be a form reasonably satisfactory to Town for purposes of this Section.

(c) An employee shall be deemed employed and trained by Employer on the date the employee receives a Training Certificate confirming that the employee has completed the training required by Employer.

(d) The Annual Employment Certification shall be submitted to Town no later than July 31, 2024 and no later than July 31 of each year thereafter, and shall cover the period ending on June 30 of such year. If the Employment Objective is achieved prior to the next June 30 following achievement of the Employment Objective, the Annual Employment Certification for that year shall be submitted to Town following the date that the Employment Objective is achieved. Town shall reimburse Employer the Town Education Incentive amount based on the most recently submitted Annual Employment Certification no later than thirty (30) days after receipt of the Annual Employment Certification.

(e) The aggregate payment of Town Education Incentive amounts paid by Town shall not exceed \$700,000.

J. The first sentence of Section 12.5(b) of the Agreement is hereby deleted.

K. Section 12.12 of the Agreement is deleted in its entirety and is replaced with the following:

12.12 Integration. Except as expressly provided in this Agreement, this Agreement, and the First Amendment to Development Agreement and Intergovernmental Agreement dated as of the First Amendment Effective Date constitutes the entire agreement between the Parties with respect to the subject matters hereof and supersedes any prior agreement, understanding, negotiation or representation regarding the subject matters covered by this Agreement.

L. Section 12.14 of the Agreement is deleted in its entirety and is replaced with the following:

12.14 Calculation of Days. If the last day of any time period stated in this Agreement or the date on which any obligation to be performed under this Agreement falls on a day other than a business day, then the duration of such time period or the date of performance, as applicable, shall be extended so that it shall end on the next succeeding business day. A “business day” means a day other than a Saturday, Sunday or day that is a legal holiday in the State of Arizona or a national holiday in the country of Korea.

M. The following Section 12.27 is hereby added to the Agreement:

12.27 A.R.S. § 35-394 Certification.

(a) If and to the extent required by A.R.S. § 35-394, Employer hereby certifies to Town and agrees for the duration of this Agreement that Employer will not use:

- (i) The forced labor of ethnic Uyghurs in the People’s Republic of China.
- (ii) Any goods or services produced by the forced labor of ethnic Uyghurs in the People’s Republic of China.
- (iii) Any contractors, subcontractors or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People’s Republic of China.

(b) If Employer becomes aware during the term of this Agreement that Employer is not in compliance with the above written certification, Employer shall notify Town within five (5) business days after becoming aware of the noncompliance. If Employer does not provide Town with a written certification that Employer has remedied the noncompliance within one hundred eighty days after notifying Town of the noncompliance, this Agreement will terminate, except that if the Agreement termination date occurs before the end of the remedy period, the Agreement terminates on the Agreement termination date.

N. Exhibit A to the Agreement is deleted in its entirety, and is replaced with Exhibit A attached to this First Amendment, which is incorporated into this First Amendment for all purposes, and is made a part of the Agreement.

O. Exhibit E to the Agreement is deleted in its entirety, and is replaced with Exhibit E attached to this First Amendment, which is incorporated into this First Amendment for all purposes, and is made a part of the Agreement.

P. Exhibit F to the Agreement is deleted in its entirety and is replaced with Exhibit F attached to this First Amendment, which is incorporated into this First Amendment for all purposes, and is made a part of the Agreement.

Q. Exhibit G attached hereto is hereby incorporated into the Agreement as Exhibit G.

R. Exhibit H (Training Facility IGA Amendment) attached hereto is hereby incorporated into the Agreement as Exhibit H.

S. Exhibit I (Notice to Commence) attached hereto is hereby incorporated into the Agreement as Exhibit I.

R. The “List of Exhibits” attached to the Agreement is deleted in its entirety and replaced with the List of Exhibits attached hereto.

S. The following Article 15 is hereby added to the Agreement:

15. **MATTERS PERTAINING TO A.R.S. § 42-5032.02.**

15.1 ACA Certification. Employer previously executed and filed with the ACA the sworn certification required by A.R.S. §42-5032.02(D) (“**ACA Certification**”) with respect to Employer’s construction completed in the Agreement.

15.2 Requirements. With respect to the ACA Certification and the requirements of A.R.S. § 42-5032.02(F):

(a) Town and Employer agree that the public infrastructure improvements to be constructed by Town are as generally identified on Exhibit F to the Agreement.

(b) Town represents that the approximate (and good faith estimate of) cost of the public infrastructure improvements identified on Exhibit F is \$84,000,000.

(c) Town represents that the source of monies to be used to pay for the public infrastructure improvements identified on Exhibit F is the Town’s Capital Improvement Program, and monies received pursuant to A.R.S. §42-5032.02.

15.3 Employer Obligations. Employer agrees that it shall (a) provide Town with the identity of the prime contractors on the construction of buildings and associated improvements, and notify each such prime contractor and each subcontractor as to which portion of the contractor’s (or subcontractor’s) income shall be separately identified to the

Arizona Department of Revenue pursuant to A.R.S. § 42-5075(H), and (b) require each such prime contractor (and subcontractor) to maintain a separate transaction privilege tax license for such prime contractor's (and subcontractor's) construction work at the Site.

T. The following Article 16 is hereby added to the Agreement:

16. **COOPERATION IN SEEKING AVAILABLE FUNDING.**

The Parties shall cooperate with each other in and coordinate efforts to obtain additional funding, grants or other funding for the Project, Infrastructure Improvements, Workforce Training Facility and other obligations under this Agreement from Federal, state or other sources.

3. No Modification; Inconsistencies. Except as otherwise expressly modified in this First Amendment, the terms and conditions of the Agreement shall remain in full force and effect.

4. Counterparts. This First Amendment may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same agreement.

5. Signatures. The Parties have executed and delivered this First Amendment to be effective as of the First Amendment Effective Date.

[Signatures of the Parties appear on following three (3) pages]

**SIGNATURE PAGE TO FIRST AMENDMENT TO DEVELOPMENT AGREEMENT
AND INTERGOVERNMENTAL AGREEMENT**

COUNTY

PINAL COUNTY, ARIZONA, a political
subdivision of the State of Arizona

By: _____
Its: _____

ATTEST:

By: _____
County Clerk

APPROVED AS TO FORM:

By: _____
County Attorney

STATE OF ARIZONA)
) ss.
COUNTY OF PINAL)

The foregoing instrument was acknowledged before me this ____ day of _____, 2023, by _____ the _____ of Pinal County, Arizona, a subdivision of the State of Arizona, who acknowledged that he/she signed the foregoing instrument on behalf of Pinal County.

Notary Public

My commission expires:

**SIGNATURE PAGE TO FIRST AMENDMENT TO DEVELOPMENT AGREEMENT
AND INTERGOVERNMENTAL AGREEMENT**

TOWN

TOWN OF QUEEN CREEK, ARIZONA, an
Arizona municipal corporation

By: _____
Its: _____

ATTEST:

By: _____
Town Clerk

APPROVED AS TO FORM:

By: _____
Town Attorney

STATE OF ARIZONA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2023, by _____ the _____ of the Town of Queen Creek, Arizona, an Arizona municipal corporation, who acknowledged that he/she signed the foregoing instrument on behalf of Town.

Notary Public

My commission expires:

**SIGNATURE PAGE TO FIRST AMENDMENT TO DEVELOPMENT AGREEMENT
AND INTERGOVERNMENTAL AGREEMENT**

EMPLOYER

LG ENERGY SOLUTION ARIZONA, INC., a
Delaware corporation, successor (by conversion) to
ES AMERICA, LLC, a Delaware limited liability
company

By: _____
Name: Heekwan Ra, President

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this _____ day of _____, 2023, by Heekwan Ra, the President of LG ENERGY SOLUTION ARIZONA, INC., a Delaware corporation, successor (by conversion) to ES AMERICA, LLC, a Delaware limited liability company, who acknowledged that he signed the foregoing instrument on behalf of Employer.

Notary Public

My commission expires:

Exhibit A
To Development Agreement and
Intergovernmental Agreement

Description of Required Improvements

An approximately 1,031,614 square foot manufacturing facility with mezzanine, together with associated warehouse, office, training, storage and distribution space of approximately 328,450 square feet under roof. The Required Improvements shall also include associated site improvements inclusive of parking facilities, utility improvements, landscaping, sidewalks, retention areas, and recreational areas.

Exhibit E
To Development Agreement and
Intergovernmental Agreement

Infrastructure Schedule

The following represents the delivery dates for the Infrastructure Improvements:

Design Start for all Improvements	April 19, 2022
Design Completion and Permitting	February 19, 2024
**Construction Start	September 19, 2023
Completion of Water and Wastewater Improvements Phase 1*	February 15, 2024

*Phase 1 is defined as water and sewer improvements within Germann Road from Meridian Road to Ironwood Road, within Pecos Road from Meridian to Ironwood and within Ironwood Road from Germann Road to Pecos Road.

Completion of Road Improvements	
Ironwood Road	March 31, 2025
Pecos Road	March 31, 2025

**Construction Completion of all Infrastructure Improvements	October 19, 2025
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** These two time frames exclude those street improvements designated in Exhibit F to be completed and installed: (a) “as traffic warrants are met”; such improvements shall be commenced and completed as traffic warrants are met; and (b) “at such time as construction commences on the adjacent parcel”; such improvements shall be constructed as construction commences on the adjacent parcel.

It is anticipated that construction will occur for multiple infrastructure segments simultaneously to meet the required schedule. The scheduling and sequencing of construction will be determined through the design process and in coordination with Employer and Employer’s Contractor(s).

The schedule, including completion dates, may be extended by agreement of the parties, changes in schedule by Employer and/or Employer’s Contractor(s), and/or pursuant to Force Majeure.

Exhibit F
To Development Agreement and
Intergovernmental Agreement

Infrastructure Improvements

Recognizing that Employer's Required Improvements will be designed, permitted, and constructed in phases, Town shall also complete the public Infrastructure Improvements required by ASLD in phased scopes, schedules, and sequences coordinated with Employer and Employer's Contractor(s) to maximize efficiency of design and construction, and minimize reconstruction or removal of prior work in place. All construction shall be designed and built in accordance with applicable Town Standards.

In addition, sidewalks and streetlights shall be installed as surrounding development requires to avoid removing existing infrastructure to install, and as a result may be constructed at a date later than the date the corresponding roads are constructed. Likewise, traffic signals shall be installed as traffic warrants are met. Solely for purposes of the consent of ASLD attached hereto and the Trunk Infrastructure Assurance of Completion, those street improvements designated in this **Exhibit F** to be completed and installed "as traffic warrants are met" or "at such time as construction commences on the adjacent parcel" shall **not** be deemed part of the Trunk Services/Infrastructure. However, as between Town and Employer, such street improvements shall be deemed part of the Trunk Services/Infrastructure and Town shall remain obligated to complete all such Street Improvements, at Town's expense, in the time frame required by this **Exhibit F**.

Germann Road:

Street Improvements

Classification: Major Arterial per Town of Queen Creek Standard Detail R-102

Improvements: The northern half street improvements from Ironwood Road to Kenworthy Road including: two travel lanes, one in each direction and a center, two-way, left turn lane for approximately ½ mile from Ironwood Road to the east where existing right of way allows. (this work replaces the two existing lanes, no new additional travel lanes are being added with these improvements), street signs, bike lane, streetlights, sidewalk, curb and gutter and the required storm drain improvements from Ironwood Road to Kenworthy Road.

Access points – Town shall coordinate access points with the design team of Employer to provide access as may be required and in accordance with Town standards. If Employer provides access point location information to Town in time and the access point aligns with one of the two roadways onto Germann in that area, Town shall design and construct a traffic signal on Germann Road at approximately one-half mile east of Ironwood Road. This signal shall not be installed by Town until traffic warrants are met.

Water and Wastewater Improvements

Water – from Meridian Road to Kenworthy Road, 24” diameter pipe.

Wastewater – from Meridian Road to Kenworthy Road, 18” diameter pipe.

Ironwood Road:

Street Improvements

Classification: Major Arterial per Town of Queen Creek Standard Detail R-101

Improvements: The eastern half street improvements including; one additional northbound travel lane, street signs, bike lane, street lights, sidewalk, curb and gutter and the required storm drain improvements, all from Germann Road to Pecos Road. Fully signalized intersections shall be constructed at the Germann Road and Pecos Road intersection and one-half mile north of Germann Road.

Access points – Town shall coordinate access points with the design team of Employer to provide access as may be required and in accordance with Town standards. At a minimum, a fully signalized intersection shall be designed and constructed for a location one half mile north of Germann Road when traffic warrants are met.

Water and Wastewater Improvements

Water – from Germann Road to Pecos Road, 24” diameter pipe.

Wastewater – from Germann Road to 1/3 mile north of Germann and from Pecos Road to 1/3 mile south of Pecos Road, 12” diameter pipe.

Pecos Road:

Street Improvements

Classification: Major Arterial per Town of Queen Creek Standard Detail R-102

Improvements: Full roadway improvements from Ironwood Road to Kenworthy Road include four travel lanes and a center median/turn lane(s) and bike lanes, curb & gutter, storm drain improvements, street signs, street lights and sidewalk adjacent to the development parcel at such time as construction commences on said parcel.

Access points – Town shall coordinate access points with the design team of Employer to provide access as may be required and in accordance with Town standards. At a minimum, a fully signalized intersection shall be designed and constructed when traffic warrants are met one-half mile east of Ironwood Road.

Water and Wastewater Improvements

Water – from Ironwood Road to Kenworthy Road, a minimum of one 16” diameter pipe.

Wastewater – from Meridian Road to Kenworthy Road, 18” diameter pipe

Kenworthy Road:

Street Improvements

Classification: Major Arterial per Town of Queen Creek Standard Detail R-102

Improvements: Full roadway improvements from Germann Road to Pecos Road to include four travel lanes and a center median/turn lane(s) and bike lanes, curb & gutter, storm drain improvements, street signs, street lights and sidewalk adjacent to the development parcel at such time as construction commences on said parcel. Fully signalized intersections shall be designed at the Germann Road and Pecos Road intersections and one-half mile north of Germann Road. The signals shall not be installed until traffic warrants are met.

Access points – Town shall coordinate access points with the design team of Employer to provide access as may be required and in accordance with Town standards. At a minimum, a fully signalized intersection shall be designed and constructed when traffic warrants are met for a location one half mile north of Germann Road.

Water and Wastewater Improvements

Water – from Germann Road to Pecos Road, 24” diameter pipe.

Wastewater – from Germann Road to 1/3 mile north of Germann and from Pecos Road to 1/3 mile south of Pecos Road, 12” diameter pipe

Exhibit H
To Development Agreement and
Intergovernmental Agreement

Training Facility IGA Amendment

[See attached]

Exhibit I
To Development Agreement and
Intergovernmental Agreement

Notice to Commence

[See attached]

List of Exhibits

- Exhibit A: Description of Required Improvements
- Exhibit B: Legal Description of Site
- Exhibit C: Legal Description of Dedication Parcels With Description of Public Purpose
- Exhibit D: Expedited ADR
- Exhibit E: Infrastructure Schedule
- Exhibit F: Infrastructure Improvements
- Exhibit G: Training Program
- Exhibit H: Training Facility IGA Amendment
- Exhibit I: Notice to Commence

ACKNOWLEDGEMENT & AGREEMENT

Reference is made to the foregoing First Amendment to Development Agreement and Intergovernmental Agreement, dated _____, 2023 (the “**First Amendment to Development Agreement**”), by and among Town, County, Employer and the State in its capacity as Trustee of the State Land Trust and third-party beneficiary, to which this Acknowledgement & Agreement is attached (“**Acknowledgement**”). Without undertaking or assuming any obligation thereunder, the State hereby acknowledges and consents to the recordation of the First Amendment to Development Agreement in the official records of Pinal County, Arizona, in respect of the interest of Employer (and not the interest of the State) in and to the Site and agrees to be bound by the provisions of Section 14 of the Development Agreement as amended by the First Amendment to Development Agreement, together with all terms to which the State is deemed to be a third party beneficiary as the context requires in order for the State to realize the benefits intended to be conferred by Section 14, including the State's enforcement of the applicable provisions thereof.

DECLARANT:

STATE OF ARIZONA

By _____
Robyn Sahid
State Land Commissioner

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this _____ day of _____, 2023, by Robyn Sahid, the Commissioner of the Arizona State Land Department, on behalf of the State of Arizona.

WITNESS my hand and official seal.

Notary Public