

**SECOND AMENDMENT TO INTERIM AGREEMENT &
RIGHT OF ENTRY AGREEMENT**

THIS **SECOND AMENDMENT TO INTERIM AGREEMENT & RIGHT OF ENTRY AGREEMENT** (“Second Amendment”) is dated as of _____, 2021 (“Effective Date”), by and between the **BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA**, a political subdivision of the Commonwealth of Virginia (“County”), and **ALPINE X INC.**, a Delaware corporation (“Developer”; together with the County, the “Parties”).

RECITALS

- R-1. The Parties entered into the Interim Agreement, dated November 18, 2020 (as amended to date, the “Interim Agreement”), regarding the potential development by the Developer of the Project, portions of which are proposed to be atop, along and near the County-owned I-95 Landfill Complex located on the Property . (Each capitalized term used but not defined in this Amendment will have the definition given to such term in the Interim Agreement.)
- R-2. When the Developer first signed the Interim Agreement, it was organized as a Virginia limited liability company. Developer switched its registration from Virginia to Delaware on June 24, 2021 and then converted from a limited liability company to a corporation on June 24, 2021. By operation of law, the Developer’s obligations under the Interim Agreement are unaffected by this conversion and continue to bind the Developer.
- R-3. The Interim Agreement provides for, among other things, the Developer’s ability to access the Project Area and to perform Initial Due Diligence regarding the Project, and an exclusivity period during which, subject to certain qualifications, the County may not convey an interest in the Project Area to a third party or negotiate with a third party for such a conveyance.
- R-4. Notwithstanding that the Parties do not yet have a final agreement regarding the Project and with full recognition that the Parties may be unsuccessful in concluding a final agreement regarding the Project, the Parties wish to extend the term of the exclusivity period, to authorize the Developer to seek land use approvals for the Project within the Project Area, and to further amend the Interim Agreement all on the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the mutual promises in this Amendment, and other valuable consideration, the receipt and legal sufficiency of which are acknowledged by the Parties, the Parties agree to the following amendments to the Interim Agreement and ROE:

- 1. Designation of the Developer as Agent.

a. The County hereby designates the Developer as its agent for the limited purpose of pursuing the Land Use Approvals (as defined below) for the Project on the Project Area, subject to the terms and conditions set forth in this Agreement, and the Developer hereby accepts such designation. The County will reasonably cooperate with the Developer's pursuit of the Land Use Approvals for the Project, including, without limitation providing additional information and signing further documentation to, in both cases, confirm the agency granted to the Developer hereby, subject to the terms and conditions set forth in this Agreement.

b. The "Land Use Approvals" shall be comprised of all zoning and similar regulatory approvals (e.g., proffers, proffered condition amendments, conceptual and final development plans) and such other approvals as the Parties may reasonably agree are necessary for the construction and use of the Project on the Project Area. The term does not include site plan or building permit applications or applications to DEQ or GSA, unless otherwise agreed to in writing by the Developer and the County.

c. Developer acknowledges and agrees that the agency created in this Second Amendment pertains only to the Project Area and not to the entire Property.

d. The Developer acknowledges and agrees that the agency created in this Second Amendment is temporary and will immediately terminate upon any termination or other expiration of the Interim Agreement. Upon such termination of the agency, the Developer will immediately cease all work with respect to the Land Use Approvals and, thereafter, the Developer will have no further duty, obligation, or right to pursue the Land Use Approvals on behalf of the County.

2. Land Use Approval Process.

a. The Developer will regularly consult and coordinate with the County's PPEA review and negotiation team (the "PPEA Team") regarding the design of the Project and regarding all submissions to be made in connection with the Land Use Approvals.

i. The PPEA Team consists of Scott Sizer, Department of Economic Initiatives; John Kellas, Department of Public Works & Environmental Services; Eric Forbes, Department of Public Works & Environmental Services; and Ryan Wolf, Office of the County Attorney. The County may update the membership of the PPEA Team by written notice to the Developer.

b. The Developer will regularly consult with the PPEA Team in developing its submissions for the Land Use Approvals and will endeavor to share drafts of its submissions with the PPEA Team before the provision of the final draft submission discussed in Section 2(c) below.

c. The Developer will provide the PPEA Team a copy (in any format requested by the PPEA Team (i.e., electronic or paper)) of all submissions to be made in connection with the Land Use Approvals for the PPEA Team's review and approval at least 10

business days prior to the Developer's anticipated filing with or submission of the same to the applicable governmental agencies. PPEA will provide a response within ten (10) business days after a request for approval by Developer, and, if PPEA does not approve of any submission by Developer, PPEA will include in its response the specific reasons for its denial of the request. Failure of the PPEA Team to respond within such ten (10) business day period shall not be deemed to be or otherwise construed as the approval of the PPEA Team.

i. The PPEA Team's approval of a submission will not be unreasonably withheld, except that the PPEA Team's approval will be in the PPEA Team's sole and absolute discretion regarding the following matters:

1. Any submission that would cause the Project to not include a ski facility or related hotel;

2. Any submission that would cause the Project to include solar power generation facilities that would materially displace the ski facility or related hotel as shown on the preliminary designs of the Project, be materially inconsistent with the preliminary designs of the Project, be developed as a freestanding first phase of development, or impose unreasonable burdens or obligations on the County; and

3. Any aspect of the submission that would materially affect (A) the operation or maintenance of the Landfill or of any adjacent or neighboring County-owned or operated property, or (B) any existing County obligations arising out of the County's ownership of the Landfill or of any adjacent or neighboring County-owned or operated property.

ii. Any PPEA Team approval of a submission by the Developer will be in the PPEA Team's capacity as an advisory body to the County as land owner, and will not be construed to imply approval by the County as the governmental body having authority over land use matters within the County.

iii. The Developer will not make any submission in connection with the Land Use Approvals until (1) the PPEA Team has approved such submission in writing and (2) if the submission applies to land subject to the County's lease with NVRPA, NVRPA has approved such submission. PPEA will provide a response within ten (10) business days after a request for approval by Developer, and, if PPEA does not approve of any submission by Developer, PPEA will include in its response the specific reasons for its denial of the request. Failure of the PPEA Team to respond within such ten (10) business day period shall not be deemed to be or otherwise construed as the approval of the PPEA Team.

d. Before Developer may make any submission involving a proffer or development condition, the Parties must agree as to which Party is responsible for the performance of such proffer(s) and/or development condition(s). Any obligations undertaken by the County in connection with the performance of any proffer(s) and/or development conditions shall be at the sole and absolute discretion of the County.

e. The Developer will cause each submission to comply with governmental and regulatory requirements imposed by Fairfax County (or other regulatory reviewing body, as applicable) on the type of such submission.

f. The Developer will be responsible for all costs associated with the Land Use Approvals and the County will not be obligated to reimburse the Developer for any costs associated with the Land Use Approvals, even if the County and the Developer are unable to reach agreement on a Comprehensive Agreement. Upon any termination of the Interim Agreement (unless the Parties enter into final agreements in connection with the Project, in which case, the final agreements shall control), the Developer will (i) assign all of its rights and interests (if any) in and to any obtained Land Use Approvals, and deliver originals or copies of any and all other publicly-available documents related to the same to the County, and (ii) assign to the County all of its rights and interests to, and provide and deliver to the County, any and all publicly-submitted work product produced by the Developer and its contractors and consultants associated with the Land Use Approvals, together with any third-party consents necessary therefor (collectively, the foregoing will be referred to as the “**Work Product**”).

3. Extensions of Certain Dates.

a. The Outside Date is extended from December 31, 2021, to December 31, 2023. The County and the Developer may mutually agree to further extend the Outside Date, in one or more increments, for up to one year (i.e., up to December 31, 2024), neither party being under any obligation do so.

b. Both the exclusive negotiation period described in Section 2(B) of the original Interim Agreement as well as the term of the ROE are also extended to the Outside Date, as the term is defined in (and may be further extended by) Section 3(a) of this Second Amendment.

4. Modification of Project Area and Limitation on County Conveyance.

a. The term “Project Area” defined in Section 1(A) of the Interim Agreement shall be amended to mean the areas identified as the “Project Area” on Exhibit A attached to this Second Amendment.

b. The rights of the County to convey interests in the Project Area pursuant to Section 1.B of the Interim Agreement and clauses (a) and (c) of Section 2(A)(i) of the Interim Agreement shall be modified to provide that the County shall not convey any rights in the Project Area if such conveyance would unreasonably interfere with the ability of the Developer to construct and operate the Project. Any easements over the Project Area or other rights affecting the Project Area, as described in Section 1.B of the Interim Agreement, or any other conveyances by the County of an interest in the Project Area during the term of the Interim Agreement, as amended hereby, shall be subject to the approval of the Developer, which approval will not be unreasonably withheld.

5. Notices to Developer. The addresses for Notice to the Developer, as defined in Section 4 of the Interim Agreement, shall be modified as follows:

Niels ten Berge
1308 Vincent Place
McLean, VA 22101
Niels@alpine-X.com

Brad Ryan
1308 Vincent Place
McLean, VA 22101
Brad@alpine-X.com

With a copy to

DLA Piper LLP (US)
11911 Freedom Drive, Suite 300
Reston, VA 20190
Attention: Antonio Calabrese
Antonio.Calabrese@us.dlapiper.com

6. Except as amended by this Second Amendment, all terms and conditions of the Interim Agreement and ROE shall otherwise remain in full force and effect.

7. This Amendment may be executed and delivered in any number of counterparts, in the original or by electronic transmission, each of which so executed and delivered will be deemed to be an original and all of which will constitute one and the same instrument.

[Signatures appear on the following page.]

IN WITNESS WHEREOF, the Parties have caused this Amendment to be executed by their duly authorized representatives as of the Effective Date.

COUNTY:

BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA,
a political subdivision of the Commonwealth of Virginia,

By: _____
Name:
Title:

DEVELOPER:

ALPINE X INC.,
a Delaware corporation

By: _____
Name:
Title:

EXHIBIT A
PROJECT AREA

Exhibit A: Project Area



Fairfax Peak
Project Area