PECOS COUNTY
FIRST AMENDMENT TO
CHAPTER 381 ECONOMIC DEVELOPMENT
PROGRAM AND AGREEMENT

This **CHAPTER 381 ECONOMIC DEVELOPMENT PROGRAM AND AMENDED AGREEMENT** (hereinafter referred to as the "Agreement") is made and entered into by and between **PECOS COUNTY, TEXAS**, a Texas political subdivision (hereinafter referred to as "County"), and **Fort Blocks LLC, a subsidiary of Cormint Data Systems, Inc.** (hereinafter referred to as the "Developer"), for the purposes and considerations stated below:

WHEREAS, Developer intends to construct a data computation and distribution facility (hereinafter referred to as the "Project") within the County and desires to participate in the economic development program established in this Agreement; and

WHEREAS, Developer agrees to make a capital investment of more than **thirty million and no/100 dollars ($30,000,000)** over the term of this agreement towards the Project in the form of new business equipment, new business personal property, and new improvements to real property, not including inventory, in accordance with the terms of this Agreement; and

WHEREAS, Developer agrees to create seventeen (17) new Full-Time Equivalent Employment Positions working on the Property over the Term of this Agreement; and

WHEREAS, the Developer desires to enter into this Agreement pursuant to Chapter 381 of the Texas Local Government Code (hereinafter referred to as "Chapter 381"); and

WHEREAS, the County desires to provide, pursuant to Chapter 381, an incentive to Developer to develop the Property as defined below; and

WHEREAS, the County has the authority under Chapter 381 to make loans or grants of public funds for the purposes of promoting local economic development and stimulating business and commercial activity within Pecos County, Texas; and

WHEREAS, the County determines that a grant of funds to Developer will serve the public purpose of promoting local economic development and enhancing business and commercial activity within the County, and will further assist with economic development within the County; and

WHEREAS, the County has concluded and hereby finds that this Agreement clearly promotes economic development in Pecos County, Texas, and, as such, meets the requisites under Chapter 381 of the Texas Local Government Code, and further is in the best interests of the County and Developer; and

WHEREAS, the County has concluded and hereby finds that this Agreement clearly promotes economic development in the Pecos County, Texas, and, as such, meets the requirements

of Article III, Section 52-a of the Texas Constitution by assisting in the development and diversification of the economy of the state, by eliminating unemployment or underemployment in the state, and by the development or expansion of commerce within the state.

NOW, THEREFORE, in consideration of the mutual benefits and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

SECTION 1. FINDINGS INCORPORATED.

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

SECTION 2. TERM.

This Agreement shall be effective as of the Effective Date of this Agreement, and shall continue thereafter until **December 31, 2043,** unless terminated sooner under the provisions hereof.

SECTION 3. DEFINITIONS.

The following words shall have the following meanings when used in this Agreement.

(a) **Agreement.** The word "Agreement" means this Chapter 381 Economic Development Program and Agreement, authorized by Chapter 381 of the Texas Local Government Code, together with all exhibits and schedules attached to this Agreement from time to time, if any. This Agreement modifies and supersedes the original agreement between the parties dated _____.

(b) **County**. The word "County" means Pecos County, Texas, a political subdivision of the State of Texas, whose address for the purposes of this Agreement is 103 West Callaghan, Ft. Stockton Texas 79735.

(c) **Developer.** The word "Developer" means Fort Blocks LLC, a subsidiary of Cormint Data Systems, Inc., its successors and assigns, whose address for the purposes of this Agreement is 2848 Andante Green Drive, Spring TX 77386.

(d) **Effective Date.** The words "Effective Date" mean the date of the latter to execute this Agreement by and between the Developer and the County.

(e) **Event of Default**. The words "Event of Default" mean and include any of the Events of Default set forth in the section entitled "Events of Default" in this Agreement.

(f) **Full-Time Equivalent Employment Position.** The words "Full-Time Equivalent Employment Position" or "Full-Time Equivalent Employment Positions" mean and

include a job requiring a minimum of One Thousand Nine Hundred Twenty (1,920) hours of work averaged over a twelve (12) month period.

(g) **Reserved.**

(h) **Payment in Lieu of Taxes or "Pilot".** Means a payment made by Developer to County as set forth in Section 4(g).

(i) **Personalty.** The word "Personalty" means the taxable tangible personal property located on the Property in connection to the Project other than tangible personal property that was located on the Property at any time before the period covered by this Agreement, excluding inventory and supplies.

(j) **Program Grant** or **Program Grant Payment.** The words "Program Grant" or "Program Grant Payment" mean the economic development grants paid by the County to Developer in accordance with this Agreement, computed with reference to County ad valorem taxes assessed and collected for the Property and Personalty located on the Property.

(k) **Project.** The word "Project" means those expenditures consisting of the construction of a data computation and distribution facility located on the Property.

(l) **Property.** The word "Property" means the approximately 30 acre tract or tracts of land in Pecos County, Texas, as generally described and/or depicted in ***Exhibit A*** of this Agreement, which is attached hereto and incorporated herein for all purposes, Pecos County, Texas. The Parties acknowledge and agree that the description of the Property contained in ***Exhibit A*** may be amended from time to time in the event that Developer contracts more tracts of land or ceases to either own, lease, or hold an option to lease any portion of the Property for Project development, such that ***Exhibit A***, as amended from time to time will only reflect that portion of the Property which Developer owns, has leased, or holds option(s) to lease for the Project development. When from time to time the Property increases or decreases the Developer shall notify the County Commissioners Court.

(m) **Term.** The word "Term" means the term of this Agreement as specified in Section 2 of this Agreement.

SECTION 4. OBLIGATIONS OF DEVELOPER.

Developer covenants and agrees with County that, while this Agreement is in effect, it shall comply with the following terms and conditions:

(a) **Project.** Developer covenants and agrees to make a capital investment of not less than **thirty million and no/100 dollars ($30,000,000)** over the term of this agreement for the Project in the form of improvements, new business personal property, new business equipment, but excluding inventory to be situated on the Property. Developer covenants

and agrees to complete construction of the Project by **December 31, 2023**.

(b) **Certificate of Completion for the Project.** Developer covenants and agrees to provide to the County a certificate of completion for that portion of the Project allowing commencement of operations by **December 31, 2023**.

(c) **Operate the Project.** Developer covenants and agrees during the Term of this Agreement to keep open the Project located on the Property.

(d) **Job Creation and Retention.** Developer covenants and agrees by **December 31, 2023**, and through the Term of this Agreement to employ and retain a minimum of seventeen (17) Full-Time Equivalent Employment Positions working on the Property, of which a minimum of eleven (11) will reside within Pecos County. Developer covenants and agrees beginning on **December 31, 2023** and annually thereafter during the Term of this Agreement, Developer shall deliver to the County an annual compliance verification signed by a duly authorized representative of Developer that shall certify the number of Full-Time Equivalent Employment Positions and shall disclose and certify the average wage for all Full-Time Equivalent Employment Positions (the "Annual Compliance Verification"). Developer covenants and agrees beginning on **December 31, 2023** and annually thereafter during the Term of this Agreement, there will be a total of ten (10) Annual Compliance Verifications due and submitted to the County covering the Full-Time Equivalent Employment Positions created and maintained during the Term of this Agreement. All Annual Compliance Verifications shall include quarterly IRS 941 returns, or Texas Workforce Commission Employer Quarterly Reports. In addition, Developer covenants and agrees beginning on **December 31, 2023** and during the Term of this Agreement, Developer shall deliver to County an annual compliance verification signed by a duly authorized representative of Developer that shall certify the following:

(1) the taxable appraised value of the Property and Personalty located on the Property for the applicable tax year; and

(2) the ad valorem taxes paid to the County for the Property and Personalty located on the Property for the applicable tax year.

(e) **Payment of Ad Valorem Taxes.** Beginning with tax year 2024 and for each year thereafter during the Term of this Agreement, Developer shall pay by January 31st of each year during the Term of this Agreement all of the ad valorem taxes due for the previous year on the Personalty and Property. Developer shall have the right to contest the appraised value of the Personalty and Property attached to the Project as provided by law. By exception to the above should Developer locate Personalty on the Property earlier than January 1st, 2022, Developer shall pay all the ad valorem taxes due for the tax year 2021 on the Personality and Property by January 31st, 2022 Developer shall have the right to contest the appraised value of the Personality and Property as provided by law.

(f) **Performance.** Developer agrees to perform and comply with all terms, conditions, and

provisions set forth in this Agreement and in all other instruments and agreements by and between Developer and the County.

(g) **Deferral Payment.** Developer shall pay the following additional consideration of $291,000 in four equal installments to the County as economic development grants: (i) on or before 5:00pm County local time of the March 31st, 2023, Developer shall deliver to the County compensation for the deferral of the Project and Pilot Payments, in the amount of $72,750; (ii) on or before 5:00pm County local time of the June 30th, 2023, Developer shall deliver to the County compensation for the deferral of the Project and Pilot Payments, in the amount of $72,750; (iii) on or before 5:00pm County local time of the September 30th, 2023, Developer shall deliver to the County compensation for the deferral of the Project and Pilot Payments, in the amount of $72,750; (iv) on or before 5:00pm County local time of the December 31st, 2023, Developer shall deliver to the County compensation for the deferral of the Project and Pilot Payments, in the amount of $72,750.

(h) **Pilot Payment.** For the tax years 2024 through 2043 Developer agrees to pay an amount each year equal to the values indicated in the table below that reflect the projected value of assets located in the County.

Each Pilot Payment described in this paragraph 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 Payment for tax year 2024 shall be due and payable on January 31, 2025

Tax Year	Annual Pilot Payment
2024	$60,000.00
2025	$30,000.00
2026	$30,000.00
2027	$30,000.00
2028	$30,000.00
2029	$30,000.00
2030	$30,000.00
2031	$30,000.00
2032	$30,000.00
2033	$30,000.00
2034	$30,000.00
2035	$30,000.00
2036	$30,000.00
2037	$30,000.00
2038	$30,000.00
2039	$30,000.00
2040	$30,000.00
2041	$30,000.00
2042	$30,000.00

2043	$30,000.00

SECTION 5. OBLIGATIONS OF COUNTY.

County covenants and agrees with Developer that, while this Agreement is in effect, it shall comply with the following terms and conditions:

(a) **Program Grant Payment.**

(1) Ad Valorem Taxes. During the Term of this Agreement, should Developer fail to maintain the following: (1) a Certificate of completion as required by Section 4(b) of this Agreement; and (2) the minimum Full-Time Equivalent Employment Positions working at the Property as required by Section 4(d) of this Agreement, then the County shall have no obligation to make a Program Grant Payment to Developer for the applicable tax year. The failure of Developer to satisfy the above-mentioned requirements for any tax year during the Term of this Agreement shall not prevent Developer from receiving a Program Grant Payment in future tax years consistent with this Agreement.

In the event, during the Term of this Agreement, Developer satisfies the requirements contained in Section 4(b) and 4(d) of this Agreement, and the initial investment by Developer for the Property and Personalty located on the Property and the tax value of Personalty relocated to the Property by Developer is at least a combined **thirty million and no/100 dollars ($30,000,000)** over the term of this agreement, beginning with tax year 2024 and for each tax year thereafter during the Term of this Agreement as set out in the table below, the County shall make a Program Grant Payment to Developer based upon the following percentages of County ad valorem taxes:

Tax Year	Percentage of County Ad Valorem Taxes Reimbursed
2024	100%
2025	100%
2026	100%
2027	100%
2028	100%
2029	100%
2030	100%
2031	100%
2032	100%
2033	100%
2034	100%
2035	100%
2036	100%

2037	100%
2038	100%
2039	100%
2040	100%
2041	100%
2042	100%
2043	100%

Notwithstanding the foregoing, the County shall have no obligation to pay Developer any Program Grant Payment until receipt of the Annual Compliance Verification required pursuant to Section 4(d) of this Agreement. 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) the Annual Compliance Verification.

(b) **Performance.** County agrees to perform and comply with all terms, conditions, and provisions set forth in this Agreement and in all other instruments and agreements between Developer and County.

SECTION 3. CESSATION OF ADVANCES.

If County has made any commitment to make any advance of financial assistance to Developer, whether under this Agreement or under any other agreement, the County shall have no obligation to advance or disburse any financial assistance if: (i) Developer becomes insolvent, files a petition in bankruptcy or similar proceedings, or is adjudged bankrupt; or (ii) an Event of Default occurs (iii) fails to timely make a Pilot payment.

SECTION 7. EVENTS OF DEFAULT.

Each of the following shall constitute an Event of Default under this Agreement:

(a) **General Event of Default.** Failure of Developer or the County to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement, or failure of Developer or County to comply with or to perform any other term, obligation, covenant or condition contained in any other agreement by and between Developer and County is an Event of Default.

(b) **False Statements.** Any warranty, representation, or statement made or furnished to the County by or on behalf of Developer under this Agreement that is false or misleading in any material respect, either now or at the time made or furnished is an Event of Default.

(c) **Insolvency.** Developer's insolvency, appointment of receiver for any part of Developer's property, any assignment for the benefit of creditors of Developer, any type of creditor

workout for Developer, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Developer is an Event of Default.

(d) **Ad Valorem Taxes.** Developer allows its ad valorem taxes owed to the County to become delinquent and fails to timely and properly follow the legal procedures for protest and/or contest of such taxes and to cure such failure within thirty (30) days after written notice thereof from County and/or Pecos County Central Appraisal District is an Event of Default.

SECTION 8. EFFECT OF AN EVENT OF DEFAULT.

Failure of either party to comply with or perform any term, obligation or condition of this Agreement shall constitute an Event of Default. The non-defaulting party shall give written notice to the other party of any default, and the defaulting party shall have thirty (30) days to begin to cure said default. If the default cannot reasonably be cured within a thirty (30) day period, and the defaulting party has diligently pursued such remedies as shall be reasonably necessary to cure such default, then the non-defaulting party shall extend the period in which the default must be cured for an additional thirty (30) days. Should said default remain uncured, the non-defaulting party shall have the right to terminate this Agreement, enforce specific performance as appropriate, or maintain a cause of action for damages caused by the event(s) of default. In the event Developer defaults and is unable or unwilling to cure said default within the prescribed time period, the aggregate total of all financial assistance provided by the County to Developer pursuant to Section 5 of this Agreement, shall become immediately due and payable by Developer to the County.

SECTION 9. INDEMNIFICATION.

Developer shall indemnify, save, and hold harmless County, its directors, officers, agents, attorneys, and employees (collectively, the "Indemnitees") from and against: (i) any and all claims, demands, actions or causes of action that are asserted against any Indemnitee if the claim, demand, action or cause of action directly or indirectly relates to tortious interference with contract or business interference, or wrongful or negligent use of County's financial assistance by Developer or its agents and employees; (ii) any administrative or investigative proceeding by any governmental authority directly or indirectly related, to a claim, demand, action or cause of action in which County is a disinterested party; (iii) any claim, demand, action or cause of action which directly or indirectly contests or challenges the legal authority of County or Developer to enter into this Agreement and related issues; and (iv) any and all liabilities, losses, costs, or expenses (including reasonable attorneys' fees and disbursements) that any Indemnitee suffers or incurs as a result of any of the foregoing; provided, however, that Developer shall have no obligation under this Section to County with respect to any of the foregoing arising out of the gross negligence or willful misconduct of County or the breach by County of this Agreement. If any claim, demand, action or cause of action is asserted against any Indemnitee, such Indemnitee shall promptly notify Developer, but the failure to so promptly notify Developer shall not affect Developer's obligations under this Section unless such failure materially prejudices Developer's right to participate in the contest of such claim, demand, action or cause of action, as hereinafter provided. If requested by Developer in writing, as so long as no Default or Event of Default

shall have occurred and be continuing, such Indemnitee shall in good faith contest the validity, applicability and amount of such claim, demand, action or cause of action and shall permit Developer to participate in such contest. Any Indemnitee that proposes to settle or compromise any claim, demand, action, cause of action or proceeding for which Developer may be liable for payment of indemnity hereunder shall give Developer written notice of the terms of such proposed settlement or compromise reasonably in advance of settling or compromising such claim or proceeding and shall obtain Developer's concurrence thereto.

SECTION 10. MISCELLANEOUS PROVISIONS.

The following miscellaneous provisions are a part of this Agreement:

(a) **Amendments.** This Agreement constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this 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) **Applicable Law and Venue.** This 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 Pecos County, Texas. Venue for any action arising under this Agreement shall lie in the state district courts of Pecos County, Texas.

(c) **Assignment.** This Agreement may not be assigned without the express written consent of the other party.

(d) **Binding Obligation.** This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. County warrants and represents that the individual executing this Agreement on behalf of County has full authority to execute this Agreement and bind County to the same. Developer warrants and represents that the individual executing this Agreement on its behalf has full authority to execute this Agreement and bind it to the same.

(e) **Caption Headings**. Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of the Agreement.

(f) **Counterparts.** This Agreement 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) **Filing in Deed Records.** This Agreement shall be filed in the deed records of Pecos County, Texas. The provisions of this Agreement shall be deemed to run with the land and shall be binding on heirs, successors and assigns of Developer.

(h) **Notices**. Any notice or other communication required or permitted by this Agreement (hereinafter referred to as the "Notice") is effective when in writing and (i) personally

delivered either by facsimile (with electronic information and a mailed copy to follow) or by hand or (ii) three (3) days after notice is deposited with the U.S. Postal Service, postage prepaid, certified with return receipt requested, and addressed as follows:

if to Developer:	Cormint Data Systems, Inc. 2848 Andante Green Drive Spring, TX 77386 Attn: Jamie McAvity, CEO Telephone: (203) 536-7863
if to County:	Pecos County Judge 103 W Callaghan Fort Stockton TX, 79735 Attn: County Judge Telephone: (432) 336-2792

(i) **Severability**. If a court of competent jurisdiction finds any provision of this Agreement to be invalid or unenforceable as to any person or circumstance, such finding shall not render that provision invalid or unenforceable as to any other persons or circumstances. If feasible, any such offending provision shall be deemed to be modified to be within the limits of enforceability or validity; however, if the offending provision cannot be so modified, it shall be stricken and all other provisions of this Agreement in all other respects shall remain valid and enforceable.

(j) **Sovereign Immunity**. No party hereto waives any statutory or common law right to sovereign immunity by virtue of its execution hereof.

(k) **Time is of the Essence.** Time is of the essence in the performance of this Agreement.

(l) **Undocumented Workers.** Developer certifies that Developer does not and will not knowingly employ an undocumented worker in accordance with Chapter 2234 of the Texas Government Code, as amended. If during the Term of this Agreement, Developer is convicted of a violation under 8 U.S.C. § 1324a(f), Developer shall repay the amount of the public subsidy provided under this Agreement plus interest, at the rate of Three percent (3%), not later than the 120th day after the date the County notifies Developer of the violation of Chapter 2234 of the Texas Government Code.

(m) **Local Spending** Developer agrees it will use commercially reasonable efforts to use qualified contractors and vendors located in the County for the construction of the Improvements and the operation and maintenance of the Project, subject to and in compliance with Developers internal procurement policies and procedures. However, Developer will not be required to use goods and services provided by local contractors or vendors where (i) such local goods or services are not comparable in quality to those provided by nonresidents, or (ii) such goods and services are not available on terms and conditions (including price and bonding capacity) comparable to those offered by

nonresidents, or (iii) certain good and services must be obtained from vendors having certain qualifications or approvals to construct and install equipment such as the Improvements. In determining whether a particular contractor, subcontractor, or service provider is qualified, Developer may consider: (i) such person or firm's bonding capacity, (ii) financial and staffing capacity to carry out the work, (iii) expertise and experience, (iv) the requirements of any manufacturer with respect to the particular aspect of the work for which the person or firm is being considered, and (v) integrity, responsibility and reliability. Owner agrees to designate a coordinator of local services who will act as a liaison between any individuals, businesses or contractors residing or doing business in the County who are interested in obtaining information about providing goods or services related to the construction of the Improvements. Additionally, Developer agrees to do the following:

1. Not later than one month following the issuance of a building permit, Developer will hold a job fair within thirty (30) miles of the Project area advertising construction employment positions and soliciting those persons or firms that are interested in selling goods or providing services with respect to the construction of the Improvements. No later than two weeks prior to the job fair, Developer shall publish a notice in the local newspaper announcing the date, time and location of the job fair and the procedure for application. Applications from the job fair shall be distributed to the various subcontractors for consideration. Developer will compile and maintain, throughout the construction process, a list of local prospective employees, vendors, contractors and service providers interested in participating in the construction process

2. Not later than one month prior to filling a full-time position (excepting internal transfer and promotions) for the on-site operation of the Facilities, Developer shall publish notice of the position in the local newspaper describing the position and the procedure for application. Any position requiring more than 35 hours per week shall be considered full time.

(n) In accordance with Section 2270.002 of the Texas Government Code (as added by Tex. H.B. 89, 85th Leg., R.S. (2017)), the Developer verifies that it does not boycott Israel and will not boycott Israel during the Term of this Agreement.

(o) In accordance with Section 2252.152 of the Texas Government Code (as added by Tex. S.B. 252, 85th Leg., R.S. (2017), 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 803.051, 807.051, or 2252.153 of the Texas Government Code.

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THE PARTIES ACKNOWLEDGE HAVING READ ALL THE PROVISIONS OF THIS AGREEMENT, AND THE PARTIES AGREE TO ITS TERMS. THIS AGREEMENT IS EFFECTIVE AS OF THE EFFECTIVE DATE AS DEFINED HEREIN.

DEVELOPER:

Fort Blocks LLC, a subsidiary of
Cormint Data Systems, Inc.
a Texas company

By: _____

Date Signed: 02/13/23

STATE OF Texas §
§
COUNTY OF Pecos §

This instrument was acknowledged before me on the 13 day of February, 2023 by Rich Godwin of Cormint, a Texas company, on behalf of said company.

GINA S. MARQUEZ
My Notary ID # 128303003
Expires June 17, 2026

Gina S. Marquez
Notary Public, State of Texas

COUNTY:

PECOS COUNTY, TEXAS
A Texas political subdivision

By: _____
Joe Suster, County Judge
Date Signed: 2/13/23

ATTEST:

Liz Chapman
Liz Chapman, County Clerk

COMMISSIONERS COURT PECOS COUNTY, TEXAS

STATE OF TEXAS §
§
COUNTY OF Pecos §

This instrument was acknowledged before me on the 13 day of February, 2023 by Joe Shuster, County Judge of Pecos County, Texas, a Texas political subdivision, on behalf of said political subdivision.

GINA S. MARQUEZ
My Notary ID # 128303003
Expires June 17, 2026

Gina S. Marquez
Notary Public, State of Texas