

**ECONOMIC INCENTIVE AGREEMENT WITH STORED ENERGY SYSTEMS, A
LIMITED LIABILITY COMPANY, PERTAINING TO FEE AND TAX REBATES, AND
OTHER CORPORATE INCENTIVES**

This Economic Incentive Agreement (this "Agreement") is entered into by and between the City of Longmont, Colorado, a municipal corporation (the "City") and Stored Energy Systems, a Limited Liability Company, a Colorado Corporation, with an effective date of _____.

RECITALS

- A. Stored Energy Systems, a Limited Liability Company ("Company") provides non-stop DC power systems, mission-critical filtered chargers, and engine start chargers to keep vital industries in business by helping insure against the risk of loss of life and property in case of a commercial power outage. Company is synonymous with reliability. Its battery charging algorithms bring out the battery's full life and performance potential. Company's meticulous design and quality control delivers charger reliability as close to "bulletproof" as is technically possible. For Company users these dual reliability advantages mean lowest risk of costly downtime. Company is a primary industry employer in that the vast majority of the products they produce will be sold outside of the Boulder County region.
- B. The City has identified Company as a primary industry employer in the industry categories of integrated power systems, battery chargers, and battery monitoring solutions, which support several key industries that have been identified by the City as high growth potential industries in the "Advance Longmont 2.0" report regarding Target Industry Analysis, including aerospace, bioscience, food and beverage manufacturing, and IT software & hardware.
- C. One of the City's identified goals, as expressed in the "Advance Longmont 2.0" study, is to expand employment in and grow the City's presence in the key industry clusters.
- D. Company currently operates at 1840 Industrial Circle, Longmont, Colorado, which consists of approximately 50,000 square feet of developed office and manufacturing space across two facilities.
- E. Company has expressed to the City a desire to develop new approximately 85,000 square feet of facilities located within the municipal limits of the City Longmont, CO ("Property") to accommodate expanded operations which would involve capital investment of up to \$12 million, and machinery and equipment purchases of up to \$1.7 million for a potential total new investment in Longmont of up to \$13.7 million (the "Project").
- F. If Company proceeds with the Project at the Property, it anticipates it will create at least 126 net new full-time equivalents ("FTE's") with an Average Annual Wage of approximately \$101,100 at time of full employment in year 3 of the Project. This Annual Wage exceeds the overall average wage in Boulder County of \$76,063 by more than 5%, which would be \$79,866.
- G. Company is eligible for economic development incentive payments as a primary employer pursuant to sections 4.72.045.A and 4.72.045.B of the Longmont Municipal Code

("City Code"), as a business which will expand its existing business within the city limits of Longmont and create at least 10 higher paying primary jobs within 2 years.

H. Company will also meet the criteria contained in sections 4.72.045.C.2 and 4.72.045.C.3 of the City Code, and is eligible for an enhanced rebate of business personal property tax because Company: 1) will far exceed the number of primary jobs above the minimum level of 10; 2) considered relocating to another state; 3) received an incentive offer from the Colorado Office of Economic Development and International Trade; and 4) is consistent with the target industries and goals identified in Advance Longmont 2.0. The proposed business personal property tax rebate incentive is estimated to be approximately \$6,291, and the final rebate amount will be based upon business personal property purchased and put into service at the Project.

I. Company will also meet the criteria contained in section 4.72.010.B and 4.72.040 of the City Code as an industrial, non-commercial business manufacturing power systems, and is eligible for an enhanced rebate of eligible fees and sales and use taxes because the Company: 1) will create 126 net new FTE's at time of full employment in year 3 of the Project; 2) the Project may, through extension of public infrastructure necessary to serve it, also facilitate annexation and development of other new projects to the benefit of the economic health and vitality of the City of Longmont; and 3) received an incentive offer from the Colorado Office of Economic Development and International Trade. The proposed fee/tax rebate incentive is estimated to be up to \$206,870, and the final rebate amount will be based upon actual construction costs.

J. The City Council has determined that granting the economic incentives set forth herein to Company is in the interests of the health, safety and welfare of the citizens of Longmont and serves the vital and important public purposes enumerated in section 4.72.005 of the City Code.

K. The City and Company are entering into this Agreement to memorialize their respective rights and obligations in satisfaction of the requirement of section 4.72.045.D of the City Code.

NOW THEREFORE, the City and Company, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in reliance upon the terms and conditions set forth below, do hereby agree as follows:

1. Incorporation and Confirmation of Recitals. The above recitals are incorporated herein and made a part of this Agreement as if fully set forth herein. Each party represents and warrants to the other that the foregoing recitals are true and correct, to best of their knowledge and belief.

2. Authority.

(a) The City hereby represents and warrants to Company that the City is duly authorized to enter into this Agreement pursuant to sections 4.72.020, 4.72.040 and 4.72.045 of the City Code and that the persons signing this Agreement on behalf of the City have been duly authorized to do so.

(b) Company hereby represents and warrants to the City that all conditions precedent to its authorization to enter into this Agreement have been met and the persons signing this Agreement on behalf of Company have been duly authorized pursuant to Company's governing documents.

3. Grant of Incentives.

(a) City has determined that:

(i) Company is a primary industry employer in the industry categories of integrated power systems, battery chargers, and battery monitoring solutions, which directly support the City's key industry clusters of aerospace, bioscience, food and beverage manufacturing, and IT software & hardware;

(ii) Company meets the requirements set forth in sections 4.72.020, 4.72.040 and 4.72.045 of the City Code, and is eligible to receive the incentive payments and permit and development fee rebates set forth in this Agreement; and

(iii) The granting of these incentives is in the interests of the health, safety and welfare of the citizens of Longmont and serves the vital and important public purposes enumerated in Section 4.72.005 of the City Code.

(b) City does hereby grant Company the following economic development incentives pursuant to sections 4.72.020, 4.72.040, and 4.72.045, of the City Code, and additional corporate incentives for the Incentive Period as provided below:

(i) 100% rebate of building permit and commercial plan review fees and the unrestricted portion of City sales/use taxes authorized to be rebated by Chapter 4.72 of the City Code paid by Company in connection with build out project at the Property; and (ii) 100% rebate of the City's portion of the business personal property tax for five consecutive years after the personal property is first put into use, to the extent such business personal property tax exceeds the business personal property tax paid in the base year and is attributable to the Project; and

(iii) depending on site location and service selection, NextLight dedicated internet access service in the approximate amount of \$160,379 and NextLight affinity program in the approximate amount of \$9,584; and

(iv) primary employer entrepreneur and retention grant in the approximate amount of \$14,392; and

(v) designation of this project as a priority project, establishing priority review for development review with regard to staffing assignments and process timing.

(c) The City and Company expressly agree and acknowledge that there is no cap to the amount of Company investment eligible for rebate, and that rebates will be calculated and paid based on the amount of actual investment in the Project. Rebates payable to Company pursuant to Section 3(b) shall be calculated and paid to Company as follows:

(i) Company will pay the full amount of the building permit and commercial plan review fees at the time of the application for the Project. The City will rebate one hundred percent (100%) of the actual amount(s) paid by the Company for all building permits and commercial plan review fees related to the Project and authorized to be

rebated by Chapter 4.72 of the City Code. The City shall pay such rebate within sixty (60) days of the issuance of a certificate of occupancy for the Project and Company's delivery of a written request for such rebate; and

(ii) The City will rebate one hundred percent (100%) of the unrestricted portion of the City sales/use taxes imposed on the building materials used in construction of the Project. The unrestricted City sales/use tax rate on building materials is currently two percent (2.0%). The Company has the opportunity to elect either: 1) the monthly process for payment of the sales/use tax pursuant to section 4.04.320.A of the City Code; or 2) payment at the time of issuance of the building permit pursuant to section 4.04.320.D of the City Code. At the time of issuance of the building permits for the Project, the Chief Building Official shall present the Company with such official's determination of the value of construction for which the permit is issued. Following issuance of the building permit for the Project, should the Company elect to pay such sales/use tax at the time of issuance of the building permit, (i) the Chief Building Official's determination of value of construction for which the permit is issued, and Company's payment of the City sales/use tax, shall be final and binding on the Company and City, (ii) no audit or reconciliation will be conducted following the Completion of the Project, and (iii) there will be no additional payment of taxes or penalties due from the Company or refund of taxes or interest due from the City.

The City shall pay such rebate for City sales/use taxes imposed on the building materials used in construction of the Project within sixty (60) days of the issuance of a certificate of occupancy for the Project and Company's delivery of a written request for such rebate.

(iii) The City will rebate one hundred percent (100%) of the City's portion of the business personal property tax for five consecutive years after the personal property is first put into use, to the extent such business personal property tax exceeds the business personal property tax paid in the base year and is attributable to the Project.

(A) Rebates of business personal property tax shall be payable to Company by the City Chief Financial Officer or his designee. The rebate must be requested annually following payment of the business personal property taxes due per the tax notice issued by the County Treasurer, which taxes can either be paid in full by April 30th, or paid in two installments due the end of February and June 15th respectively. The rebate can be requested immediately following payment of the taxes to Boulder County, provided that the taxes must be paid in full prior to applying for the refund and the request for the rebate must be made by October 1st of each year. The request for a rebate shall be in the form of invoice delivered to the City Chief Financial Officer with supporting documentation that includes the following: (i) a copy of the current property tax notice and verification that all taxes have been paid; and (ii) certification of the cost of the eligible personal property for which the rebate is claimed by providing an itemized list that includes (A) a brief description of each piece of eligible equipment, (B) the year each piece of eligible equipment was acquired, (C) the original cost of each piece of eligible equipment, (D) confirmation that the equipment is being utilized at the

Property, and (E) such additional information as may be reasonably requested by the City to confirm which eligible equipment is being utilized at the Property. The rebate will be paid within ninety (90) days following the Company's delivery of a completed request for the rebate, or thirty (30) days following the City's receipt of such taxes from Boulder County, whichever date is later.

(B) Company shall provide the City with notice of the anticipated commencement of the business property tax rebate on or before June 30 of the calendar year immediately preceding the first year of such rebate. In addition, to assist the City with budgeting of incentive rebates, the Company will provide the City Chief Financial Officer confidential copies of any business personal property declarations contemporaneously with the filing of such documents by Company with Boulder County.

(C) An example of the operation of these terms for calculation of the rebates set forth in this subsection (iii) above is as follows: Company purchases and installs equipment during 2023 and 2024 at a cost of \$5 million. Completion of the Project occurs, and Company commences operations at the Property in May of 2024. It is Company's and City's understanding that Boulder County Assessor considers personal property at the Project to be "placed in service" i.e., first used in the business, on the May 2024 date when operations began and therefore would not be assessed until January 1, 2025 as part of the 2025 tax year, which assessment will not be paid and therefore not eligible for rebate until 2026. Company notifies the City by June 30, 2025 that it desires to have the business personal property tax rebate commence in 2026, such that incentive payments commence in 2026. The base year under the terms of this Agreement and Section 4.72.045 would be 2024 with a base value of equal to the amount of business person property taxes assessed in that year; Company's choice of year 1 of the business personal property tax rebate would likely be 2025, thereby entitling Company to a rebate of 100% of the increase in business personal property taxes over the base year.

4. Company's Capital Investment and Job Creation and Retention Covenants for the Project.

In consideration of the foregoing economic and development incentives granted to it, Company covenants and agrees as follows:

- (a) it will lease or acquire the Property for construction of the Project;
- (b) Company will construct the Project substantially consistent with its proposal, including projected expenditures of up to \$12 million in capital investment, and up to \$1.7 million in machinery and equipment costs;
- (c) Company shall: (i) hire at least 50 net new FTE's with an average annual salary of at least \$101,000 within two years after the effective date of this Agreement; (ii) hire at least 76 additional net new FTE's with an average annual salary of at least \$101,000 before December 31, 2027; and (iii) retain its existing 83 FTE's as of the effective date of

this Agreement and the 126 net new FTE's during the incentive period which is a five (5) year period after the effective date of this Agreement ("Incentive Period"). The total net new FTE's to be added by Company before December 31, 2027 is 126. The average salary of the net new FTE's shall be at least \$101,000, all of whom will work at the Property.

(d) Company will make reasonable efforts to recruit qualified persons who are then-current residents of Longmont for at least one-third (1/3) of such positions, such as, by way of example, advertising the job positions to be fulfilled for the Project in local publications.

(e) At the time of execution of this Agreement, Company shall certify to the City in writing the total number of existing FTE's and their respective salaries currently employed at its Longmont facility. Thereafter, Company shall certify to the City in writing the total number of net new FTE's and their respective salaries employed at the Project site that is the subject of this Agreement, the total number of retained existing FTE's and their respective salaries employed at the Property, and the percentage of employees that have advised the Company they claim residence in Longmont. Such additional certifications shall first occur 12 months from the effective date of this Agreement, annually thereafter until the fifth year from the effective date of this Agreement, and shall be formatted to report separately net new FTE's from retained existing FTE's.

5. Breach of Job Creation Covenants.

(a) Should Company fail to employ at least 126 net new FTE's with an average annual salary of at least \$101,000 and retain Company's existing 83 FTE's at the three year mark after the effective date of this Agreement, the rebates to be paid to the Company pursuant to Section 3(c) shall each be reduced proportionately by determining the sum of net new FTE's with an average annual salary of at least \$101,000 and the number of retained employees as a percentage of the covenanted 126 total net new and retained existing FTE's. By way of example, if the Company employs 80 net new FTE's with an average annual salary of at least \$101,000 and 50 existing FTE's at the three year mark after the effective date of this Agreement, the rebates pursuant to Section 3(c) shall be reduced to 62.2% (i.e. $130/209 = 62.2\%$) of the total rebate.

(b) Similarly, should Company fail to employ at least 126 net new FTE's with an average annual salary of at least \$101,000 and retain Company's existing 83 FTE's as of December 31, 2027 and through the Incentive Period, the rebates to be paid to the Company pursuant to Section 3(c) shall each be reduced proportionately by determining the sum of net new FTE's with an average annual salary of at least \$101,000 and the number of retained employees as a percentage of the covenanted 209 total net new and retained existing FTE's.

(c) If the City has previously paid Company the rebate and/or refund, then any excess paid to Company as a result of a reduction in the rebate and/or refund shall be first deducted from any future rebates paid to Company. Only if such future incentive

payments pursuant to this Agreement are insufficient to repay any amounts owed by Company to the City pursuant to this subparagraph will Company be obligated to refund the difference. Such refund shall be paid by the Company to City within thirty (30) days of a written request by the City containing a detailed itemization and calculation of the amounts to be refunded.

6. City's Breach of Covenants. The City's failure to comply with the provisions of this Agreement, or the non-appropriation of funds sufficient to meet the City's obligations hereunder, shall relieve Company from any obligations hereunder.

7. Force Majeure. Should an event of *force majeure* occur, the requirement for performance by the City or Company, as applicable, during the time when such *force majeure* event exists shall be suspended until such time as the *force majeure* event no longer exists (but no longer than 6 months), and the time period required for such performance shall, if practicable, be extended for a period of time equal to the time during which the *force majeure* event existed, including, as necessary, extension of the Incentive Period. For purposes of this paragraph, force majeure shall mean acts of God; acts of public enemies; terrorist events; orders or restraints of any kind of the government of the United States or of the State or any of their departments, agencies, political subdivisions or officials, or any civil or military authority; insurrections; civil disturbances; riots; epidemics; landslides; lightning; earthquakes; fires; hurricanes; tornados; storms; floods; restraint of government and people; explosions; or other similar casualties, causes, events or circumstances reasonably beyond the control of the City or Company (as the case may be).

8. Notice and Cure for Breach of Covenants. Upon a breach of any covenant in this Agreement, the breaching party, upon written notice from the non-breaching party, shall proceed immediately to cure or remedy such breach. Any breach shall be cured within thirty (30) days after receipt of such notice, or such cure shall be commenced and diligently pursued to completion within a reasonable time if curing cannot be reasonably accomplished within thirty (30) days. If such default is not of a type which can be cured within such thirty (30) day period and the breaching party gives written notice to the non-breaching party within such thirty (30) day period that it is actively and diligently pursuing such cure, the breaching party shall have a reasonable period of time given the nature of the breach following the end of such thirty (30) day period to cure such breach, not to exceed ninety (90) additional days unless otherwise agreed by the Company and City in writing, provided that such breaching party is at all times within such additional time period actively and diligently pursuing such cure in good faith. The Company and City shall at all times attempt to resolve the breach in good faith to implement the intent of this Agreement, and as a last resort, may consider seeking City Council approval of an amendment to this Agreement to address the breach.

9. Appropriation/TABOR. Nothing in this Agreement shall be deemed a pledge of the City's credit or a payment guarantee by the City. All financial obligations of the City under this Agreement are contingent upon appropriation, budgeting, and availability of specific funds to discharge such obligations. Any financial obligation of the City under this Agreement which may mature in a future fiscal year is subject to appropriation by the City Council of sufficient funds to meet such obligation. Consequently, this Agreement does not create a multiple fiscal year obligation of the City under Article X, Section 20 (4) of the Colorado Constitution.

If to the City: City Manager
350 Kimbark Street
Longmont, CO 80501

With a Copy to: City Attorney
408 Third Avenue
Longmont, CO 80501

If to Company: Stored Energy Systems, A Limited Liability Company
Attn: Legal Department
1840 Industrial Circle Longmont, CO 80501

- (a) Each party shall bear its own costs in connection with the preparation and enforcement of this Agreement.
- (b) Captions and headings contained herein are for ease of reference only and shall not be used in the interpretation of this Agreement. This Agreement is the result of arms' length negotiations and any ambiguity contained herein shall not be construed more strongly against any presumed drafting party. References herein to Sections and subparagraphs shall refer to Sections and subparagraphs of this Agreement.
- (c) Estimates of benefits contained herein are not intended to be, and shall not be construed as, caps or limitations on the amount of such benefits.
- (d) Each of the parties will execute and deliver such other instruments and documents and will take all such other actions as the other party may reasonably request and as may reasonably be required in order to effectuate the purpose of this Agreement and to carry out its terms.
- (e) This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.
- (f) This Agreement constitutes the entire agreement between the parties and supersedes and replaces all prior and contemporaneous agreements, representations, both

written and oral, between the parties with respect to the economic and development incentives which are the subject matter of this Agreement. This Agreement shall be interpreted in accordance with the City Code in effect at the time of the effective date of this Agreement.

(g) No variation or modification of this Agreement, and no waiver of the Agreement's provisions or conditions, shall be binding unless made in writing and signed by duly authorized officers of the City and Company.

(h) The Company and the City agree that the City is willing to enter into this Agreement and provide economic development incentive as outlined herein only if the Project is constructed, and the applicable jobs identified herein are created. Accordingly, the identity of the Company and the parties in control of the Company are of critical importance to the City. Until completion of the Project the Company shall not assign or transfer all or any part or of or any interest in this Agreement without the prior written approval of the City, which shall not be unreasonably withheld. For the purposes of this Agreement, "assign" and "transfer" shall include, without limitation, a change in the identity of the parties in control of the Company, but shall not include any assignment or transfer by the Company to any Affiliate of Company. For purposes of this Agreement, an "Affiliate" of Company means any other Person which, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, Company. For purposes of this definition, "control" of any Person means possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting capital stock, by contract, or otherwise. Until the completion of the Project, Company shall promptly notify the City of any and all changes which result in it no longer controlling Company, directly or indirectly. No voluntary or involuntary successor in interest of the Company shall acquire any rights or powers under this Agreement in whole or in part, including the right to receive payments of any Incentives, unless and until completion of the Project, without the prior written approval of the City, which shall not be unreasonably withheld, and then only subject to the terms and conditions set forth herein, unless expressly agreed by the City.

(i) This Agreement shall be binding upon, and inure to the benefit of, the parties and their respective successors and assigns. This Agreement shall be governed by and construed according to the laws of the state of Colorado, and venue for any dispute shall be Boulder County.

(j) It is expressly understood and agreed that the enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the undersigned parties and nothing in this Agreement shall give or allow any claim or right of action whatsoever by any other person not included in this Agreement. It is the express intention of the undersigned parties that any entity other than the undersigned parties receiving services or benefits under this Agreement shall be an incidental beneficiary only.

[BALANCE OF PAGE INTENTIONALLY BLANK; SIGNATURE PAGES FOLLOW.]

THE CITY OF LONGMONT, a municipal corporation

Mayor Joan Peck

ATTEST:

CITY CLERK

DATE

APPROVED AS TO FORM:

CITY ATTORNEY

DATE

PROOFREAD

DATE

APPROVED AS TO FORM AND SUBSTANCE:

ORIGINATING DEPARTMENT

DATE

Stored Energy Systems, A Limited Liability Company
a Colorado Corporation

By: _____

Name and Title: _____

Date: _____

State of Colorado)
) ss:
County of Boulder)

The foregoing instrument was acknowledged before me by _____ as _____
_____, of _____, a Colorado Corporation, on behalf of the company,
this _____ day of _____, 2024.

Witness my hand and official Seal.

Notary Public

My Commission expires _____