

## ORDINANCE NO. 2262

An Ordinance Approving A Business Incentive Agreement with Peak Energy Technologies, Inc.

### Recitals.

Whereas, Broomfield has built and maintained a strong, balanced tax base through balancing residential and business development and growth.

Whereas, in order to attract, grow and retain businesses within the community, Broomfield occasionally provides business incentives to specific businesses in targeted business sectors.

Whereas, the benefits of expanding and relocating businesses within Broomfield include an increase in employment and wage earning opportunities for residents and an increase to local tax revenue from real and personal property, lodgers and sales and use taxes.

Whereas, Broomfield is intentionally limited in its use of business incentives to support businesses. Business incentive agreements are performance based, with a reimbursement to the recipient company from collected revenues resulting from the business's taxable activity over a period of up to ten years.

Whereas, the revenues subject to reimbursement pursuant to a business incentive agreement may include sales taxes, use taxes and personal property taxes paid by the business to Broomfield. Business incentives do not include tax revenues collected by Broomfield on behalf of other governmental entities.

Whereas, the City has determined that supporting the growth of local businesses and the relocation or expansions of selected businesses to Broomfield is in the best interest of the City, serves the public interest, and benefits the public.

Whereas, pursuant to Section 6.4 of the Home Rule Charter, every act making an appropriation, creating an indebtedness, authorizing borrowing of money, levying a tax, establishing any rule or regulation for the violation of which a penalty is imposed, or placing a burden upon or limiting the use of private property, shall be by ordinance.

Whereas, Chapter 3-40 of the Broomfield Municipal Code authorizes the City Council to enter into an agreement to provide all or a portion of Broomfield's retail sales and use tax revenue generated by taxable activity to be used to provide incentives to attract individual retail or commercial businesses to Broomfield.

Whereas, the pledge by Broomfield to reimburse a business all or a portion of sales, use and personal property taxes generated by the taxable activity of the business over multiple years creates an indebtedness requiring approval by ordinance.

Whereas, City Council has determined it appropriate to enter into business incentive agreements to Peak Energy Technologies Inc.; a form of which is on file with the City Clerk.

Now, therefore, be it ordained by the City Council of the City and County of Broomfield, Colorado:

**Section 1.**

The business incentive agreement, by and between the City and County of Broomfield and Peak Energy Technologies Inc., in substantially the form presented to the City Council and on file with the City Clerk, is hereby approved.

**Section 2.**

The Mayor or Mayor Pro Tem is authorized to sign and the Office of the City and County Clerk to attest the business incentive agreement, in a form approved by the City and County Attorney.

**Section 3.**

This ordinance shall be effective seven days after public notice following final passage.

Introduced and approved after first reading on December 10, 2024, and ordered published in full.

Introduced a second time and approved on January 14, 2025, and further ordered published.

The City And County Of Broomfield, Colorado

*Dan Castriello* \_\_\_\_\_

Mayor

Attest:

*Tasha Reynolds* \_\_\_\_\_

Office of the City and County Clerk



Approved As To Form:

*Nancy Rodgers* \_\_\_\_\_ *KF*

City and County Attorney

**INVESTMENT AGREEMENT BETWEEN  
THE CITY AND COUNTY OF BROOMFIELD AND  
PEAK ENERGY TECHNOLOGIES, INC.**

1.0 PARTIES. The parties to this Agreement (hereinafter referred to as the "Agreement") are the City and County of Broomfield, a Colorado municipal corporation and county, (hereinafter referred to collectively as the "City") and Peak Energy Technologies, Inc. (hereinafter referred to as "Peak Energy") and provided that City and Peak Energy may be individually referred to herein as a "Party" and together may be referred to as the "Parties."

2.0 RECITALS.

2.1 Peak Energy is a renewable energy storage business which will be located within Broomfield, Colorado.

2.2 Currently, Peak Energy's research and development operations are located in a smaller facility, and is experiencing market opportunities resulting in the need for expanded workspace, additional investment in equipment, and increased employment. This level of business expansion requires a combined office and work space of 13,000 square feet.

2.3 Peak Energy desires to grow and invest in a facility located in Broomfield, and has options to increase the work space through future expansion.

2.4 Peak Energy will relocate research and development equipment, and will continue to invest in their operations in the City. The capital investment is expected to be more than \$1.2 million, for equipment and other investments in one or more facilities locally. The projected job growth from the facility is 20 full time jobs over the next 5 years, with an average annual salary above \$121,950.

2.5 It is the policy of the City to support its local businesses and to encourage the creation and retention of local jobs.

2.6 The City finds and determines that the development proposed by Peak Energy is in the best interest of the City, serves the public interest, and benefits the public.

3.0 THE OBLIGATIONS OF PEAK ENERGY. In consideration of the mutual covenants and promises of the Parties contained herein, and other valuable consideration, the receipt and adequacy of which are hereby acknowledged Peak Energy agrees as follows:

3.1 Peak Energy shall maintain a research and development facility(s) by occupying no less than 13,000 square feet of commercial and office space in the City. This space may be company-owned or company-leased. Evidence of meeting this requirement will be:

3.1.1 By an existing lease, future lease, and/or building ownership, and

3.1.2 Property tax records, *Ad Valorem* Property and/or Business Personal Property, showing the location, tax liability, and payment by Peak Energy as an entity within the City and with taxes owed to the City.

3.2 Peak Energy may operate in multiple work spaces, including but not limited for the purpose of research, engineering and design, and manufacturing. All space located within the City and used for these purposes will be included in any calculations for qualifying for business support under this Agreement.

3.3 In exchange for the receipt of any tax rebates from the City, Peak Energy shall employ no less than 10 full time employees in the Broomfield location(s) beginning January 1, 2026 through December 31, 2029.

4.0 THE OBLIGATIONS OF THE CITY. In consideration of the mutual covenants and promises of the Parties contained herein, and other valuable consideration, the receipt and adequacy of which are hereby acknowledged, the City agrees as follows:

4.1 Use Tax Rebate. The City agrees to rebate and pay to Peak Energy an amount equal to seventy-five percent (75%) of the City's 3.50% use tax, which percentage excludes 0.25% presently allocated for open space and 0.40% presently allocated for the county functions, levied and collected on building construction materials used in the initial construction of the proposed development (hereinafter referred to as the "Use Tax Rebate"). The City estimates the amount of the Use Tax Rebate to be a total of \$29,880.

4.2 Personal Property Tax Rebate. The City agrees to rebate and pay to Peak Energy an amount equal to sixty-six percent (66%) of the city and county personal property taxes paid by Peak Energy and retained by the City, after any pre-existing development support agreements, for taxable personal property located within all Peak Energy occupied and operating facilities in the City beginning on January 1<sup>st</sup> of the tax year (such as 2024, paid in 2025) following the establishment of the Peak Energy facility within the City, and for the duration of this agreement as long as the facility remains located and operating in the City. Said rebate will be paid by the City for a period of five years. No rebate will be paid for any year in which Peak Energy fails to maintain the required full time employment minimums pursuant to Section 3.3 above. Peak Energy shall certify to the City in writing on or before July 15<sup>th</sup> of each year that it has maintained the necessary number of employees for the previous 365 days. Payment of the rebate shall be submitted to Peak Energy by the City within forty-five (45) days of the City's receipt from Peak Energy of its certification. The City estimates the amount of the personal property tax to be rebated to be a total of \$18,715 over a five year period.

4.3 Permitting Fees Rebate. The City agrees to rebate and pay to Peak Energy an amount equal to fifty percent (50%) of the City's permit fees, levied and collected on

space buildout and improvements used in the initial construction of the proposed development (hereinafter referred to as the "Permitting Fees Rebate"). The City estimates the amount of the Permit Fee Rebate to be less than \$5,000.

4.4 **Total Tax and Fee Rebate.** The City agrees to rebate and pay to Peak Energy the amount determined by the above Sections on an annual basis, with the total maximum amount of the rebated payments not to exceed \$50,000 over the term of this agreement.

5.0 **Repayment Conditions.** During the term of the agreement, year one to year five, if in any year Peak Energy fails to maintain the required full time employment minimums pursuant to Section 3.3 above, no rebate for that year shall be made to Peak Energy.

6.0 **Miscellaneous.**

6.1 The City shall calculate and pay Peak Energy any rebate authorized by the Agreement based upon the actual taxes and fees levied and collected and not the amounts of tax or fees estimated herein.

6.2 The City's obligations pursuant to this Agreement terminate if Peak Energy does not maintain a physical presence (including a research and development facility) in the City following the commencement of this agreement. The City agrees to use its best efforts, including but not limited to, assigning a senior level staff person to assist Peak Energy with the process necessary for obtaining the permits and approvals required for the development and operation of the facility.

7.0 **ASSIGNMENT.** This Agreement shall not be assigned by the other Party without the prior written consent of the City, provided, however, that Peak Energy shall have the right to assign this Agreement to any wholly owned affiliate of Peak Energy without prior written consent of the City, but with prior written notice to the City.

8.0 **NOTICES.** Any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if personally served or if sent by electronic or registered mail, postage and fees prepaid, addressed to the Party to whom such notice is to be given at the address set forth on the signature page below, or at such other address as has been previously furnished in writing, to the other Party or Parties. Such notice shall be deemed to have been given when received if sent electronically, or when deposited in the mail of the United States Postal Service.

9.0 **EXHIBITS.** All exhibits referred to in this Agreement, if any, are by reference incorporated herein for all purposes.

10.0 **DELAYS.** Any delays in or failure of performance by any Party of its obligations under this Agreement shall be excused if such delays or failure are a result

of acts of God, fires, floods, strikes, labor disputes, accidents, acts of terrorism, regulations or order by civil or military authorities, shortages of labor or materials, or other causes, similar or dissimilar, which are beyond the control of such Party.

11.0 DEFAULT. Time is of the essence. If any payment or any other material condition, obligation, or duty is not timely made, tendered, or performed by either Party within ten (10) business days following receipt of notice to the non-performing Party, then this Agreement, at the option of the Party who is not in default, may be terminated by the non-defaulting Party, in which case, the non-defaulting Party may recover such damages as may be proper. If the non-defaulting Party elects to treat this Agreement as being in full force and effect, the non-defaulting Party shall have the right to an action for damages that is limited to the amount of use and personal property taxes rebated under this Agreement.

12.0 PARAGRAPH CAPTIONS. The captions of the paragraphs are set forth only for the convenience and reference of the Parties and are not intended in any way to define, limit, or describe the scope or intent of this Agreement.

13.0 ADDITIONAL DOCUMENTS OR ACTION. The Parties agree to execute any additional documents or take any additional action that is necessary to carry out this Agreement.

14.0 INTEGRATION AND AMENDMENT. This Agreement represents the entire agreement between the Parties and there are no oral or collateral agreements or understandings. This Agreement may be amended only by an instrument in writing signed by the Parties. If any other provision of this Agreement is held invalid or unenforceable, no other provision shall be affected by such holding, and all of the remaining provisions of this Agreement shall continue in full force and effect.

15.0 WAIVER OF BREACH. A waiver by any Party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either Party.

16.0 GOVERNING LAW. This Agreement shall be governed by the laws of the State of Colorado.

17.0 BINDING EFFECT. This Agreement shall inure to the benefit of and be binding upon the Parties and their respective legal representatives, successors, heirs, and assigns, provided that nothing in this paragraph shall be construed to permit the assignment of this Agreement except as otherwise expressly authorized herein.

18.0 EXECUTION IN COUNTERPARTS. This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument.

19.0 NO THIRD-PARTY BENEFICIARIES. This Agreement is intended to describe the rights and responsibilities only as to the Parties hereto. This Agreement is not intended and shall not be deemed to confer any rights on any person or entity not named as a Party hereto.

20.0 FINANCIAL OBLIGATIONS OF THE CITY. All financial obligations of the City under this Agreement are subject to appropriation, budgeting, and availability of funds to discharge such obligations. In the event the City fails to appropriate funds for this Agreement beyond the current fiscal year, the City shall have no obligations for rebates for future fiscal years. Nothing in this Agreement shall be deemed to pledge the City's credit or faith, directly or indirectly, to the other Party.

21.0 NO PRESUMPTION. The Parties to this Agreement and their attorneys have had a full opportunity to review and participate in the drafting of the final form of this Agreement. Accordingly, this Agreement shall be construed without regard to any presumption or other rule of construction against the Party causing the Agreement to be drafted.

22.0 SEVERABILITY. If any provision of this Agreement as applied to either Party or to any circumstance shall be adjudged by a court to be void or unenforceable, the same shall in no way affect any other provision of this Agreement, the application of any such provision in any other circumstances or the validity, or enforceability of the Agreement as a whole.

23.0 EXECUTION REQUIRED. This Agreement shall not be binding upon any Party hereto unless and until the Parties have executed this Agreement.

24.0 MINOR CHANGES. The Parties executing this Agreement are authorized to make non-substantive corrections to this Agreement and attached exhibits, if any, as the Parties mutually consider necessary; provided, however, that a copy of any correction made to this Agreement and attached exhibits, if any, by a Party shall immediately be provided to the other Party and, further, no such correction shall be effective unless the other Party has indicated its agreement with such correction

25.0 DAYS. If the day for any performance or event provided for herein is a Saturday, Sunday, or a day on which national banks are not open for the regular transactions of business, or a legal holiday pursuant to section 24-11-101(1), C.R.S., such day shall be extended until the next day on which such banks and state offices are open for the transaction of business.

26.0 GOOD FAITH OF PARTIES. In the performance of this Agreement or in considering any requested approval, acceptance, extension of time, or appropriation, budgeting, or payment action, the Parties agree that each will act in good faith and will not act unreasonably, arbitrarily, capriciously, or unreasonably withhold, condition, or delay any approval, acceptance, or extension of time required or requested pursuant to this Agreement.

27.0 PARTIES NOT PARTNERS. Notwithstanding any language in this Agreement or any other agreement, representation, or warranty to the contrary, the Parties shall not be deemed to be partners or joint venturers, and neither Party shall be deemed to be partners or joint venturers, and neither Party shall be responsible for any debt or liability of the other Party.

28.0 PRIOR AGREEMENTS. By entering into this Agreement, the Parties terminate any prior existing agreements entered into between the Parties.

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, this Agreement is executed by the Parties hereto in their respective names as of \_\_\_\_\_, 2024.

THE CITY AND COUNTY OF BROOMFIELD, a Colorado municipal corporation and county

*Lupe Castriello*

\_\_\_\_\_  
Mayor

ATTEST:

*Tasha Reynolds*

\_\_\_\_\_  
Office of the City & County Clerk



APPROVED AS TO FORM:

*Nancy Rodgers*

KF

\_\_\_\_\_  
City & County Attorney

