

**FIRST AMENDED ECONOMIC
DEVELOPMENT AGREEMENT**

BY AND AMONG

SOLAR TURBINES INCORPORATED

and

**BROKEN ARROW ECONOMIC DEVELOPMENT
AUTHORITY**

FIRST AMENDED ECONOMIC DEVELOPMENT AGREEMENT

THIS FIRST AMENDED ECONOMIC DEVELOPMENT AGREEMENT (the "Agreement") is dated as of

the ____ day of _____, 2024, by and between THE BROKEN ARROW ECONOMIC DEVELOPMENT AUTHORITY, an Oklahoma Municipal Trust, and Solar Turbines Incorporated, a Delaware Corporation, (together with its successors and assigns, the "Company and/or Developer").

WITNESSETH:

WHEREAS, The Company is a Corporation organized under the laws of the State of Delaware; and

WHEREAS, The Company is interested in expanding the Company's existing Broken Arrow operations by increasing the location's current manufacturing capacity through expansion, additional hiring and capital investment; and

WHEREAS, the City (as defined below) reasonably expects that the establishment of the Project in the City will increase overall sales tax and property tax revenues of the City; and

WHEREAS, a declared goal of the City is to encourage and facilitate economic development within and near the City by attracting and expanding new industry and commercial businesses to the Broken Arrow area, and to promote the economic health and expansion of existing industry and commercial businesses within the City; and

WHEREAS, the City seeks to promote development in this area in order to retain and expand employment, enhance the tax base, stimulate economic growth, improve the quality of life in the City, and strengthen the community; and

WHEREAS, the City also recognizes that the Project (as defined below) and its operations will have additional direct and indirect economic benefits within and near the City, in Tulsa County and in the State of Oklahoma through, including without limitation, diversifying the local economy, providing economic stimulus for additional employment and other development, and predicated and/or providing training and employment opportunities in manufacturing, sales and management skills; and

WHEREAS, it is estimated that, upon undertaking the expansion, the Company will create an additional 29 new jobs having an average annual gross wage of a minimum \$58,500, once fully completed; and

WHEREAS, the Company will also invest a minimum amount of \$15,500,000 as a capital contribution to allow for expansion of approximately 22,000 square feet to their existing facility which shall allow 6 additional machine tools and would allow for an additional 20% increase in production. The expansion will also encompass an additional 38,000 sq. ft. slab poured outdoors to accommodate additional storage. The expansion is also expected to add an additional minimum of 29 new full-time jobs at the Broken Arrow facility; and

WHEREAS, the City recognizes it would be beneficial to the public and would help facilitate the construction of additional facilities and addition of full time employees at the Project Site if the City were to assist in providing incentives to the Company pursuant to the City's incentive policy; and

WHEREAS, implementation of this Agreement, which is reasonably expected to facilitate the realization of the aforesaid economic benefits to the City and general area, would otherwise be difficult or impractical without certain development incentives, and apportionments and appropriations for such purposes of certain City sales tax revenues, other forms of public assistance and the involvement the City; and

WHEREAS, the City deems it appropriate to approve the execution and delivery of this Agreement in the interest of providing for the implementation of the Project and have determined such actions are in the best interests of the City and the health, safety, and welfare of the City and residents within and near the City;

NOW, THEREFORE, in consideration of the covenants and mutual obligations herein set forth and other consideration, the sufficiency of which the parties hereby acknowledge, the parties hereto hereby covenant and agree as follows:

ARTICLE I DEFINITIONS

"Agreement" and such terms as "herein," "hereof," "hereto," "hereby," "hereunder," and the like shall mean and refer to this Agreement, and any and all permitted supplements, modifications and/or amendments hereto.

"Company/Developer" shall mean Solar Turbines Incorporated, a Delaware Corporation.

"City" shall mean Broken Arrow Economic Development Authority ("BAEDA"), an Oklahoma Municipal Trust, of which the City of Broken Arrow is beneficiary, and, as the case may be, shall mean and refer to such agency, department or instrumentality of the City as may have, or shall have been charged with, primary responsibility for any given Agreement-subject activity.

"Construction Plans" shall mean such architectural and engineering drawings, plans, specifications, and other documentation as may be reasonably necessary to describe the nature, scope, materials, quality, quantity, and other information requisite for the construction and fitting of improvements and/or structures included, or to be included, within the Project, which shall be subject to the City's normal and customary review and approval as part of the City's permitting process.

"Completion Date" shall mean the date by which all construction on the Project Site is completed by both parties.

"Project" shall mean development of the Project Site and either constructing, or causing to construct, additional square footage to the facility in a total minimum amount of 50,000 square feet for both indoor and outdoor expansion and an additional minimum of 29 new full time jobs.

"Project Site" shall mean a tract of land located at 4217 West Seattle Street, Broken Arrow, OK 74012, within the City as shown on ***Exhibit A***, which is attached hereto and incorporated by reference.

"State Competitive Contracting Requirements" shall mean the Public Competitive Bidding Act, Title 61, O.S.A., sections 101, *et seq.*, together with all other applicable statutory requirements pertaining to the advertising, selection and award of contracts pursuant thereto and including all contractual, bonding and insurance requirements pertaining to such contracts.

ARTICLE II **NATURE OF THIS AGREEMENT**

2.1 Scope of the Project. The Project constructed at and on the Project Site shall be developed, constructed and landscaped in conformity with the City's Zoning Ordinances and Building and Land Subdivision Codes, and the Engineering Design Criteria Manual.

The parties understand, acknowledge and agree that the Company shall be solely responsible for constructing and completing or causing the construction or completion of any and all improvements to the Project Site, except as specifically provided herein.

2.2 Relationship of the Parties. The undertakings of the parties under this Agreement require the mutual cooperation of the parties and their timely actions on matters appropriate and/or necessary to fully implement the provisions hereof. The parties agree to exercise diligent, best and good faith efforts in performing and assisting one another, and requisite third parties, in performing their respective obligations under and/or relating to this Agreement, specifically including, without limitation, the performance obligations hereinafter set forth in **Articles III** and **IV** hereof.

ARTICLE III

OBLIGATIONS OF THE BROKEN ARROW ECONOMIC DEVELOPMENT AUTHORITY

3.1 Incentive Payments to Company for Job Creation. The Company shall create a minimum of twenty-nine (29) new full-time jobs located at the Company's Broken Arrow location by December 31, 2028. A "New Full Time Job" shall be a newly created position, created after the execution of this Agreement, having a minimum of thirty five (35) work hours per week, performed at the Broken Arrow location, and that has been created as a result of the improvements and expansion to the Project Site.

(a). The incentive paid by BAEDA to the Company for a "New Full-Time Job" created hereunder shall be as follows:

1. Tier 1 Reimbursement

a. Any job created having a total annualized gross wage of \$58,500.00 or more but less than \$62,474.00 shall be entitled to a reimbursement from BAEDA in the amount of \$2,000.00 per individual job;

2. Tier 2 Reimbursement

a. Any job created having a total annualized gross wage of \$62,475.00 or more shall be entitled to a reimbursement from BAEDA in the amount of \$3,000.00 per individual job;

(b). Repayment for Jobs Incentives. Once ten (10) additional New Full-Time Jobs have been created and filled by employees in satisfaction of Section 4.1(d)(1) of this Agreement, the Company will notify City of Broken Arrow Finance Department of the same, and thereafter, the sum of \$500 shall be paid by BAEDA to the Company per job per quarter for the next 4 quarters or 6 quarters, dependent upon the annualized wage for each job as listed above, until the incentive is paid in full. Said payments for the jobs incentive shall in no event exceed a total of \$87,000.00.

1. OES-3 reports shall be submitted to the City each quarter for the entirety of this Agreement.
2. As of the date of this Agreement, the Company has 165 full-time employees ("Starting Payroll") at its Broken Arrow manufacturing facility. Should the total number of full-time employees at the Company's Broken Arrow facility fall below the Starting Payroll or required numbers as listed

herein, all payments from BAEDA shall temporarily be suspended until such time as such threshold is met.

3. If the total number of full-time jobs at the Company's Broken Arrow facility falls below the Starting Payroll for more than two consecutive quarters, the Company shall repay all incentives received within 90 days of written demand by BAEDA.

3.2 Incentive Payments to Company for Capital Investment. The Company shall be reimbursed for its Capital Investment for the Project and the Project Site in the amounts as follows:

(a). For all construction and equipment purchases made in furtherance of the Project, the Company shall be entitled to a reimbursement not to exceed \$75,000.00. Said reimbursement shall be payable to Company upon Company receiving a Certificate of Occupancy from the City of Broken Arrow for the new portion of construction. To receive the incentive, the Company shall provide all receipts and invoices showing a minimum total cost of construction and purchased equipment in a total amount exceeding \$10,000,000.00.

(b). BAEDA agrees to further waive or reimburse Company, an amount not to exceed \$15,000.00, for City of Broken Arrow related fees incurred in connection with the Project during the construction process. Should construction-related fees be waived or reimbursed but construction not completed by June 30, 2028, as extended for unavoidable delays, such fees shall be repaid by the Company to BAEDA within 90 days of written demand by BAEDA. In the event construction is delayed or for any reason not completed by the agreed date, any and all incentives owed by BAEDA shall be terminated and no amounts shall be due from BAEDA. All incentives received by the Company shall then be repaid to the BAEDA within 90 days of written demand.

To the extent that any infrastructure improvements are made on or in public rights of way or any other lands owned by the City, title to the same, upon the completion thereof, shall vest in the City, and the Company shall furnish to the City all requested instruments of release or conveyance necessary to perfect the City's title thereto, provided such instruments are in a form reasonably acceptable to the Company.

3.3 Incentives subject to annual appropriations. Due to the term of this agreement being in excess of one year, in the event the BAEDA does not appropriate funds in a given fiscal year for payments due or expenditures under this Agreement, the BAEDA shall not be liable to the Company for such payments or expenditures unless and until appropriation of the necessary funds is made; provided, however, that the Company, in its sole discretion, shall have the right, but not the obligation, to terminate this Agreement and shall have no obligations under this Agreement for the year in which the City does not appropriate the necessary funds. For the avoidance of doubt, the Company would not need to repay BAEDA for incentives received

under this Agreement if BAEDA does not appropriate funds in a given fiscal year and decides to terminate this Agreement.

3.4 BAEDA Maximum Incentive Obligation. BAEDA's total maximum incentive obligation to the Company under this Agreement shall not exceed \$177,000.00.

ARTICLE IV **OBLIGATIONS OF SOLAR TURBINES INCORPORATED**

4.1 Development of Project. The Company agrees to construct and equip or cause to be constructed and equipped, the Project Site in accordance with the Construction Plans, as follows:

- (a) At its sole cost, develop, construct or cause to be constructed, and facilitate the operation of an approximate 22,000 sq. ft. expansion of its existing facility to accommodate expansion of 6 additional machine tools. Said construction shall commence by December 31, 2024 and shall be completed no later than June 30, 2028;
- (b) At its sole cost, develop, construct or cause to be constructed, and facilitate the operation of an additional approximately 38,000 sq. ft. slab outside of the facility to facilitate additional storage. Said construction of the slab shall commence by December 31, 2024 and shall be completed no later than June 30, 2028.
- (c) The Company shall invest a minimum of \$15,500,000 through June 30, 2028 in capital improvements and shall provide the City with all receipts and proof of the investment as stated herein to qualify for payment of incentives by BAEDA.
- (d) To qualify for the incentives outlined herein:
 - i. The Company must first create a minimum of ten (10) new Full Time New Jobs by December 31, 2025.
 - ii. The Company must achieve a \$500,000 or greater annual payroll, periodically adjusted for inflation, for New Full-Time Jobs in a two-year period.
 - iii. Qualifying New Full-Time Jobs created must be within Broken Arrow city limits and must meet or exceed an annualized gross wage of \$58,500 per year.

- iv. Additionally, the Company must provide basic health insurance coverage to full-time employees and those employees must pay no more than 50% of the premium cost and be allowed access to coverage within 180 days of employment. Furthermore, employees must have the ability to accrue Paid Time Off within 180 days of employment.
- v. The Company shall provide a report covering the time period of July 1-June 30 to the City of Broken Arrow Director of Finance with a carbon copy to the Broken Arrow Economic Development Director, no later than August 1st, showing the number of new hires, salary of the new hire and title of position held, specific to this project. Company further agrees to cooperate and provide any documentation requested by BAEDA or City of Broken Arrow Finance Department to fulfill this requirement. All requests from BAEDA or City of Broken Arrow Finance Department shall be reasonable in scope. The parties acknowledge that no payment shall be made by BAEDA until all required paperwork is submitted by Company pursuant to this paragraph.

- (e) Should the total number of jobs fall below the Starting Payroll or required numbers as listed herein, all payments owed by BAEDA shall temporarily suspend until the required threshold is satisfied.
- (f) If the total number of jobs falls below the Starting Payroll of this Agreement for more than two consecutive quarters, the Company shall repay all incentives previously received within 90 days of written demand by BAEDA.

4.2 Right-of-way and Easements. At its sole cost, the Company shall dedicate right-of-way, utility easements and other reasonably necessary easements within the Project Site shown on and in accordance with the Master Site Plan and the City's Zoning, Building, Land Subdivision Code and Engineering Design Criteria Manual. These dedications shall be accomplished by deeds drafted by the City Engineer for the pertinent rights of way, easements or other necessary conveyances. All other dedications may be accomplished through the platting process.

4.3 Performance and Claw Back. In the event the Project is not commenced by the Company within the time allotted herein for any reason, or the number of full time employees are not met as required for more than two consecutive quarters as specified in Section 4.1(d)(1), the BAEDA may terminate this Agreement and all of the terms and conditions hereof upon written notice to the Company, and, in such case, this Agreement shall no longer be of any force and effect as between the parties. Furthermore, the Company shall repay to the BAEDA any and all

incentives received, or fees waived by the City within 90 days of written request. The parties acknowledge that time is of the essence for purposes of this Agreement in all respects.

4.4 Project Site Acquisition. The Company has acquired fee simple title to the Project Site.

ARTICLE V CONSTRUCTION AND INDEMNIFICATION PROVISIONS

5.1 Construction Plans and Contracts. Prior to commencement of any construction on the Project Site, the Company (or other party undertaking construction of building improvements) shall furnish the Construction Plans to the City, for the City's normal and customary review and approval as part of the City's permitting process. The parties agree to cooperate and to use their respective best efforts to secure whatever assistance and approvals may be required from third parties in order to facilitate the preparation for and the course of such construction.

5.2 Indemnification. It is understood and agreed between the parties that the Company is performing its obligations hereunder independently, and the City assumes no responsibility or liability in connection therewith to third parties, and the Company agrees to indemnify and hold harmless the City, and its respective officers, agents and employees, from and against any and all claims, lawsuits, judgments, costs and expenses for personal injury (including death), property damage, or other harm for which recovery of damages is sought, suffered by any person or persons that may arise out of or be occasioned by any of the terms or provisions of this Agreement, or by any negligent act or omissions of the Company or its officers, agents, associates, employees, or contractors, in the performance of the Company's obligations under this Agreement. The provisions of this Section 5.2 are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

ARTICLE VI GENERAL PROVISIONS

6.1 Nondiscrimination. The Company agrees not to discriminate on the basis of race, color, religion, gender, or national origin in the sale, lease, or rental or in the use or occupancy of the Project Site, the Project or any related facilities in violation of applicable law or regulation.

6.2 Conflict of Interest; Representatives not individually Liable. No official or employee of the City shall have any personal interest in or under this Agreement, nor shall any person voluntarily acquire any ownership interest, direct or indirect, in any legal entity which is a party to this Agreement. No official or employee of the City shall be personally liable to the Company in the event of any default or breach by the City.

6.3 Applicable Law, Severability and Entire Agreement. This Agreement shall be governed by and construed in accordance with the laws of the State governing agreements made and fully performed in Oklahoma. If any provisions of this Agreement or the application thereof to any

persons or circumstances shall, to any extent, be invalid or unenforceable, then the remainder of this Agreement or surviving portion(s) of such provision, and each other provision of this Agreement, shall be valid and enforceable to the fullest extent permitted by law. This Agreement sets forth the entire understanding between the City and the Company with respect to the subject matters of this Agreement, there being no terms, conditions, warranties or representations with respect to the subject matter other than as contained herein.

6.4 Third Parties. Except as expressly provided otherwise in this Agreement, the provisions of this Agreement are for the exclusive benefit of the parties hereto and not for the benefit of any other persons, as third-party beneficiaries or otherwise, and this Agreement shall not be deemed to have conferred any rights express or implied, upon any other person.

6.5 No Partnership Created. This Agreement specifically does not create any partnership or joint venture between the parties hereto, or render any party liable for any of the debts or obligations of any other party.

6.6 Formalities and Authority. The parties hereto represent and warrant that they are validly existing and lawful entities with the power and authorization to execute and perform this Agreement. The headings set forth in this Agreement are for convenience and reference only, and in no way define or limit the scope or content of this Agreement or in any way affect its provisions.

6.7 Notices and Demands. Any notice, demand, or other communication under this Agreement shall be sufficiently given or delivered when it is deposited in the United States mail, registered or certified mail, postage prepaid, return receipt requested, or delivered personally, as follows:

To the Company:

Attn: General Manager
Solar Turbines Incorporated
4217 West Seattle Street
Broken Arrow, OK 74012

With copies to:

Director, Corporate Real Estate
Caterpillar Inc.
100 NE Adams Street
AB4260
Peoria, IL 61629-4260

Tax Manager

Solar Turbines Incorporated
9330 Sky Park Court, CSC-16
San Diego CA 92123

To the City:

City Manager
The Broken Arrow Economic Development Authority
P. O. Box 610
220 South First
Broken Arrow, Oklahoma 74012

With copies to:

City Attorney
City of Broken Arrow, Oklahoma
P. O. Box 610
Broken Arrow, Oklahoma 74012

or to such other address, within the United States, with respect to a party as that party may from time to time designate in writing and forward to the others as provided in this Section. A copy of any notice, demand or other communication under this Agreement given by a party under this Agreement to any other party under this Section shall be given to each other party to this Agreement.

6.8 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors and assigns.

6.9 Modifications. This Agreement cannot be changed orally, and no executory agreement shall be effective to waive, change, modify or discharge it in whole or in part unless such executory agreement is in writing and is signed by the parties against whom enforcement of any waiver, change, modification or discharge is sought.

6.10 Unavoidable Delays. The time for performance of any term, covenant, condition, or provision of this Agreement shall be extended by any period of unavoidable delays. In this Agreement, "unavoidable delays" shall mean any delay beyond the reasonable direct or indirect control of the party obligated to perform the applicable term, covenant, condition, or provision under this Agreement and shall include, without limiting the generality of the foregoing, delays attributable to acts of God, strikes, labor disputes, governmental restrictions, court injunctions, riot, civil commotion, acts of public enemy, and casualty, and shall not include any delays attributable to financial difficulties; *provided*, the assertion of any unavoidable delay shall be subject to the asserting party first giving written notice to the other parties of its claim thereof and thereupon and forthwith diligently and in good faith undertaking all reasonable efforts to overcome the conditions leading to or causing such delay.

6.11 Further Assurances. Each party agrees that it will, without further consideration, execute and deliver such other documents and take such other action, whether prior or subsequent to the consummation of the matters or completion of the undertakings set forth herein, as may be reasonably requested by any other party to consummate more effectively the purposes or subject matter of this Agreement.

6.12 Attorneys' Fees. In the event of any controversy, claim or dispute between the parties affecting or relating to the subject matter or performance of this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party all of its reasonable expenses, including reasonable attorneys' fees as determined by Oklahoma law.

6.13 Counterparts. This Agreement may be executed in several counterparts, and all such executed counterparts shall constitute the same agreement. It shall be necessary to account for only one such counterpart in proving this Agreement.

6.14 BAEDA's Limited Liability. The obligations of the BAEDA arising under or by virtue of this Agreement shall be limited and shall not exceed the total amount of incentives as listed herein. Said incentive payments shall be the sole remedy for the Company in case of a breach by BAEDA.

6.15 Construction of this Agreement. Each party hereby acknowledges that it and its legal counsel have reviewed and, as the case may be, revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto.

6.16 Jurisdiction and Venue. This Agreement shall be interpreted under the laws of the State of Oklahoma. That any lawsuit or challenge to this agreement shall be commenced and maintained in the District Court of Tulsa County, State of Oklahoma.

IN WITNESS WHEREOF, the each of the parties has caused this Agreement to be executed by its duly authorized official(s), as of the date first above written.

BROKEN ARROW ECONOMIC DEVELOPMENT AUTHORITY,
a municipal trust,

ATTEST: (SEAL)

By: _____
Chairperson

By: _____
Secretary

Approved as to form:

By: _____
Deputy City Attorney

SOLAR TURBINES INCORPORATED
a Delaware company

By: _____
Name: _____
Title: _____

EXHIBIT A-PROJECT SITE PLAN