

## **LEASE AGREEMENT**

---

THIS LEASE AGREEMENT is made and entered into by and between the City of Brookings, South Dakota, a municipal corporation, Lessor, hereinafter referred to as "City", and Northern Plains Power Technologies, hereinafter referred to as "Tenant".

WHEREAS, City owns the Brookings Area Research and Technology Center, located at 807 – 32<sup>nd</sup> Avenue, in Brookings, South Dakota, and desires to lease a portion of said facilities to Tenant, and

WHEREAS, the above-named Tenant has expressed a desire to lease a portion of said facilities hereinafter described in accordance with the terms and conditions set forth herein, now therefore,

FOR AND IN CONSIDERATION OF THE MUTUAL COVENANTS, CONDITIONS AND PROMISES, THE PARTIES DO HEREBY AGREE AS FOLLOWS:

### **1. Lease Agreement**

The City does hereby lease unto Tenant and Tenant does hereby agree to lease and take from City, that space located in the Brookings Area Research and Technology Center, which is located at 807 – 32<sup>nd</sup> Avenue, Brookings, South Dakota, marked as Unit 2 on the attached Exhibit "A", and containing approximately 2,066 square feet, hereinafter referred to as "Unit 2".

### **2. Term**

This Lease Agreement shall commence on March 11, 2020 and shall be for a month-to-month tenancy which may be cancelled by either party upon giving notice to the other party at least thirty (30) days prior to the end of the month. The term of this lease shall end no later than December 31, 2020. In the event the City terminates the lease prior to December 31, 2020, it shall give as much notice as possible and will work with the Tenant to allow, if possible, additional time to vacate the premises.

### **3. Use of Premises**

The above leased premises shall be used by Tenant in connection with its research and development pertaining to that business for the following purpose and no others without the prior written consent of City:

Engineering consulting services and computer modeling technologies serving the distributed generation and smart-grid industries.

Tenant shall not use any portion of the premises for purposes other than those specified herein without the prior written consent of the City and no use shall be made or permitted to be made upon the premises nor acts done which will increase the existing rate of insurance upon the property or cause cancellation of insurance policies covering said property. Tenant shall not conduct or permit any sale by auction on the premises.

### **4. Rent**

#### **Monthly Rent for the Duration of this Lease**

The Tenant shall pay as rent to City during the term of this Lease monthly rent in the sum of \$10.00 per square foot, based upon the occupancy of 2,066 square feet, the total annual sum of

\$20,660.00 to be payable in equal monthly installments of \$1,721.66, commencing with the month of March, 2020.

Tenant shall pay each monthly rental on or before the 15th day of each month through the full term of this Lease, and is late if paid after the 20th day of the month. Failure to timely pay the rent, in addition to all other remedies, will result in a ten (10%) percent late charge.

### **5. Utilities**

Tenant shall be responsible for paying its own utilities.

### **6. Tenant Covenants**

The Tenant makes the following covenants:

1. To keep the interior of Unit 2 and all fixtures therein in good condition and repair.
2. Not to make any structural alterations or additions to Unit 2 without the written consent of the City.
3. Not to assign this Lease, nor sublet Unit 2, nor to permit any other person to occupy Unit 2, except for employees of the Tenant.
4. To remove, at the termination of this Lease, all goods and effects, and to leave Unit 2 in good repair and order, reasonable wear and tear excepted.
5. To use Unit 2 for the purpose of the Tenant's business only, and to comply in all respects to the schedule of Tenant's Rules of Occupation, hereinafter called "Rules", annexed to this Lease as Exhibit "B", or such amended rules that may be issued by the City or the City's agents.
6. To purchase and maintain such insurance as Tenant deems appropriate to protect Tenant from loss of Tenant's property due to fire and/or casualty; and to purchase and maintain a commercial general liability premises policy in the minimum amount of \$1,000,000.00 per occurrence and \$2,000,000.00 aggregate, and Tenant shall provide City with a Certificate of Insurance showing City as an additional insured. The Certificate shall provide for a ten (10) day written notice to City in the event of cancellation or material change of coverage. Tenant shall furthermore hold the City harmless and indemnify it from any injury, loss or damage that may occur to the property of employees of Tenant or other third parties visiting the Tenant or other Tenants in the facility.  
  
To the maximum extent permitted by insurance policies which may be owned by City or Tenant, Tenant and City, for the benefit of each other, waive any and all rights of subrogation which might otherwise exist.
7. To comply with all Federal, state, or local laws which may affect the Tenant's use of Unit 2.
8. Not to affix signs or advertising displays of any kind, either to the exterior or interior walls of Unit 2, or to any of its doors or windows, without the prior written consent of City.
9. Tenant shall not vacate or abandon the premises at any time during the term hereof, and if Tenant shall abandon or vacate the premises, or be dispossessed by process of law, or otherwise, any personal property belonging to Tenant left upon the premises shall be deemed to be abandoned at the option of the City.

10. City shall not be liable for any damage or injury to Tenant, or any other person, or to any property, occurring on the demised premises or any part thereof, and Tenant agrees to hold City harmless from any claims for damages unless such damage or injury results from the negligence of the City.

## **7. Lessor's Covenants**

The City makes the following covenants:

1. The City covenants that it has the right to grant this Lease as Owner of the building.
2. To keep the exterior of the premises in good repair and condition, and to clean and maintain the areas of the Brookings Area Research and Technology Center which are used in common by all Tenants. The City shall be responsible for the exterior and interior structural maintenance of the building and maintaining the common areas. The City shall be responsible for pest control around the exterior of the Center and in the common areas. The City shall also be responsible for maintenance of the heating and cooling system.
3. To insure and keep insured at all times the buildings, structures and fixtures owned by the City against fire, windstorm and similar occurrences.
4. To permit the Tenant to occupy Unit 2 during the term of this Lease quietly and peaceably, provided the Tenant performs the covenants of this Lease.
5. To provide and update a directory of Tenants in the reception area and to provide identification signs within the building to enable visitors to locate Tenant.
6. To provide suitable means of disposing of a reasonable amount of non-hazardous waste materials resulting from use of the leased premises by Tenant.

## **8. Mutual Covenants**

1. It is mutually agreed that the principal objective of the Brookings Area Research and Technology Center is to encourage the formation of successful new businesses and to create new job opportunities, and this Lease and any other agreement between the City and the Tenant must be construed in the context of this objective.
2. Both parties agree that if Unit 2 shall be substantially destroyed by windstorm, fire or other happening, then either party may elect to terminate this Lease by giving written notice of termination to the other party.
3. If Tenant receives the City's written permission to alter or add to the structure, such alterations or additions will be undertaken at the expense of the Tenant.
4. If Tenant fails to perform any of the covenants contained in this Lease, or if the Tenant shall be declared bankrupt or insolvent, or if a receiver of the property of the Tenant is appointed, or if an assignment shall be made of a Tenant's property for the benefit of creditors, or if Tenant is otherwise in default under this Lease, then the City shall give written notice of default to Tenant. The Tenant shall have thirty (30) days to cure said default. In the event the Tenant fails to cure said default within the thirty (30) day period, the City may immediately enter into Unit 2, without further notice, and repossess Unit 2, expel the Tenant and those claiming through or

under the Tenant, and remove their effects. The Tenant hereby expressly waives the service of any notice of intention to re-enter, and Tenant covenants that, in the case of such termination, the Tenant will indemnify the City against any loss of rent and other claims that the City may incur by reason of termination of this Lease and re-entry, including reasonable attorney's fees.

**9. Miscellaneous**

1. Any notice from the City to Tenant or from Tenant to City shall be deemed duly served if mailed by certified mail to the last known address of the Tenant, or to the address of the City or to the address of the Agents acting for City, and the customary certified mail receipt shall be conclusive evidence of such service.

2. This Lease shall be subject to and construed under the laws of the State of South Dakota.

IN WITNESS WHEREOF, the parties have hereto placed their signatures on the day and date set forth below.

Dated this 10<sup>th</sup> day of March, 2020.

CITY OF BROOKINGS, SOUTH DAKOTA, LESSOR

By: \_\_\_\_\_

Paul Briseno, City Manager  
City of Brookings  
520 3<sup>rd</sup> Street, Suite 230  
Brookings, South Dakota 57006  
Telephone No. (605) 692-6281

ATTEST:

\_\_\_\_\_  
Bonnie Foster, City Clerk

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_, Tenant

By: \_\_\_\_\_

Its: \_\_\_\_\_

Northern Plains Power Technologies  
807 32<sup>nd</sup> Avenue  
Brookings, South Dakota 57006

# Exhibit "A"

## MAP DEPICTING Unit 2



Brookings Multiplex Research Building

Research & Technology Center

Not To Scale

Brookings City Engineer

## Exhibit "B"

### TENANT RULES OF OCCUPATION

1. These are the Rules of Occupation referred to in Section 6.5 of the Tenant Covenants contained in the Lease between the City and Tenant.

2. Tenants will be required to:

a. Ensure that all access doors into the building are properly closed after exit or entry. Fire exit doors are for emergency use only and must not be used for entry or exit or for loading or unloading freight. This requirement is imposed to protect the security and integrity of the whole building and its occupants.

b. Dispose of all waste materials in the receptacles provided by the City, and not to leave any garbage or waste materials in any part of the premises or on the parking lot. No oil, grease, paint, or other deleterious matter can be deposited in any drain inside or outside the building.

c. Ensure that no gasoline or any other particularly inflammable explosive or combustible material is stored within Unit 2 occupied by Tenant or on any part of the Brookings Area Research and Technology Center in violation of the City of Brookings Fire Code, with the exception only of fuel contained in the fuel tanks of Tenant's vehicles.

d. Take care to connect all plant and machinery to electrical services in an approved manner and not to overload any electrical circuits.

e. Avoid obstructing the corridors or passageways within the Brookings Area Research and Technology Center and to use only approved means of transporting freight, goods or supplies through such corridors or passageways.

f. Permit the City scheduled access at all reasonable times to enter and inspect Unit 2 leased to the Tenant, and to allow contractors employed by the City to enter and carry out repairs or alterations to any part of Unit 2 or its fixtures, subject to reasonable notice and an opportunity to be present during said repairs or alterations.

g. Do nothing which would cause the insurance procured by the City to become void or invalidated.

h. To ensure that all employees of the Tenant that access Unit 2 are aware of these Rules and to make it a condition of employment that employees obey these Rules or any variation of them which are made from time to time.