

## **LEASE AGREEMENT**

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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 Brookings Backpack Project, 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 desires 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, 807 32<sup>nd</sup> Avenue, Brookings, South Dakota, as shown on the attached Exhibit "A", and which contains approximately 2,066 square feet.

### **2. Term/Option to Renew/Expiration**

The initial Lease term is Month to Month, and commences January 1, 2021.

Tenant shall have the option to renew this Lease on a month to month basis. Such renewal shall be upon the same terms and conditions as the initial term except that the rent shall be adjusted as provided in Section Four (4), below. Tenant's option to renew shall conclusively be deemed to have been exercised without prior notice unless Tenant provides written notice of Tenant's intent not to renew to City no later than thirty (30) days prior to expiration of the then current lease term. On December 31, 2022 at 5:00 PM, unless terminated earlier, this Lease will terminate.

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

The above leased premises shall be used by Tenant for the following purposes and no others without the prior written consent of City:

Storage and preparation of supplies associated with the Brookings Backpack Program

No use by Tenant 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**

The Tenant shall pay as rent for 807 32<sup>nd</sup> Avenue, the sum of \$0.00 per square foot.

## **5. Utilities**

Tenant shall be responsible for paying its' own utilities associated with 807 32<sup>nd</sup> Avenue. The utilities are in the name of the City and as such, the City will bill Tenant directly for the utility expenses of 807 32<sup>nd</sup> Avenue. Tenant shall be responsible for paying the City within thirty (30) days of receipt of the utility billings. Failure to timely pay the utility billings, in addition to all other remedies, will result in a ten (10%) percent late charge (10% of the unpaid utility payment).

## **6. Tenant Covenants**

The Tenant makes the following covenants:

- A. To keep the interior of 807 32<sup>nd</sup> Avenue and all fixtures therein in good condition and repair.
- B. Not to make any structural alterations or additions to 807 32<sup>nd</sup> Avenue without the written consent of the City.
- C. Not to assign this Lease, nor sublet 807 32<sup>nd</sup> Avenue, nor to permit any other person to occupy 807 32<sup>nd</sup> Avenue, except for employees and invitees of the Tenant.
- D. To remove, at the termination of this Lease, all goods and effects, and to leave 807 32<sup>nd</sup> Avenue at the conclusion of this Lease in good repair and order, reasonable wear and tear excepted.
- E. To use 807 32<sup>nd</sup> Avenue 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", attached to this Lease as Exhibit "B", or such amended rules that may be issued by the City or the City's agents.
- F. 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 the 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 persons or property of employees of Tenant or to other persons visiting the Tenant's place of business.
- G. To comply with all Federal, state, or local laws which may affect the Tenant's use of 807 32<sup>nd</sup> Avenue.
- H. Not to affix signs or advertising displays of any kind, either to the exterior or interior walls of 807 32<sup>nd</sup> Avenue, or to any of its doors or windows, without the prior written consent of City.
- I. 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.

J. 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:

- A. The City covenants that it has the right to grant this Lease as Owner of the building.
- B. 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.
- C. To insure and keep insured at all times the buildings, structures and fixtures owned by the City against fire, windstorm and similar occurrences.
- D. To permit the Tenant to occupy 807 32<sup>nd</sup> Avenue during the term of this Lease quietly and peaceably, provided the Tenant performs the covenants of this Lease.
- E. 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**

- A. 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.
- B. Both parties agree that if 807 32<sup>nd</sup> Avenue 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.
- C. If Tenant receives the City's written permission to alter or add to the structure, the alterations or additions will be undertaken at the expense of the Tenant.

## **9. Default and Remedies**

- A. Events of Default. The occurrence of any of the following shall constitute a default and material breach of this Lease by Tenant:

1. Any failure by Tenant to pay any rent or any other charge required to be paid under this Lease, or any part thereof, within ten (10) days of the due date; or

2. Any failure by Tenant to observe or perform any other provision, covenant or condition of this lease to be observed or performed by Tenant where such failure continues for ten (10) days after written notice thereof from City to Tenant; provided that if the nature of such default is such that the same cannot reasonably be cured within a ten (10) day period, Tenant shall not be deemed to be in default if it shall commence such cure within such period and thereafter diligently pursue such cure to completion; or

3. Abandonment of the Premises by Tenant; or

4. To the extent permitted by law, or the filing by or against Tenant of any proceeding under bankruptcy law.

B. Remedies. In the event of a default by Tenant, the City, in addition to any other remedies set forth herein or available to it at law or in equity, including injunction, at its option, and without further notice or demand of any kind to Tenant or any other person may:

1. Terminate this Lease and declare the Lease Term hereof ended and re-enter the Premises and take possession thereof and remove all persons and property therefrom, and Tenant shall have no further claim thereon or hereunder; or

2. Even though the City may have re-entered the Premises, thereafter elect to terminate this Lease and all of the rights of Tenant in or to the Premises.

3. Should the City have re-entered the Premises under the provisions of paragraph 2 above, City shall not be deemed to have terminated this Lease or the liability of Tenant to pay any rental or other charges thereafter accruing, or to have terminated Tenant's liability for damages under any of the provisions hereof by any action in unlawful detainer or otherwise to obtain possession of the Premises, unless the City shall have notified Tenant in writing that it has so elected to terminate this Lease.

Should the City elect to terminate this Lease pursuant to the provisions of this section, the City may recover from Tenant as damages the following:

(i) The value at the time of the award of any unpaid rent, late charges and other charges which had been earned or were payable by Tenant at the time of termination.

C. Cure of Tenant's Default. Should Tenant fail to pay and discharge, when due and payable any lien or claim for labor or materials, or any claim for damages arising out of the repair, alteration, maintenance and use of the Premises to be paid by Tenant under this Lease, or should Tenant fail to provide evidence of the issuance and coverage of any insurance policy as required by this Lease, or should Tenant fail to fully pay any sum to be paid or perform any covenant or agreement to be performed by Tenant, as provided for in this Lease, after ten (10) days' written notice from the City, then the City may, at its option and without waiving or releasing Tenant from any of Tenant's obligations hereunder, pay any such lien, claim, or charge, or settle or discharge any action therefor

or satisfy any judgment thereon, or obtain any such insurance, or pay any such sum or perform any such covenant or agreement. All costs, expenses and other sums incurred or paid by the City in connection therewith, together with interest at the rate of one (1%) percent per month on such costs, expenses, and sums from the date incurred or paid by City, shall be deemed to be additional rent hereunder and shall be paid by Tenant to City upon demand, and any default therein shall constitute a breach of the covenants and conditions of this Lease.

D. No Waiver. The waiver by the City of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of rent by the City shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease other than the failure of Tenant to pay the particular rent so accepted, regardless of the City's knowledge of such preceding breach at the time of acceptance of such rent. No covenant, term or condition of this Lease shall be deemed to have been waived by Landlord unless such waiver is in writing and executed by the City.

#### **10. Miscellaneous**

A. 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.

B. 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 \_\_\_\_ day of \_\_\_\_\_, 2020.

CITY OF BROOKINGS, SOUTH DAKOTA, LESSOR

By: \_\_\_\_\_  
Paul Briseno, City Manager  
City of Brookings

ATTEST:

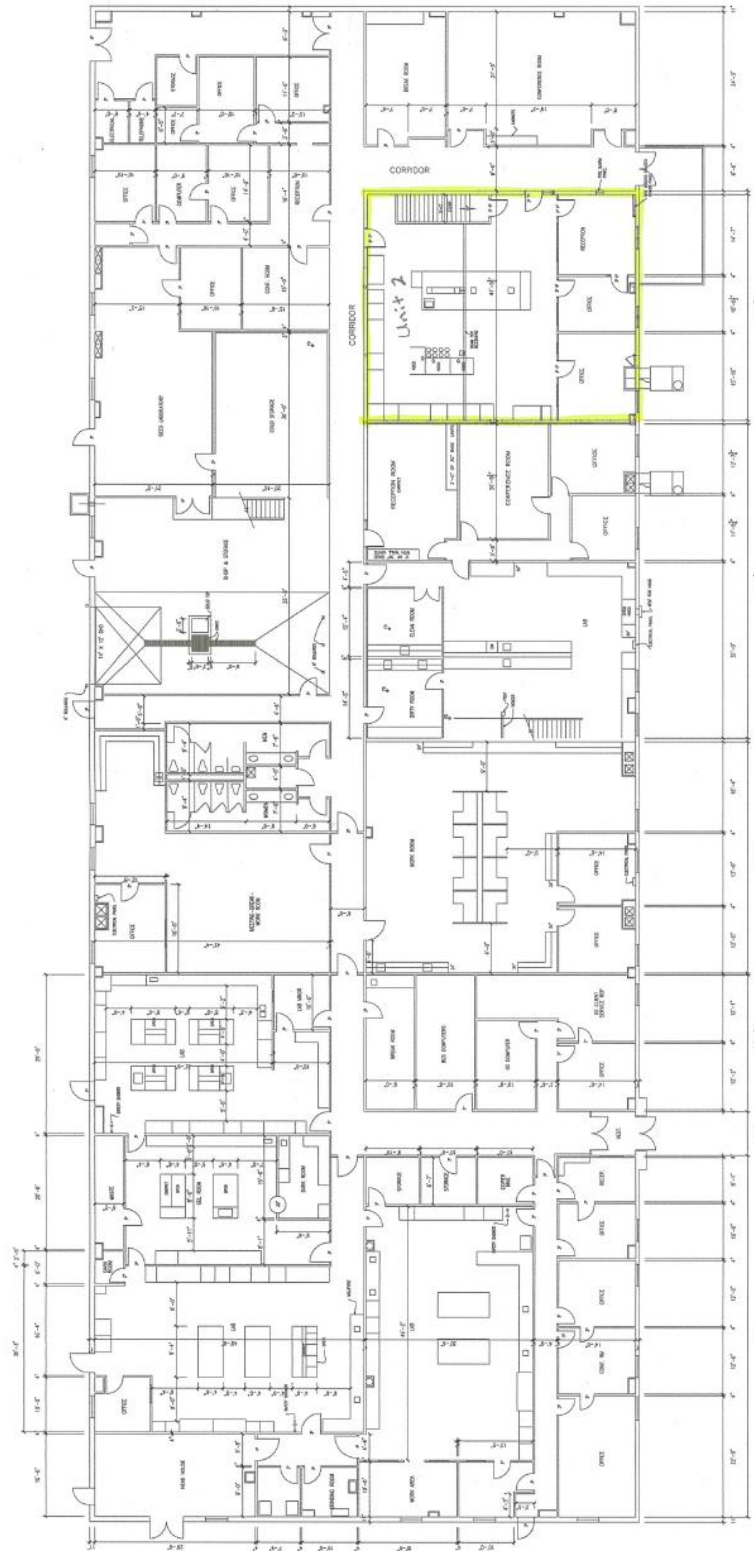
\_\_\_\_\_  
Bonnie Foster, City Clerk

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

Brookings Backpack Project, Tenant

By: \_\_\_\_\_  
Its: President

# Exhibit "A"



Brookings Multiplex Research Building

Research & Technology Library

Not To Scale

Brookings City Engineer

## **Exhibit "B"**

### **TENANT RULES OF OCCUPATION**

1. These are the Rules of Occupation referred to in Section 6 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 807 32<sup>nd</sup> Avenue 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 807 32<sup>nd</sup> Avenue leased to the Tenant, and to allow contractors employed by the City to enter and carry out repairs or alterations to any part of 807 32<sup>nd</sup> Avenue 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 807 32<sup>nd</sup> Avenue 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.