

**SECOND AMENDED AND RESTATED HUNTERSVILLE/ELECTRICITIES
OPERATIONS CENTER LEASE AGREEMENT**

This Second Amended and Restated Lease Agreement ("Second Amended Agreement") is made as of the ____ day of _____, 2015, by and between the TOWN OF HUNTERSVILLE (hereafter, "Town") and ELECTRICITIES OF NORTH CAROLINA, INC. (hereafter, "Tenant"), for itself and as operating entity for the Huntersville Electric System and the Cornelius Electric System.

WITNESSETH

WHEREAS, Town is the owner of the land, with a building containing approximately 8,552 square feet of usable space ("Building") located at 11316 Sam Furr Road; and

WHEREAS, pursuant to a Lease Agreement dated July 1, 1997 ("Original Lease"), a first amendment thereto approved by the Board of Commissioners on May 19, 2008 ("Amendment"), and an Amended and Restated Lease dated September 17, 2012 ("Restated Lease"), Town now leases the Building to Tenant with the leased area and the financial obligations apportioned between Tenant as operator of the Huntersville Electric System and Cornelius Electric System and Tenant on behalf of the Power Agency Group (hereafter, "NCMPA 1"); and

WHEREAS, Tenant's rental payments for the portion attributable to the operation of the Huntersville and Cornelius Systems are allocated between the Huntersville Electric Enterprise Fund ("Huntersville Fund") which pays sixty (60%) per cent and the Cornelius Electric Enterprise Fund ("Cornelius Fund") which pays forty (40%) percent. The rent for the area not used for the operation of the Huntersville and Cornelius Funds are paid by Tenant but with funds not from the Huntersville Fund nor the Cornelius Fund; and

WHEREAS, the rental rate is and will continue to be based upon an annual rate of \$9.02 per square foot; and

WHEREAS, the Parties wish to amend and restate the Lease to re-allocate the area and the rental responsibility between Tenant as operator of the Huntersville and Cornelius Systems, and on behalf of NCMPA1 and on behalf of ElectriCities Corporate Group in the following manner:

Operation of the Huntersville and Cornelius Systems: 6,019 square feet - \$54,291.38

NCMPA1: 1,000 square feet - \$9,020.00

Corporate Group: 1,533 square feet - \$13,827.00

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties do hereby amend and restate the Original Lease, the Amendment and the Restated Lease, and agree as follows:

I. PREMISES

Town hereby leases to and Tenant (for itself and on behalf of the Huntersville Electric System and the Cornelius Electric System) and accepts rental of the Building of approximately 8,552 square feet located at 11316 Sam Furr Road, ("Leased Premises") together with reasonable right of usage of the parking and outside areas associated with the Leased Premises. Tenant accepts the total Leased Premises for the term stated and at the rental agreed to herein as may be extended or amended.

II. TERM

The term of this Agreement shall be deemed to begin as of July 1, 2015 and continue for a period of three (3) years to and including June 30, 2018. In any event this lease shall terminate as of that date unless parties mutually agree to renew for additional terms.

III. RENT

- a. Rental Payments, as hereafter set forth, shall be payable in annual payments due on June 1 of each fiscal year of the lease. For example, the lease payment for the lease year of July 1, 2015 through June 30, 2016, shall be due and payable on or before June 1, 2016. If not paid by June 10 of the fiscal year, the payment shall be deemed late and in default.
- b. The annual base rent for the Leased Premises shall be calculated at Nine and 02/100 (\$9.02) Dollars per square foot, a total of Seventy-Seven Thousand, One Hundred, Thirty-nine and 04/100 (\$77,139.04) Dollars per year. A portion of the annual rental representing the rent for one thousand (1000) square feet (\$9,020.00/sq. ft. annually) shall be allocated to and paid by Tenant for NCMPA1, but not paid from either the Huntersville Fund or the Cornelius Fund, and a portion represents the rent for 1,533 square feet (\$13,827.00) shall be paid by Tenant on behalf of the Corporate Group and not paid by the Huntersville Fund or the Cornelius Fund. The balance shall continue to be paid by the respective Electric Enterprise Funds by a separate agreement between the two funds, currently set at sixty (60%) per cent for the Huntersville Fund and forty (40%) per cent for the Cornelius Fund.
- c. Notwithstanding the provisions of paragraph III b., the annual rental obligation of the Huntersville Fund to the Town shall continue to be paid partially in the form of a credit against the advance for the new construction under the 2008 Amendment in the nature of prepaid rent as set forth in the Amended and Restated Lease, presently in the amount of \$7,574.11 for each year through fiscal year 2024, and a final credit for fiscal year 2025 in the amount of \$2,736.02. There will be no credit for the amounts paid by Huntersville Fund for the Interior Upfitting. The balance of the Huntersville Fund share of rent for the appropriate fiscal year shall be paid as set forth in III.a. The Cornelius Fund, in addition to its share of the Base Rent, shall continue to pay its share of the cost of the 2008 new construction.

- d. In the event any rental payment is not received in the office of the Town on or before the 10th day of June of any fiscal year, a late payment charge of two (2%) per cent of the Tenant's annual rent shall be added to the rental obligation. This additional sum shall become automatically due and payable without notice, and failure to make payment of this additional amount shall be deemed a failure to pay rent and a default in this Agreement.

IV. RENEWAL

At the end of the three year term as specified above, this Lease shall terminate as of June 30, 2018, unless the parties hereto have mutually agreed to renew, or enter into a new Agreement for an additional term or terms.

V. SECURITY DEPOSIT

- a. The Town hereby acknowledges that it had received a security deposit in the sum of twenty-six hundred eighty-eight dollars (\$2,688.00), the equivalent of 1/12 of the initial annual rental payment to secure Tenant's performance of the terms of the Original Lease. Tenant acknowledges that in the event this Lease is renewed, Town may require Tenant to deposit with Town on the first day of the commencement of the new lease period, sufficient additional funds so that the security deposit held by Town is equal to 1/12th of one year's then current rental payment. In the event Tenant shall fail to maintain the security deposit at the necessary amount, such failure shall constitute a ground of default.
- b. The security deposit, or so much as is then available after deduction of all proper charges, shall be returned to Tenant no later than thirty (30) days following termination of this Lease.
- c. Town may use, apply or retain the whole or any part of the security deposit to the extent required for the payment of any rent or other sum as to which the Tenant is in default, or for any sum which the Town may expend or may be required to expend by reason of the Tenant's default in respect of any of the terms of this Lease. Tenant may not assign or encumber money security deposit, and the Town shall not be bound by any such assignment or encumbrance.
- d. In the event of any default in the terms and conditions of this Lease, which default results in the expenditure of funds by Town, but which does not result in the termination of this Lease. Town shall have the option of applying so much of the security deposit as is necessary to cover such expenditure.

VI. USE OF PREMISES

- a. Tenant shall use the leased premises as an operations center for serving electrical customers and maintaining electrical distribution systems.
- b. The Tenant shall not use or occupy or permit the demised premises to be used or occupied, nor do or permit anything to be done in or on the demised premises, in a manner which would be deemed disreputable or extra hazardous, or make void or voidable any insurance any insurance then in force with respect thereto, or which will result in any increase in the customary premium charged for warehouse insurance, or

cause Town to be unable to obtain at regular rates fire or other insurance required to be maintained by the Tenant or Town hereunder, or which will cause or be likely to cause structural damage to the Building or any part thereof, or which will constitute a public or private nuisance, and shall not use or otherwise permit the demised premises to be used or occupied in any manner which will violate any present or future laws of any governmental authority.

- c. Town shall have the right to establish reasonable and uniform rules governing use of the leased premises by Tenants in order to insure compliance with public laws, ordinances, and regulations and insurance requirements to protect the premises.
- d. Town covenants that Tenant, upon the prompt payment of rent and other previously mentioned charges and upon the performance of all other covenants herein, shall and may peaceably and quietly have, hold and enjoy the leased premises for the term of this Lease.

VII. TENANT IMPROVEMENTS

Except for the conversion to office space as hereinabove provided, Tenant accepts the leased premises as is. After receiving written permission from Town, which permission shall not be unreasonably withheld, Tenant may, at his or her own expense, improve all interiors of leased premises in conformance with agreed uses, provided that all improvements shall be in compliance with all applicable codes, ordinances and regulations. The Town, at its discretion, may make improvements to the property at the Tenant's request, with requisite increases in rent to cover the improvements. All such improvements, whether paid for by Tenant or Town, should remain the property of the Town at the termination of this Lease.

VIII. REPAIRS AND MAINTENANCE

- a. Tenant shall be responsible for maintaining all tenant improvements, as well as the walls, floors and ceilings of the leased premises, in good repair and in proper condition. Tenant shall insure that all repairs and maintenance performed by or on behalf of Tenant comply with all applicable codes and regulations, and that town's approval is obtained prior to commencement of any such work.
- b. Tenant shall be responsible for prompt repair of any damage or injury caused by Tenant to the Building, its fixtures and appurtenances at his or her sole cost and expense and to the satisfaction of Town. Tenant shall be responsible for replacement when broken of all plate glass and windows in the Building which causes to be damaged.
- c. At the expiration of the term of this Lease, Tenant shall be required to pay the cost of returning the leased premises to the same condition as when the term of this Lease commenced, reasonable wear and tear excepted. It is expressly agreed that Tenant shall not be required to bear the cost of repairing the leased premises, unless such expenditure is required due to the Tenant's decoration of the premises which causes same to be un-rentable without such repairing.

IX. UTILITIES

The Tenant is responsible for all utilities necessary for the use of the leased premises.

X. DEFAULT

- a. The occurrence of any of the following shall be considered an event of default hereunder:
 - i. If the Tenant shall be in default in the performance of any covenant of this Lease (other than the covenants for the payment of rent), and such default is not cured within thirty (30) days after written notice thereof given by the Town; or, if such default shall be of such nature that it cannot be cured completely within such thirty (30) day period, if the Tenant shall not have promptly commenced within such thirty (30) day period or shall not thereafter proceed with reasonable diligence and in good faith to remedy such default.
 - ii. If the leased premises becomes vacant or deserted for a period of thirty (30) days without prior written notice to Town.
 - iii. If Tenant shall attempt to assign or sublet the premises in violation of the provisions of Article XIII.
 - iv. If the Tenant shall be in default in the payment of any rent and such default is not cured within five (5) days after written notice thereof by Town.
 - v. In the event the Tenant or Town files a voluntary petition in bankruptcy, or is adjudicated as bankrupt, or insolvent; or makes an assignment for the benefit of its creditors; or allows any judgment or lien to remain outstanding for more than thirty (30) days.
 - vi. In the event the Tenant fails to maintain the security deposit at the necessary amount.
- b. Upon the occurrence of an event of default as defined above, Town, in addition to any other lawful right or remedy with it may have, may do the following:
 - i. Declare the rent for the balance of the term immediately due and payable, and collect the same by available legal remedies;
 - ii. Repossess the leased premises, and with or without terminating this Lease, relet the same at such amount as Town deems reasonable and if the amount is less than the rent required under this Lease, Tenant shall immediately pay the difference on damages. All expenses of Town repairing, restoring or altering the leased premises for reletting, together with leasing fees and all other expenses in seeking and obtaining a new tenant, shall be charged to and be a liability of Tenant. Notwithstanding anything contained herein, this Lease shall not be considered terminated unless the Town shall specify in writing. In the event of any litigation between Town and Tenant, the prevailing party shall be entitled to recover reasonable attorney fees.

XI. FIRE AND OTHER CASUALTY

In the event of irreplaceable or irreparable damage by fire or other casualty to the Building in which the leased premises are located, meaning any such damage that cannot be reasonably restored or repaired within sixty (60) days, this Lease shall immediately terminate. In such event, any rent of such amounts to the Town as may then be due, all rights under this Lease shall terminate. In all other cases where the leased premises may be damaged by fire or other casualty, the Town shall repair the damage with all due dispatch, to the extent that there are insurance proceeds available, and if the damage has rendered the leased premises untenable, in whole or in part, there shall be an

apportionment determined by the Town of the rent to be paid until the damage has been repaired. Tenant shall be responsible for the repair and replacement of all personal property and tenant improvements located in the leased premises.

XII. INDEMNIFICATION; INSURANCE

Tenant agrees to and does hereby indemnify and hold Town harmless against any and all claims, demands, judgments, damages, actions, causes of actions, injuries and expenses of any kind, including but not limited to attorney fees arising out of or by reason of Tenant's use or occupancy of the premises, including but not limited to wrongful or negligent acts of Tenant, its officers, employees, agents, guests or invitees. In addition, and not in lieu thereof, the Town reserves the right to require liability insurance, in the amounts and under the conditions deemed necessary by the Town based on the use of the space. Should such insurance be required, Tenant must provide Town with a Certificate of Insurance stating the name of company, liability limits, coverage dates and contact agent.

Town shall provide casualty insurance insuring against loss by fire, or other hazards for the building in such amounts as the Town shall deems appropriate, and for personal property and equipment belonging to Town. Tenant shall be responsible for its own casualty insurance for personal property and equipment owned by it and not a part of the Building and Tenant does hereby waive and hold Town harmless for any claim that Tenant may have by reason of damage or destruction of its personal property and equipment.

XIII. SUBLEASE

Tenant may not sublease, assign, or transfer all or any part of the leased premises during the term of this Lease. Tenant will remain personally liable for all obligations contained herein, and Town's acceptance of rental payments from any sublessee shall not be deemed a release of Tenant's obligations under this lease, or a waiver of any rights which Town may have against Tenant.

XIV. DUTY TO INFORM TOWN OF LATENT OR PATENT DEFECTS

The Tenant has the duty to inform the Town of any latent or patent defects in the premises of which the Tenant has knowledge.

XV. NOTICES

All Notices required hereby shall be sent to the address designated below, unless changed by written notice:

Town:
Town of Huntersville
Post Office Box 664
Huntersville, NC 28070

Tenant:
ElectriCities of NC, Inc.
Post Office Box 2819
Huntersville, NC 28070

XVI. ENTIRE AGREEMENT

This Lease can only be an agreement in writing, signed by both parties. If any term or provision of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

XVII. SITUS

This Lease shall be governed by, construed and enforced in accordance with the laws of the State of North Carolina. The sole venue for the resolution of any dispute hereunder shall be a State or Federal Court sitting in Mecklenburg County, North Carolina.

IN WITNESS WHEREOF, the parties have executed this Lease on this _____ day of _____, 2015.

ATTEST:

TOWN OF HUNTERSVILLE

Janet Pierson, Town Clerk

BY: _____
Greg Ferguson, Town Manager

APPROVED AS TO FORM:

Robert B. Blythe, Town Attorney

ATTEST:

LESSEE

BY: _____

Title: _____