

**AGREEMENT BETWEEN THE CITY OF RAPID CITY AND BLACK HILLS POWER,
INC. FOR CONSTRUCTION OF PUBLIC SANITARY SEWER AND FOR OVERSIZE
SANITARY SEWER MAIN COST REIMBURSEMENT**

THIS AGREEMENT is made and entered into by and between the CITY OF RAPID CITY, a municipal corporation, of 300 Sixth Street, Rapid City, SD 57701, hereinafter referred to as the “City,” and BLACK HILLS POWER INC., of 7001 Mt Rushmore Road, Rapid City, South Dakota, 57702 hereinafter referred to as the “Developer.”

WHEREAS, Developer owns property located within the City of Rapid City on Deadwood Avenue, legally described as follows:

Lot 1 of the NE1/4SW1/4 Less Lot H1 of Section Thirty-Four (34), Township Two North (T2N), Range Seven East (R7E) of the Black Hills Meridian, Rapid City, Pennington County, South Dakota;

Lot 2 of BHP Addition to the City of Rapid City, Pennington County, South Dakota; and

Lot C of the NW1/4SE1/4 and the vacated portion of the Deadwood Avenue right-of-way to said Lot less lots H-1(E) and H2 of Section Thirty-Four (34), Township Two North (T2N), Range Seven East (R7E) of the Black Hills Meridian, Rapid City, Pennington County, South Dakota; and

WHEREAS, no public sewer main is currently located adjacent to Developer’s property;
and

WHEREAS, Developer desires to construct approximately 2087 linear feet of 8 inch diameter public sewer main, to be known as Schedule A, as shown in Exhibit A, to allow for redevelopment of Developer’s property and for connection to City sewer service; and

WHEREAS, the City has requested the Developer construct an additional portion of 8 inch sewer main beyond Schedule A across the entire length of Developer’s property, which oversize portion is approximately 1072 linear feet beyond the Developer’s needed location, to be known as Schedule B, as shown in Exhibit B; and

WHEREAS, the City wishes for Developer to extend its sewer main an additional 1072 linear feet to the Cement Plant Street access easement¹ to improve public sewer access for existing parcels north of Developer’s property, which currently do not have access to a public sewer main;
and

WHEREAS, the City has agreed to pay for the oversize cost of the 8 inch sanitary sewer main in beyond the Developer’s requested location, known as Schedule B; and

¹ Cement Plant Street is located in an access easement and is not public right of way.

WHEREAS, the Developer is willing to design and construct the sewer main improvements to the Cement Plant Street access easement if the City agrees to pay for the oversize costs of the sewer main improvements in Schedule B up to a maximum of \$135,572.92; and

WHEREAS, the Developer has contracted with a professional engineer to prepare the design plans, contract documents and detailed specifications for the design of the 8 inch sanitary sewer main, as well as cost estimates for the construction; and

WHEREAS, the plans have been reviewed by the City, and the City concurs with the Developer's cost estimates; and

WHEREAS, the City has agreed to accept ownership of the sanitary sewer main upon its completion according to the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions herein set forth, it is agreed by the parties as follows:

1. Recitals. The recitals set forth above constitute an integral part of this Agreement and are incorporated herein by this reference as if fully set forth herein as agreements of the parties.

2. Design. The Developer hereby agrees to contract with a professional engineer to design the sanitary sewer main. The sanitary sewer main plans shall be designed in accordance with the City's Infrastructure Design Criteria Manual and the City's Standard Specifications for Public Works Construction. All plans shall be approved by the City prior to starting construction.

3. Construction Observation. The Developer hereby agrees to contract with a professional engineer to provide construction observation services for the sanitary sewer main construction. The City reserves the right to observe and inspect all construction activities within the public right-of-way or public sanitary sewer main easements.

4. Pre-Construction Meeting. The Developer shall conduct a pre-construction meeting prior to commencing construction of the sanitary sewer main. The Developer shall notify the City and all affected private and public utilities affected by the project of the meeting date and time a minimum of five working days prior to the meeting. The Developer, the Developer's professional engineer, and the Developer's construction contractor shall attend the pre-construction meeting.

5. Sewer Main Easements. The Developer agrees to secure all necessary easements including permanent sewer easements and temporary construction easements. Developer shall provide such easement prior to City's acceptance of the project.

6. Permits. The Developer agrees to obtain all applicable permits prior to construction.

7. Construction. The Developer agrees to construct an 8 inch sanitary sewer main the entire length of its property to the Cement Plant Street access easement on the north boundary of Developer's property, in accordance with the approved plans. No changes or variances from the plans shall be allowed unless approved by the City in writing. Developer shall be responsible for all construction costs associated with the 8 inch sanitary sewer main. The City's participation shall

be by reimbursement of amounts expended by the Developer for oversize construction as noted in Item 8.

8. Oversize Reimbursement. The City agrees to reimburse Developer for the construction of the 8 inch sanitary sewer main oversize construction for a total maximum dollar amount not to exceed \$135,572.92. This maximum dollar amount is based upon quantities and costs provided in Exhibit C attached hereto and incorporated herein by this reference. If actual quantities and costs are less than specified in Exhibit C, the amount of reimbursement shall be adjusted accordingly. The Developer shall provide certified costs which contain sufficient information for the City to review Developer's actual oversize construction costs and determine the accuracy of the invoice.

Payment to Developer shall be conditioned on a timely request for reimbursement submitted within 90 days of City's acceptance of work pursuant to Section 10. The Developer may request reimbursement by the City only following acceptance of the project. The City shall make payment to the Developer within 45 calendar days of receipt of the reimbursement request, provided the project has been accepted.

The oversize costs payable by the City will be recouped by charging construction fees to benefiting properties, identified in Exhibit D. A construction fee resolution will be placed on the next available City Council agenda upon receipt of a request for reimbursement by the Developer.

9. Warranty. Prior to project acceptance by the City, a warranty bond, or other equivalent surety, in an amount equivalent to ten percent (10%) of the total cost of the 8" sanitary sewer main shall be provided to the City to secure the warranty for a period of two years. This obligation may be met by Developer supplying an equivalent warranty bond from their contractor for the project. The surety shall be in a form acceptable to the City Attorney. The warranty shall also meet the requirements of the City's Standard Specifications for Public Works Construction, Section 7.65.

10. City Acceptance of Work. Acceptance of the project by the City will not be considered until all construction and testing is completed, as-built plans submitted, and costs verified. Upon the City's approval of the same, acceptance will be documented by issuance of an acceptance letter by the City.

11. Additional Provisions.

- A. *Severability*. In the event that any section(s), or provision(s) of this Agreement is declared invalid for any reason whatsoever by any competent court, such invalidity shall not affect any other section(s) or provision(s) of this Agreement if it can be given effect without the invalid section(s) or provision(s).
- B. *Governing Law and Venue*. The parties agree that the terms of this Agreement shall be governed by the laws of the State of South Dakota. In the event of any conflict of laws, the law of the State of South Dakota shall be controlling. Any legal action arising out of or

relating to this agreement shall be brought only in the Circuit Court of the State of South Dakota, Seventh Judicial Circuit, located in Rapid City, Pennington County, South Dakota.

C. *Entire Agreement.* The parties agree that this writing constitutes the entire agreement between them and that there are no other oral or collateral agreements or understandings of any kind or character except those contained herein. No modification or amendment to this Agreement shall be valid, unless evidenced by a writing signed by the parties hereto.

CITY OF RAPID CITY

Mayor Steve Allender

ATTEST:

Pauline Sumption, Finance Officer

(seal)

State of South Dakota)

ss.

County of Pennington)

On this the _____ day of _____, 2019, before me, the undersigned officer, personally appeared Steve Allender and Pauline Sumption, who acknowledged themselves to be the Mayor and Finance Officer, respectively, of the City of Rapid City, a municipal corporation, and that they as such Mayor and Finance Officer, being authorized to do so, executed the foregoing Agreement for the purposes therein contained by signing the name of the City of Rapid City by themselves as Mayor and Finance Officer.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

(seal)

Notary Public, South Dakota
My Commission Expires: _____

BLACK HILLS POWER, INC.

By *Christopher W. Anderson*

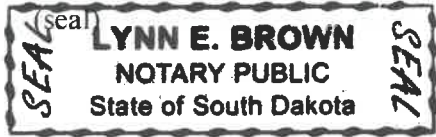
Printed Name Christopher W Anderson

Its Director Real Estate & Facilities

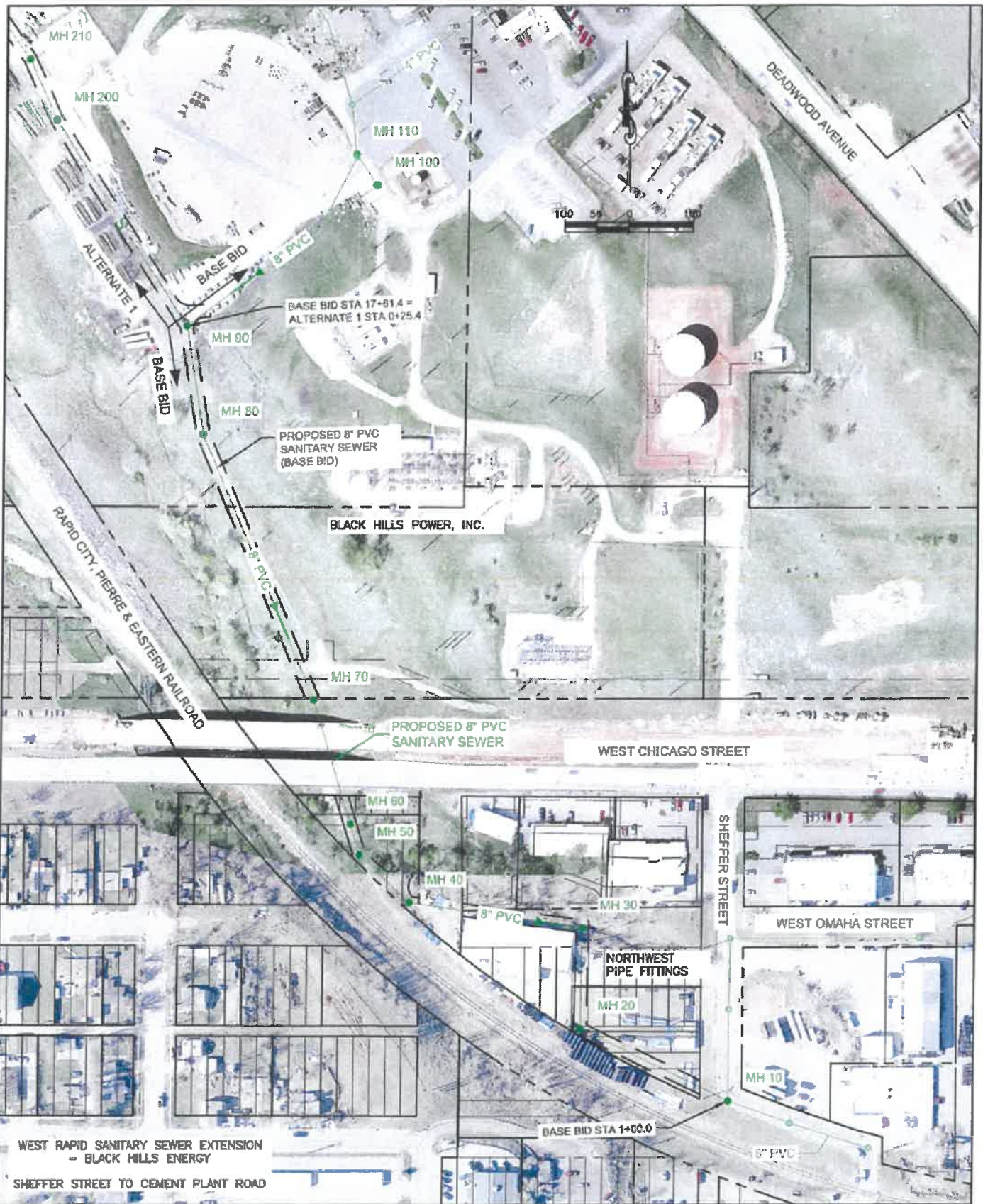
STATE OF SOUTH DAKOTA)
)ss.
COUNTY OF PENNINGTON)

On this 18th day of April, 2019, before me, the undersigned officer, personally appeared Christopher W. Anderson, known to me or satisfactorily proven to be the persons whose names subscribed to the within instrument and acknowledged that they executed the same who acknowledged him/herself to be the Dir. Real Estate & Facilities of BLACK HILLS POWER, INC., and that as such, being duly authorized to do so, executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF I hereunto set my hand and official seal.



Lynn E. Brown
Notary Public, South Dakota
My Commission Expires: 6-29-2024



02-18-18 P:\18-145\AutoCAD\Figures\EXHIBIT A.dwg



• Civil Engineering
 • Geotechnical Solutions
 • Water Resources
 • Transportation
 • Land Surveying

EXHIBIT A

PROJECT NO.	J18-145
FIGURE NO.	1 OF 1



P:\18-145\AutoCAD\Figures\EXHIBIT_B.dwg

WEST RAPID SANITARY SEWER EXTENSION
 - BLACK HILLS ENERGY
 SHEFFER STREET TO CEMENT PLANT ROAD



EXHIBIT B

PROJECT NO.
 J18-145
 FIGURE NO.
 1 OF 1

EXHIBIT C

ENGINEERS ESTIMATE OF PROBABLE CONSTRUCTION COST* – ALTERNATE 1



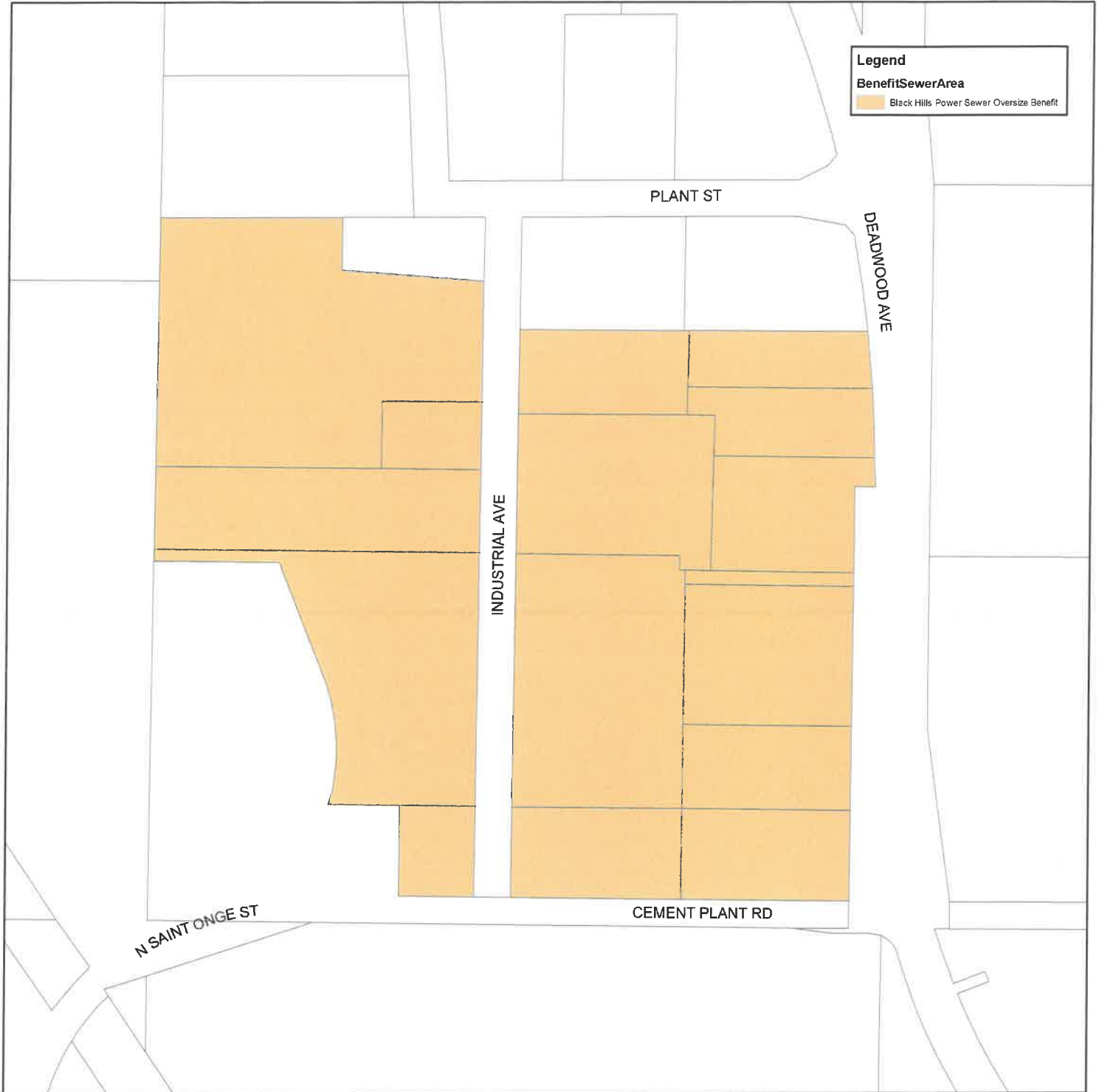
**Ferber
Engineering
Company, Inc.**

PROJECT: SANITARY SEWER EXTENSION
CLIENT: BLACK HILLS ENERGY
DESCRIPTION: SHEFFER STREET TO CEMENT PLANT ROAD
DATE PREPARED: 3/8/19 3:13 PM
ESTIMATOR: AJC/DMM

ITEM NO.	DESCRIPTION OF ITEM	QUANTITY	UNIT	UNIT COST	TOTAL COST
1	MOBILIZATION	1	LS	\$6,600.00	\$6,600.00
2	INCIDENTAL	1	LS	\$5,775.00	\$5,775.00
3	REMOVE CONTAMINATED SOIL	200	CY	\$50.00	\$10,000.00
4	REMOVE AC PAVEMENT	1137	SY	\$4.50	\$5,116.50
5	REMOVE PCC PAVEMENT	13	SY	\$9.00	\$117.00
6	AASHTO T-180 PROCTOR TEST	2	EA	\$150.00	\$300.00
7	TYPE III FOUNDATION MATERIAL	75	T	\$35.00	\$2,625.00
8	TYPE IV FOUNDATION MATERIAL	75	T	\$35.00	\$2,625.00
9	INSTALL 8" PVC SEWER MAIN (0'- 6')	321	LF	\$35.00	\$11,235.00
10	INSTALL 8" PVC SEWER MAIN (6'- 8')	453	LF	\$37.00	\$16,761.00
11	INSTALL 8" PVC SEWER MAIN (8'-10')	301	LF	\$39.00	\$11,739.00
12	STANDARD MANHOLE, 48"	4	EA	\$4,500.00	\$18,000.00
13	EXTRA MANHOLE DEPTH, 48"	5.8	VF	\$350.00	\$2,030.00
14	12" SEDIMENT CONTROL WATTLE	1031	LF	\$4.00	\$4,124.00
15	AGGREGATE BASE COURSE	245	T	\$22.00	\$5,390.00
16	AC, CLASS E, TYPE I PG64-28	162	T	\$105.00	\$17,010.00
	SUBTOTAL				\$119,447.50
	SURVEY AND DESIGN			7.00%	\$8,361.33
	CONSTRUCTION OBSERVATION and STAKING			6.50%	\$7,764.09
	TOTAL				\$135,572.92

*Ferber Engineering has no control over the cost or availability of labor, equipment or materials nor over market conditions. Ferber Engineering makes no warranty, expressed or implied, that the cost of the work will not vary from this estimate.

Exhibit D



BLACK HILLS ENERGY SANITARY SEWER EXTENSION SANITARY SEWER OVERSIZE CONSTRUCTION FEE AND BENEFITING AREA

