

**AGREEMENT FOR UTILITY RELOCATION BETWEEN THE CITY OF RAPID CITY  
AND BLACK HILLS POWER, INC. FOR REIMBURSEMENT OF POWER  
TRANSMISSION/DISTRIBUTION LINE RELOCATION COSTS FOR THE CIVIC  
CENTER EXPANSION PROJECT NO. 18-2452.**

This Agreement is entered into this \_\_\_ day of \_\_\_\_\_, 2019 by and between the City of Rapid City, a South Dakota municipal corporation, of 300 Sixth Street, Rapid City, SD 57701, (the “City”), and BLACK HILLS POWER, INC., d/b/a Black Hills Energy, of PO Box 1400, Rapid City, SD 57709 (the “Utility Company”).

The parties agree as follows:

1. Relocation Required by Project. The City is undertaking a project entitled Rushmore Plaza Civic Center Arena Expansion, Project No. 18-2452 (herein referred to as the “Project”). The Project requires relocation of utility infrastructure owned by the Utility Company, as described on Exhibit A. The parties agree that such relocation of the utility infrastructure shall be performed by Utility Company at the City’s cost, according to the terms of this Agreement.

2. Time for Relocation. The Utility Company shall perform the work concurrently with the Project, and as such, the Utility Company will not need to secure its own City permits for the work. The Utility Company and the City agree to coordinate the schedule for work to be performed, as further described on Exhibit A.

3. Consideration. In exchange for Utility Company’s performance of the work, the City shall compensate the Utility Company in an amount not to exceed Three Hundred Thirty-Eight Thousand Dollars and Zero Cents (338,000.00) (the “Contract Amount”). The Utility Company agrees to provide the City with an itemized invoice of work performed that reflects the actual cost to perform the work based on as-built plans.

4. Unknown Conditions. If the Utility Company’s actual costs exceed the maximum amount provided in Paragraph 3 due to unknown conditions or circumstances that were unable to be foreseen, the City and Utility Company agree to negotiate in good faith an amendment to this Agreement to reimburse the Utility Company for such unknown or unforeseeable expenses.

5. Payments. The Utility Company shall invoice the City upon conclusion of the work. Invoices shall include the Project name and number listed in Paragraph 1 and shall be sent to the City at the address provided above % Public Works Compliance Specialist. Payment for the work will be made to the Utility Company by check after the completion of the contracted work, receipt of a signed voucher, and approval by the City Council. Payment shall be made within 45 days after receipt of a signed voucher.

6. Standards. Specifications to be followed under this Agreement are the City of Rapid City Standard Specifications for Public Works Construction (current edition), the City’s Infrastructure Design Criteria Manual (current edition), and any Special Provisions, Special Conditions, and/or Detailed Specifications pertaining to the Project. The City agrees to provide copies of all relevant standards to Utility Company.

7. Integration. This Agreement and the agreements and documents referred to herein (including any exhibits incorporated herein) contain the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersede all prior agreements, negotiations, and understandings, whether written or oral, relating to the subject matter hereof. This Agreement may only be amended by a written document duly executed by all parties.

8. Third Parties. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns. Nothing herein shall give or be construed to give any person or entity, other than the parties hereto, their respective successors, and permitted assigns, any legal or equitable rights hereunder.

9. Communication. The parties agree that communication between the parties and coordination of the work described herein shall be made by and between the parties' representatives listed below as designated contacts.

10. Authority. This Agreement is made and entered into on behalf of the City by the Director of Public Works pursuant to the authority granted by SDCL § 9-1-5 and Section 3.04.090 of the Rapid City Municipal Code. Projects under \$50,000 may be executed on behalf of the City by the Public Works Director. Projects \$50,000 or higher shall be approved on behalf of the City by the Common Council and executed by the Mayor and Finance Officer.

11. Indemnity. The Utility Company agrees to indemnify, defend and hold the City harmless from and against any and all liability, losses, claims, damages, suits, costs, and expenses including, but not limited to, costs of defense and reasonable attorney's fees, which the City may hereafter suffer itself or pay to another party by reason of any claim, action, or right of action, at law or in equity, arising out of willful misconduct, error, omission or negligent act of the Utility Company and resulting in injury (including death) to any person or damage to any property to the extent such are caused by or are alleged to be caused by the Utility Company or its employees, any contractor or its employees, or any person, firm, partnership, or corporation employed or engaged by the Utility Company.

12. Relationship between the Parties. The relationship of the parties is that of independent contractors. The parties are not, by virtue of this Agreement or otherwise, in an employer-employee, principal-agent, joint venture or partnership relationship with each other, and each party agrees not to represent to any other person, or to assert in any form or forum to the contrary. Neither party is authorized to act as an agent for, or legal representative of, the other party and neither party shall have the authority to assume or create any obligation on behalf of, in the name of, or binding upon the other party.

13. Counterparts. This Agreement may be executed in counterparts; each such counterpart shall be deemed an original and when taken together with other signed counterparts, shall constitute one Agreement.

14. Further Action. The parties covenant and agree that each shall execute and deliver such further instruments or documents as shall be necessary or convenient to effectuate the purposes contemplated by this Agreement.

15. Severability. The invalidity of all or any part of any section of this Agreement shall not render invalid the remainder of this Agreement or the remainder of such section. If any provision of this Agreement is held to be unenforceable for any reason, it shall be modified rather than voided, if possible, in order to achieve the intent of the parties to this Agreement.

16. Choice of Law and Venue. This Agreement shall be governed and construed in accordance with the laws of the state of South Dakota, without regard for its choice-of-law principles, and all claims relating to or arising out of this Agreement, or the breach of the terms thereof, whether sounding in contract, tort or otherwise, shall likewise be governed by the laws of the state of South Dakota, without regard for its choice-of-law principles. The parties hereto explicitly agree to submit to the personal jurisdiction of South Dakota state courts, and any dispute relating to or arising out of this Agreement, or the breach of the terms thereof, whether sounding in contract, tort or otherwise, shall be decided solely and exclusively by the Circuit Court located in Pennington County, South Dakota.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

**CITY OF RAPID CITY**

\_\_\_\_\_  
Mayor Steve Allender

**ATTEST**

\_\_\_\_\_  
Pauline Sumption, Finance Officer

(seal)

**BLACK HILLS POWER, INC.**

By \_\_\_\_\_  
(signature)

\_\_\_\_\_  
(printed name)

Its \_\_\_\_\_  
(title)

City Designated Contact:

\_\_\_\_\_  
(printed name)

\_\_\_\_\_  
(phone)

\_\_\_\_\_  
(email)

Utility Company Designated Contact:

\_\_\_\_\_  
(printed name)

\_\_\_\_\_  
(phone)

\_\_\_\_\_  
(email)