AGREEMENT BETWEEN CITY OF RAPID CITY AND BLACK HILLS POWER, INC.
FOR REIMBURSEMENT OF POWER TRANSMISSION/DISTRIBUTION LINE
RELOCATION COSTS

This Agreement is made and entered into between the CITY OF RAPID CITY, 300 Sixth Street, Rapid City, SD 57701, herein after referred to as “City” and BLACK HILLS POWER, INC., d/b/a Black Hills Energy, of PO Box 1400, Rapid City, SD 57709, herein after referred to as “BHE.”

WHEREAS, BHE owns and operates a 69kV power transmission line with an associated 12.47kV under-built distribution line through the City’s Landfill (collectively, the “Power Lines”); and

WHEREAS, the property over which the Power Lines run is part of unopened but permitted cell for the Landfill’s expansion; and

WHEREAS, the City has agreed to pay the expense for BHE to relocate its Power Lines to other property on the Landfill that is not permitted for solid waste disposal; and

WHEREAS, the parties have agreed to terms and conditions under which BHE shall relocate the Power Lines and the City will reimburse BHE for its expenses.

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. **Relocation of Power Lines.** BHE agrees to move its Power Lines located on the Landfill Property. The Power Lines shall be relocated as shown on Exhibit A, attached hereto and made a part hereof, as if fully set forth herein.

3. **Expense Reimbursement.** The City agrees to reimburse BHE for its actual expenses in relocating its Power Lines in an amount not to exceed One Million Two Hundred Forty-two Thousand Five Hundred Eighty-six Dollars and Seventeen Cents ($1,242,586.17). The allocation of costs is set forth in Exhibit “B”. Notwithstanding the foregoing, if BHE’s actual costs exceed this amount due to unknown conditions or circumstances that were unable to be foreseen, the City and BHE agree to negotiate in good faith an amendment to this Agreement to reimburse BHE for such unknown or unforeseeable expenses.

4. **Claims for Reimbursement.** BHE shall invoice the City for its expenses. BHE shall have the option to invoice on a monthly, quarterly, or one-time basis upon completion of part or all of the work contemplated hereunder. Any invoice shall describe with reasonable degree of particularity the work completed and the cost associated with such work.

5. **Payment of Claims.** Upon receipt of the claim for reimbursement submitted pursuant to Paragraph 4, the City agrees to pay the claim within 45 days of the date the claim was submitted.

6. **Relationship Between the Parties.** This Agreement does not create an employment relationship between the City of Rapid City and the officers, directors, employees or agents of BHE. Nothing contained in this Agreement is intended to create a partnership or joint venture between the City of Rapid City and BHE.
7. Liability, Release and Indemnification. BHE assumes all liability for the work performed pursuant to this Agreement by its officers, employees, agents and assigns. BHE agrees to fully release, acquit and forever discharge the City from any and all actions, causes of action, claims, demands, damages, losses, and expenses of any kind, relating to work contemplated by the terms of this Agreement, with the exception of the reimbursement provided hereunder. BHE further agrees to defend, indemnify and hold the City, its officers, employees and agents harmless from and against any and all suit, claim, loss, liability, personal injury, property damage, costs and expenses (including reasonable attorneys’ fees and expenses of litigation), arising out of BHE’s relocation of distribution and service lines as provided in this Agreement, but only to the extent caused by the negligent acts or omissions of BHE. Notwithstanding anything to the contrary in this Agreement, BHE is not obligated to indemnify, hold harmless or defend the City against any claims (whether direct or indirect) if such claims arise out of the City’s (a) negligent acts or omissions (including recklessness or willful misconduct) or (b) bad faith failure to comply with its obligations set forth in this Agreement.

8. Notices. All notices and other communications required or permitted by this Agreement shall be in writing and shall be deemed given to a party when either (a) delivered to the appropriate address by hand or by nationally recognized overnight courier service (costs prepaid) or (b) received or rejected by the addressee, if sent by certified mail, return receipt requested, in each case to the addresses designated below (or such other address as a party may designate by notice to the other parties):

   City of Rapid City                Black Hills Power, Inc.
   Attn: Public Works Director      Attn: Mark Carda
   300 Sixth Street                625 Ninth Street
   Rapid City, SD 57701            Rapid City, SD 57701

9. Integration. This Agreement and the agreements and documents referred to herein (including any exhibits and schedules 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.

10. Amendments. This Agreement may only be amended by a written document duly executed by both parties.

11. 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.

12. 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.

13. Time of the Essence. Time is of the essence with respect to all provisions of this Agreement in which a definite time for performance is specified; provided, however, that the foregoing shall not be construed to limit or deprive a party of the benefits of any grace or use period provided for in this Agreement.

14. Enforceability. This agreement is intended solely for the benefit of the parties hereto and shall not be enforceable by, or create any claim of right or right of action, in favor of any other party.
15. **Waivers.** The failure by one party to require performance of any provision herein shall not affect that party’s right to require performance at any time thereafter, nor shall a waiver of any breach or default of this Agreement constitute a waiver of any subsequent breach or default or a waiver of the provision itself.

16. **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.

17. **Severability.** If any provision of this Agreement is held unenforceable by a court of competent jurisdiction, such holding shall not affect the remaining provisions of this Agreement, which shall remain in full force and effect.

18. **Construction.** The language in all parts of this Agreement shall in all cases be construed as a whole according to its fair meaning and not strictly for nor against any party. The headings and numbering of the different paragraphs of this Agreement are inserted for convenience only and are not to control or affect the meaning, construction or effect of each provision. The parties agree that each party has reviewed this Agreement and has had the opportunity to have its counsel review the same. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

19. **Choice of Law.** 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.

20. **Jurisdiction and Venue.** 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 Rapid City, South Dakota.

Dated this _____ day of ______________, 2016.

CITY OF RAPID CITY

By ______________________________

Steve Allender, Mayor

ATTEST

____________________________________

Pauline Sumption, Finance Officer

(seal)
BLACK HILLS POWER, INC.

By Michael Schad
(Signature)

Michael Schad
(Printed Name)

Its Manager, Contracts
(Printed Title)
EXHIBIT B

COST ESTIMATE
CITY OF RAPID CITY
RAPID CITY LANDFILL
TRANSMISSION LINE RELOCATION
69kV w/ 12.47 kV UNDERBUILD

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