DEVELOPMENT AGREEMENT FOR
TAX INCREMENT DISTRICT NUMBER SEVENTY-SEVEN

Between

BLACK HILLS POWER, INC.

&

THE CITY OF RAPID CITY, SOUTH DAKOTA
THIS AGREEMENT, is made and entered into on this ___ day of May, 2016, by and between Black Hills Power, Inc., a wholly owned subsidiary of Black Hills Corporation, both of which are South Dakota corporations located at 625 Ninth Street, Rapid City SD 57701, (Black Hills Power, Inc. and Black Hills Corporation are herein after collectively referred to as the “Developer”), and the City of Rapid City, a municipal corporation and political subdivision of the State of South Dakota, located at 300 Sixth Street, Rapid City, South Dakota 57701, herein after referred to as the “City.”

RECITALS

WHEREAS, the City has an interest in promoting economic development and is authorized pursuant to Chapter 11-9 of the South Dakota Codified Laws (SDCL) to create tax increment districts for that purpose; and

WHEREAS, the Developer proposed a tax increment district that will make it feasible for the Developer to complete an additional 39,640 sq.ft of finished office space in its new headquarters currently under construction in Rapid City and further facilitate the creation of a minimum of 50 new jobs in the City; and

WHEREAS, the 50 new jobs created by this project have an estimated annual economic impact in excess of $8,000,000; and

WHEREAS, on April 4, 2016, the City approved a resolution creating Tax Increment District Number Seventy-Seven pursuant to SDCL Chapter 11-9; and

WHEREAS, the City finds that the creation of Tax Increment District Number Seventy-Seven will stimulate and develop the general economic welfare and prosperity of the state through the promotion and advancement of commercial uses and the improvement proposed for the district is likely to significantly enhance the value of substantially all of the other real property in the district; and

WHEREAS, on April 4, 2016, the City also adopted by resolution a Project Plan for Tax Increment District Number Seventy-Seven which identifies a grant expenditure of $6,047,965 to be used to fund the cost of constructing and financing the additional office space identified above; and

WHEREAS, this grant qualifies as an allowable project cost pursuant to SDCL 11-9-14 and SDCL 11-9-15; and

WHEREAS, Pursuant to SDCL 11-9-2(5), the City is empowered to enter into contracts or agreements necessary and convenient to implement the provisions of state law and effectuate the purposes of the Project Plan; and

WHEREAS, the purpose of this Agreement is to establish the conditions under which the Developer can be reimbursed from the proceeds of the tax increment district for the project costs identified in the Project Plan.
NOW THEREFORE, the parties hereby agree as follows:

SECTION 1. As reimbursement for the eligible project costs identified in the approved project plan, the City agrees to pay the Developer a grant in an amount not to exceed $6,047,695. This sum is comprised of a principal balance of $3,204,839 for the costs associated with completion of an additional 39,640 sq.ft. of additional finished office space and $2,842,856 in interest costs based on that balance. The interest is calculated at 5.5% on the principal balance per annum for up to a twenty (20) year period. Interest will begin to accrue upon the principal amount upon approval of the Developer’s Agreement. Interest will continue to accrue and be paid until the principal balance is retired or upon the end of the twenty (20) year period in which payments can legally be made pursuant to state law. Any interest that accrues prior to funds being disbursed to the Developer under this Agreement will be capitalized by the City. The City’s Finance Dept. will develop an amortization schedule to track the amount of principal and interest owed to the Developer. The Developer and the City agree that if the principal balance is retired in less than twenty (20) years the City will only be responsible for paying the Developer an amount equivalent to the interest accrued for the term that the principal balance was outstanding. To cover its expenses in connection with the formation of this tax increment district and the negotiation of this Agreement, the City will pay itself out of the tax increment funds an administrative fee of $20,000. The administrative costs are interest-free and are not included in the total project costs. The administrative costs will be paid from the balance remaining in the Tax Increment District #77 Fund available to the City Finance Officer beginning on April 4, 2021. The Finance Officer may withdraw monies from the TID #77 fund until such time as this fee is paid in full.

SECTION 2. In consideration of the grant payment identified in Section 1 of this Agreement, the Developer agrees that it will complete approximately 39,640 sq.ft. of additional interior floor space within the new headquarters building currently under construction in Rapid City. The completion of additional interior floor space at this time will stimulate the creation of a minimum of fifty (50) new jobs in Rapid City. The Developer agrees that in addition to constructing a concrete warm/dry shell space, that it will construct fully inhabitable Class-A office space, complete with floor coverings, finished walls, ceiling systems, lighting, safety, communications, data, security, and furniture. The project costs include all associated third party professional services, including construction management, project management, architectural design, mechanical/electrical/plumbing engineering and design, prorated at an amount equivalent to nineteen percent (19%) of the total square footage of the building. The construction of the additional interior space will bring the total proposed square footage for the entire headquarters building to approximately 200,000 sq.ft. The additional space the Developer is proposing to complete consists of the south wings of both the main level and second level as identified on Exhibits A and B which have been attached to this Agreement and are through this reference fully incorporated herein.

Subject to the remainder of this Agreement, the Developer hereby agrees to (a) complete, or cause to be completed, all improvements described in the Project Plan and
this Agreement, (b) provide, or cause to be provided, all materials, labor, and services for completing the project, (c) seek all necessary permits and approvals from City and/or all other governmental agencies having jurisdiction over the construction of improvements to the property, and (d) provide sufficient documentation to the City to certify that the terms of this Agreement have been complied with. The Developer shall diligently work to successfully complete the additional office space by December 31, 2017.

In addition to completion of the office space, within three (3) years following the creation of TID #77, the Developer shall provide the City with evidence that a minimum of fifty (50) new jobs have been created at the Developer’s corporate headquarters in Rapid City.

SECTION 3. Any improvements identified in this Agreement will be constructed by the Developer through private contracts. The City is not responsible for bidding or construction of any improvement identified in this Agreement.

SECTION 4. The base value of the property located in Tax Increment District Number Seventy-Seven has yet to be certified by the South Dakota Department of Revenue. Both parties understand that before any increment can be generated by the district that the base valuation of the property within the district must be certified by the Department of Revenue. The base valuation is expected to be determined utilizing Black Hills Power, Inc’s 2015 year-end financials as stated in its now as-filed 2016 property tax return. It is further understood that this Agreement is contingent upon certification of the value of the property in the district by the South Dakota Department of Revenue. The City shall work diligently to obtain a certified value for the district from the Department of Revenue. When the certified property value has been received by the City from the Department of Revenue it will be incorporated into and become part of this Agreement. The Developer assumes any and all risk that may result from entering into this Agreement prior to receiving a certified land value from the Department of Revenue.

SECTION 5. Upon the Developer certifying that it has fulfilled its obligations contained in Section 2 of this Agreement, all positive tax increment payments for Tax Increment District Number Seventy-Seven which are not already allocated to another tax increment district shall, upon receipt by the City, be deposited in a special fund to be known as the “Tax Increment District Number Seventy-Seven Fund,” hereinafter referred to as the “Fund.” Subject to any conditions or limitations contained in this Agreement, the City shall within Forty-Five (45) days after the receipt of each tax increment payment from the Treasurer of Pennington County, disburse the total amount in the Fund to the Developer.

SECTION 6. It is specifically a condition of this Agreement and a condition of the City’s obligation to pay, that all sums payable shall be limited to the proceeds of the positive tax increment from Tax Increment District Number Seventy-Seven receipted into the “Fund” specified in Section 5 hereof. The obligation of the City to pay pursuant to this Agreement does not constitute a general indebtedness of the City or a charge against the City’s general taxing power. The provisions of SDCL 11-9-36 are specifically incorporated herein by reference. It is also specifically agreed that the City has made no
representation that the proceeds from such fund shall be sufficient to retire any indebtedness incurred by the Developer. The parties further acknowledge that SDCL 11-9-25 limits the duration of allocability of the positive tax increment payments to the fund created by Section 5 hereof. The provisions of SDCL 11-9-25 are specifically incorporated herein by this reference.

SECTION 7. It is understood by the parties that the boundaries of Tax Increment District Seventy-Seven may overlap the boundaries of other tax increment districts. Any increments generated from areas within overlapping districts will be used to pay for the improvements in the districts based on the chronological order in which the districts were created. Only after the disbursements required of the City in the project plans or developer’s agreements for any previously created districts have been completely satisfied, will the City have a duty to disburse funds under this Agreement which were generated in areas that are part of previously created overlapping districts.

It is further understood by the parties that the Developer is a centrally assessed utility and that a special taxing district will need to be created in order for a tax increment to be generated within this district. The Developer has contacted the South Dakota Dept. of Revenue and reached an understanding to create a special district so that the incremental taxes generated by this property will be allocated and used to fund the grant described in this Agreement. The Developer assumes all risk that may arise from this Agreement and further agrees to hold the City harmless for any failure of the Dept. of Revenue to follow through on its agreement with the Developer or from any errors arising out of the Dept. of Revenue’s calculation of the tax revenues raised within the special district.

SECTION 8. If the Developer fails to complete construction of the additional square footage or to create the new positions in Rapid City substantially in accordance with the timeframes identified in Section 2 of this Agreement, the City may terminate this Agreement if such failure or default is not cured by the Developer. In the event of such failure or default, the City will notify the Developer in writing of its intent to terminate the Agreement and the Developer shall have sixty (60) days from the time written notice has been provided by the City to cure such default. If the Agreement is terminated as set forth in this Section, the City’s obligations under the Agreement will be deemed fully discharged.

SECTION 9. The Developer agrees to defend, indemnify and hold harmless the City from any and all obligations or liability, including reasonable attorney’s fees, arising out of this Agreement or the construction of the improvements contemplated by the Tax Increment District Seventy-Seven Project Plan. This Section is not applicable to any claims arising out of actions to enforce the terms of this Agreement, or for any negligent acts or omissions of the City, or any of its agents, officers, or employees.

SECTION 10. The parties acknowledge that the grant funds paid to the Developer pursuant to this Agreement are paid in order to accelerate build out of the Developer’s new headquarters and to facilitate the creation of a minimum of fifty (50) new jobs in
Rapid City. The parties acknowledge that their respective obligations constitute good and sufficient consideration for the execution and performance of this Agreement.

SECTION 11. This document, along with the Project Plan for Tax Increment District Seventy-Seven, constitute the entire agreement of the parties with respect to the payment of funds from Tax Increment District Seventy-Seven. No other promises or consideration form a part of this Agreement. All prior discussions and negotiations are merged into these documents or are intentionally omitted. This Agreement may only be amended or modified in writing by mutual agreement of the parties.

SECTION 12. 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. The rights and obligations of the parties hereunder shall not be assigned or transferred by either party without the express written consent of the other. Subject to that restriction, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and legal representatives.

SECTION 13. Failure of a party to insist upon adherence to any term of this Agreement on any occasion shall not be considered a waiver, or deprive that party of the right thereafter to insist upon adherence to that term, or any other term of this Agreement.

SECTION 14. If one or more provisions 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 of this Agreement if they can be given effect without the invalid section(s) or provisions.

SECTION 15. This Agreement shall be deemed to be prepared jointly by the parties hereto and neither shall be deemed to be its sole author. In the event of any claim of ambiguity, no provision shall thereby be construed against either party.

SECTION 16. This Agreement shall be construed and the parties’ actions governed by the laws of the State of South Dakota. The Circuit Court of Pennington County shall be the sole venue for any disputes arising under this Agreement.

Dated this ___ day of ________________, 2016.

CITY OF RAPID CITY

___________________________________
Steve Allender, Mayor

ATTEST:

_________________________________
Finance Officer
BLACK HILLS POWER, INC

By: _______________________________

Its: ____________________________

State of _______________ )
County of _______________ )

On this the ____ day of _______________, 2016, before me, the undersigned officer personally appeared ______________________, who acknowledged himself to be the _________________ of Black Hills Power, Inc. and that as such, being duly authorized to do so, executed the foregoing instrument for the purposes herein contained.

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

_____________________________
Notary Public, ______________________

My Commission Expires:

(SEAL)