

**COVENANT AGREEMENT BETWEEN THE CITY OF RAPID CITY AND UTILITY  
COMPANY BLACK HILLS POWER, INC. TO PERMIT EXISTING PRIVATE  
INFRASTRUCTURE TO ENCROACH ONTO THE SHEPHERD HILLS WATER  
BOOSTER PUMP STATION LOT**

This Covenant Agreement (the "Agreement") is made and entered into by and between the **CITY OF RAPID CITY**, a municipal corporation of the State of South Dakota, located at 300 Sixth Street, Rapid City, SD 57701 (hereinafter referred to as the "City") and **BLACK HILLS POWER, INC. (d/b/a Black Hills Energy)**, a business corporation, of PO Box 1400, Rapid City, SD 57709 (hereinafter referred to as the "Utility Company").

WHEREAS, the City owns property will be the site of the Shepherd Hills Water Booster Pump Station located at 1851 East Anamosa Street in Rapid City, South Dakota (hereinafter referred to as the "Property"); and

WHEREAS, prior to the City taking ownership of the Property, the Utility Company installed utility power lines and vaults (hereinafter referred to as "private infrastructure") to serve the surrounding public; and

WHEREAS, by nature of the installation, the Utility Company's private infrastructure is encroaching on the Property past the dedicated easement running parallel and abutting the north Property boundary that runs parallel to E. Philadelphia Street; and

WHEREAS, the Utility Company has requested to remain encroaching due to the age of utilities, relocation cost, and impact to residents when the private infrastructure is relocated; and

WHEREAS, the Utility Company acknowledges that the private infrastructure is encroaching on the Property and that the City may legally require its immediate removal at Utility Company's cost; and

WHEREAS, the Utility Company has requested authorization from the City to permit the private infrastructure to encroach on the Property; and

WHEREAS, the City is willing to authorize the Utility Company's existing private infrastructure to remain encroaching on the Property if the Utility Company agrees to certain terms and conditions designed to protect the Property interest and to further insulate the City from liability for the Utility Company's encroachment on the Property.

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

1. The land which is subject to this Agreement is generally located at 1851 East Anamosa Street, Rapid City, South Dakota and is legally described as follows:

**Lot 1 of Block 6, Shepherd Hills South Subdivision, Rapid City, Pennington County, South Dakota**, as shown on Exhibit "A," attached hereto and incorporated herein by reference.

2. The Utility Company is hereby authorized to continue to maintain its existing private infrastructure within the Property. The Utility Company agrees that as a condition of the City allowing the existing private infrastructure to remain encroaching on the Property, the Utility Company will remove said private infrastructure from the Property within 180 days of receiving a request to do so if the City engages in event which necessitates removal. Utility Company agrees to bear the entire cost of removing its respective private infrastructure from the Property.

3. From the execution of this Agreement, the encroachment onto the Property will be considered in the nature of a revocable license permitting the Utility Company to occupy that portion of the Property where the private infrastructure is located. The Utility Company agrees that any investment it has made, or any investment it makes in the future maintenance, in the existing private infrastructure located within the Property, is at its own risk. City shall not be responsible for reimbursing or paying any costs or lost investment the Utility Company may have if the private infrastructure is removed pursuant to this Agreement.

4. If the City becomes aware of safety or maintenance issues related to the private infrastructure authorized in this Agreement and if the Utility Company refuses to repair or remove the private infrastructure within its ownership, the City may, at its sole discretion, remove the private infrastructure at Utility Company's sole expense. Alternatively, the City may choose to build around the private infrastructure if, in the sole discretion of the City, it would be in the best interest to do so.

5. The parties agree that the private infrastructure shall not be added to or enlarged outside of its present area dimensions at its location within the Property. If private infrastructure becomes damaged or in need of repair to the extent of more than 50% of its cost of replacement at the time of damage, the parties agree that the license described in Section 3 is automatically revoked and the private infrastructure shall be relocated and the existing private infrastructure removed. If the private infrastructure becomes damaged or in need of repair to the extent of less than 50% of its cost of replacement at the time of damage, then Utility Company may repair or reconstruct the private infrastructure so long as the work occurs within 1 year of the date of the damage.

6. The Property will be the site of the City's Shepherd Hills Water Booster Pump Station which will undergo regular maintenance by City crews and private contractors working on behalf of the City. Utility Company agrees to hold the City harmless for any regular maintenance of the lot and abutting Right of Way (ROW) that damages the vaults encroaching on the Property.

7. The Property shall be completely fenced. The fence is anticipated to be approximately 10 ft tall and will be equipped with a 2 ft concrete mow strip under the fence. The City has relocated the north fence line further south to avoid the private infrastructure; however, the fence will be in close

proximity to the private infrastructure. Utility Company has reviewed the fence alignment and proximity and agrees to hold the City harmless for any damage to the fence that arises from the Utility Company operation and maintenance of its private infrastructure and agrees to repair or replace the portion of the impacted fence if the maintenance of its private infrastructure necessitates the fence's repair or replacement.

8. The Utility Company agrees to defend, indemnify and otherwise hold the City harmless from any and all claims arising from or related to the location of the Utility Company's private infrastructure encroaching out of the prescribed easement and onto the Property.

9. Utility Company acknowledges that this Agreement is made for the direct benefit of the Property noted above. All of the terms and conditions herein set forth shall extend to and be binding upon the heirs, assigns, and successors in interest of the Utility Company, and shall be considered as a covenant running with the Property. Furthermore, it is agreed that, in accepting title to the Property, any grantee, heir, assign, or successor in interest to the undersigned expressly agrees to be bound by the terms of this Agreement recorded with the Pennington County Register of Deeds Office.

10. The Utility Company acknowledges the City's license to permit the continued occupation of the existing private infrastructure on the Property is good and sufficient consideration for the promises it has made herein.

11. The parties may undertake any legal or equitable action available to enforce the provisions of this Agreement in addition to any other remedies provided herein.

12. 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.

13. This Agreement constitutes the entire agreement of the parties. No other writings or negotiations are part of this document. This Agreement may only be modified by mutual agreement of both parties. Any modifications or addendums to this Agreement must be in writing.

14. This Agreement is intended solely for the benefit of the parties hereto along with their heirs, assigns and successors in interest and shall not be enforceable by, or create any claim of right or right of action, in favor of any other party. Except as allowed under paragraph 9 of this Agreement, 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.

13. If any section(s), or provisions of this Agreement are declared invalid for any reason whatsoever by any competent court, such invalidity shall not affect any other section(s) or provision of this application if they can be given effect without the invalid section(s) or provisions.

14. This Agreement shall be construed according to the laws of the State of South Dakota. Any action concerning this Agreement shall be venued in Rapid City, South Dakota, in the Pennington County Circuit Court.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

**CITY OF RAPID CITY**

\_\_\_\_\_  
Jason Salamun, Mayor


ATTEST:

\_\_\_\_\_  
Daniel Ainslie, Finance Director

(seal)

Dated this 8 day of August, 2024.

**BLACK HILLS POWER, INC.**

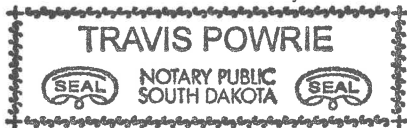
  
\_\_\_\_\_  
Robert M. Usera,  
*Manager of Construction Planning*

State of South Dakota        )  
  ) ss.  
County of Pennington        )

On this the 8<sup>th</sup> day of August, 2024, before me, the undersigned officer, personally appeared Robert M. Usera, who acknowledged himself to be the *Manager of Construction Planning* of **BLACK HILLS POWER, INC. (d/b/a Black Hills Energy)**, a business corporation, and that he, as such *Manager of Construction Planning*, being authorized so to do, executed the foregoing instrument for the purposes therein contained.

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

(seal)



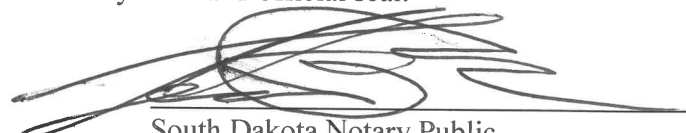
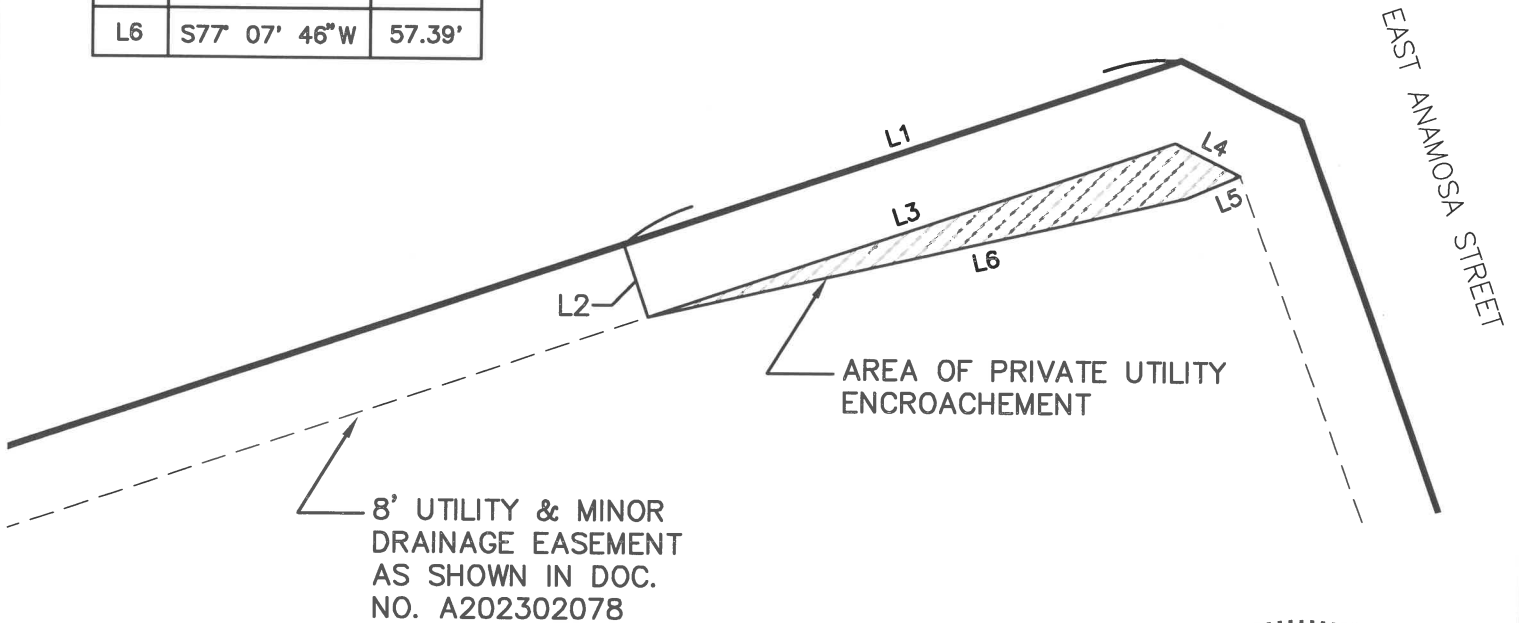
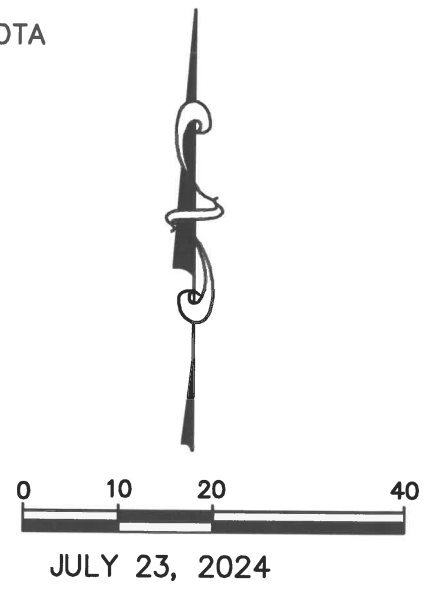
  
\_\_\_\_\_  
South Dakota Notary Public  
My Commission Expires: May 7, 2027

EXHIBIT 'A'  
**UTILITY ENCROACHMENT,  
 LOT 1 OF BLOCK 6  
 SHEPHERD HILLS SOUTH SUBDIVISION,**

LOCATED IN THE SW $\frac{1}{4}$  OF THE NW $\frac{1}{4}$  OF THE SE $\frac{1}{4}$ , AND IN THE N $\frac{1}{2}$  OF THE SW $\frac{1}{4}$  OF THE SE $\frac{1}{4}$ ,  
 SECTION 32, T2N, R8E, B.H.M.,  
 RAPID CITY, PENNINGTON COUNTY, SOUTH DAKOTA

LINE TABLE (M)		
LINE	BEARING	LENGTH
L1	S71° 17' 52" W	61.14'
L2	S18° 42' 08" E	8.00'
L3	N71° 17' 52" E	57.85'
L4	S64° 02' 52" E	7.71'
L5	S67° 32' 52" W	6.26'
L6	S77° 07' 46" W	57.39'

EAST PHILADELPHIA STREET



LOT 1 OF BLOCK 6 OF  
 SHEPHERD HILLS SOUTH SUBDIVISION

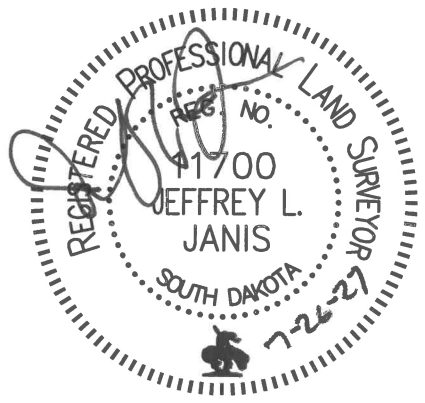


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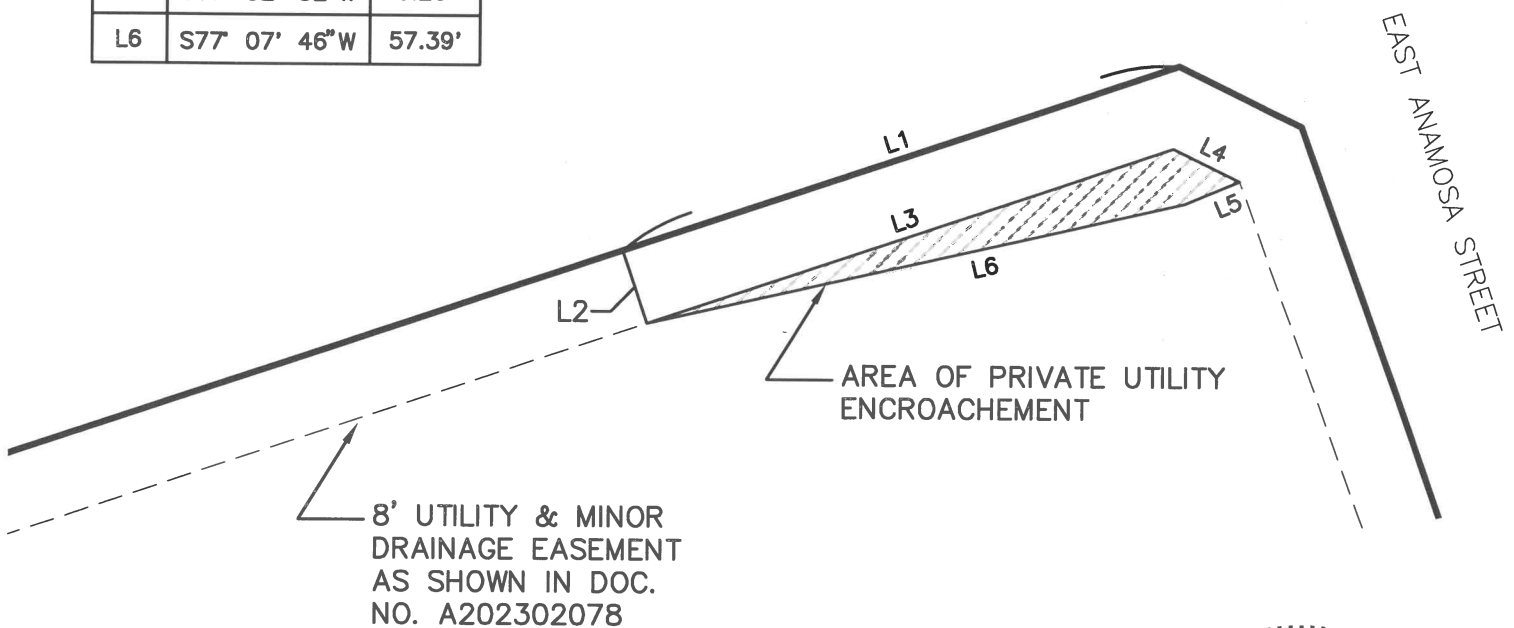
LOCATED IN THE SW<sup>1</sup>/<sub>4</sub> OF THE NW<sup>1</sup>/<sub>4</sub> OF THE SE<sup>1</sup>/<sub>4</sub>, AND IN THE N<sup>1</sup>/<sub>2</sub> OF THE SW<sup>1</sup>/<sub>4</sub> OF THE SE<sup>1</sup>/<sub>4</sub>,  
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EAST PHILADELPHIA STREET



JULY 23, 2024



LOT 1 OF BLOCK 6 OF  
 SHEPHERD HILLS SOUTH SUBDIVISION

