

**AGREEMENT BETWEEN THE CITY OF RAPID CITY AND
BLACK HILLS POWER, INC., D/B/A BLACK HILLS ENERGY
FOR UTILITY RELOCATION RELATED TO MEADE/HAWTHORNE DRAINAGE
BASIN DESIGN PLAN – ELEMENT 48, PROJECT NO. 15-2306 / CIP # 50758**

1. This Agreement is entered into this ___ day of _____, 2017 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., a South Dakota corporation d/b/a Black Hills Energy, of 625 Ninth Street, Rapid City, SD 57701 (the “Contractor”).
2. The Contractor agrees to relocate existing facilities located as shown on Sheet 4.2 of the plans for Project No. 15-2306 Meade/Hawthorne Drainage Basin Design Plan – Element 48 (the “Project”), to accommodate the construction of a storm sewer main and a sanitary sewer main. This work will include installation of new utility poles and cables for electrical services to the homes at 821 Flormann Street, 2210 South Ridge Road, 2220 South Ridge Road, and structure at 2215 Mt. Rushmore Road. The City will install underground conduits for the relocation work adjacent to 821 Flormann Street. The Contractor will perform all other relocation work including installing overhead and underground conductors and service drops to customers. The City will remove existing utility poles which are to be abandoned.
3. The Contractor shall perform the work concurrently with the Project, and as such, the Contractor will not need to secure its own City permits for the work.
4. In exchange for Contractor’s performance of the work, the City shall compensate the Contractor in an amount not to exceed Eighteen Thousand Dollars and no Cents (\$18,000). The Contractor shall invoice the City upon conclusion of the work, and the Contractor shall only be paid for work actually performed, based on time and materials. Payment for the work will be made to the Contractor by check after the completion of the contracted work, receipt of a signed voucher, and approval by the Council. Payment shall be made within 45 days after receipt of a signed voucher.
5. Specifications to be followed under this contract 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 this contract.
6. This Agreement along with the referenced Project Plans constitutes the entire agreement between the City and Contractor and supersedes all prior written or oral communications with regard to the subject matter hereof.
7. The Contractor agrees to indemnify, defend and hold the City harmless against all liability, loss, damage, 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 Contractor 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 Contractor or its employees, any subcontractor or its employees, or any person, firm, partnership, or corporation employed or engaged by the Contractor.

8. The Contractor is an independent entity, and neither it nor its employees are employees, agents, or partners of the City.

9. 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.

10. The provisions of this Agreement shall be deemed severable, and the invalidity or unenforceability of any provision shall not affect the validity and enforceability of the other provisions hereof. If any portion of this Agreement is unenforceable for any reason whatsoever, such provision shall be appropriately limited and given effect to the extent that it may be enforceable.

Dated this _____ day of _____, 2017.

BLACK HILLS POWER, INC.
d/b/a Black Hills Energy

By: _____

Its: _____

CITY OF RAPID CITY

Mayor

Attest

Finance Officer

(seal)