

PREPARED BY: City Attorney's Office
300 Sixth Street
Rapid City, SD 57701
(605) 394-4140

NEW
12/18/17

COVENANT AGREEMENT BETWEEN BLACK HILLS POWER, INC., AND THE CITY OF RAPID CITY REGARDING INSTALLATION AND MAINTENANCE OF DECORATIVE STREET LIGHTS ALONG ENERGY PARK DRIVE

This declaration of covenant and agreement ("Agreement") is entered into this 20th day of JANUARY, 2016, by and between Black Hills Power, Inc., ("Landowner"), a South Dakota corporation, of 625 Ninth Street, Rapid City, SD 57701, and the City of Rapid City ("City"), a South Dakota municipal corporation, 300 Sixth Street, Rapid City, SD 57701.

The Landowner hereby acknowledges that they are the owners of record of the property in Rapid City, South Dakota which is described below.

WHEREAS, the Landowner has applied for a right of way permit; and

WHEREAS, The Landowner desires to utilize decorative street lights along Energy Park Drive as part of a Planned Commercial Development; and

WHEREAS, the Landowner has submitted to the City design details of the decorative street lights it proposes to install along Energy Park Drive.; and

WHEREAS, the City has standard specifications for street lights; and

WHEREAS, the use of decorative street lights may result in higher maintenance and replacement costs than those associated with the standard street lights; and

WHEREAS, in consideration for allowing decorative street lights in lieu of standard street lights, the Landowner agrees to enter into a recorded Covenant Agreement identifying maintenance responsibility for the decorative street lights along Energy Park Drive.

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

1. The property which is subject to this Agreement is legally described as:

Lot 1 of CB2 Addition in the City of Rapid City, Pennington County, South Dakota, as shown on the plat filed as Doc#A201307411.

2. The Landowner hereby covenants and agrees that if it chooses to install decorative street lights along Energy Park Drive in lieu of the City's standard street lights such aesthetic changes will be in accordance with the submitted design details which have been attached hereto as Exhibits "A" and "B".

3. The Landowner further covenants and agrees to maintain the decorative street lights at the Landowner's sole expense in accordance with the reasonable requirements of the City. If maintenance is needed, the City will provide written notice to the Landowner of the required maintenance to be performed. Within ten (10) business days after receipt of said written notice from the City, the Landowner will provide a written schedule with appropriate plans and specifications for the timing of the work to be performed. Thereafter, the City will acknowledge its acceptance or rejection of said written schedule. If the City rejects the Landowner's proposal it shall indicate to the Landowner the basis for the denial and provide the Landowner with ten (10) days to respond. Should the Landowner fail to respond to the City within the time frames specified, the parties fail to reach an agreement on the work to be performed or the timing of such work, or if the Landowner fails to perform any necessary maintenance within the timeframes contained in the agreed upon schedule, with due consideration being given to the Landowner for weather and other issues beyond its control which delay the completion of the work, the City shall have the right to cause the work to be performed and bill the Landowner for such work. If the lights covered in this Agreement are damaged or destroyed to the extent complete replacement becomes necessary, the Landowner shall have 180 days to replace the street light(s). Should the Landowner fail to replace a street light which requires it within 180 days, the City may replace it. The parties acknowledge that if the City is required to replace any street lights they may not match the more aesthetic street lights installed by the Landowner.

4. The City agrees to allow the Landowner to maintain the decorative street lights along Energy Park Drive for a period of twenty (20) years. After twenty (20) years the City may replace the lighting covered by this Agreement with alternate lighting or may leave the Landowner's lighting in place. The Landowner's obligations under this Agreement shall remain in full force and effect for as long as the lighting covered by this Agreement remains, but shall cease if the City chooses to replace the lighting installed by the Landowner with alternate lighting after the twenty (20) year term has expired. Nothing in this paragraph shall be construed as preventing the replacement of the decorative lighting with alternate lighting at an earlier time if the parties mutually agree to such replacement.

5. The parties acknowledge that in the absence of the promises made by Landowner in this Agreement the City would not approve installation of decorative street lights along Energy Park Drive which otherwise deviate from the City's standard specifications. The parties further acknowledge that the City's approval of installing the more aesthetically pleasing street lights at the request of the Landowner is good and sufficient consideration for the promises made herein.

6. All of the terms and conditions herein set forth shall extend to and be binding upon the heirs, assigns, or successors in interest of Landowner, and be considered as a covenant running with the above-described property. Furthermore, it is agreed that, in accepting title to the above-described 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 pursuant to provisions of South Dakota statutes.

7. The City may undertake any legal or equitable action available to enforce the provisions of this Agreement in addition to any remedy provided herein. In the event the City is required to undertake any action to enforce the terms of this Agreement or its subdivision regulations in connection with this Agreement, the undersigned, heirs, assigns, or successors in interest agree the City may recover from the owner of said property its reasonable expenses, including attorney's fees incurred with respect to such action.

8. 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 laws of the State of South Dakota shall be controlling without regard to the principles of conflict of laws. Any legal action arising out of or relating to this Agreement shall be brought only in the Circuit Court for the State of South Dakota, Seventh Judicial Circuit located in Rapid City, Pennington County, South Dakota.

9. 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.

10. 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.

11. If any section(s), or provisions of this application is 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.

12. If the landowner is a corporation, it has the power to enter into this Agreement and its officers signing for it have full power and authority to do so.

13. This Agreement can only be amended in writing by the consent of all the parties hereto.

CITY OF RAPID CITY

Steve Allender, Mayor

Attest

Pauline Sumption, Finance Officer

(seal)

