

**AGREEMENT BETWEEN THE CITY OF RAPID CITY AND BLACK HILLS  
SURGERY CENTER FOR THE RELOCATION OF A SEWER MAIN.**

This agreement is made by and between the City of Rapid City (the "City") a municipal corporation located at 300 Sixth Street, Rapid City, SD 57701, and Black Hills Surgery Center, LLP ("BHSC") a South Dakota limited liability partnership located at 1868 Lombardy Drive, Rapid City, SD 57703.

WHEREAS, BHSC owns property generally located at 216 Anamaria Drive and legally described as:

Lot 1R of Block 28 of Robbinsdale Addition No. 10 and Lots 32R and 33R of Block 18 of Robbinsdale No. 10 Subdivision all located in the Northeast Quarter of the Southwest Quarter (NE1/4SW1/4) and the Southeast Quarter of the Northwest Quarter (SE1/4NW1/4) of Section 13, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota; and

WHEREAS, the City has a permanent utility easement crossing the above described property; and

WHEREAS, there is a City sewer main located within this easement; and

WHEREAS, BHSC has its service connection to the sewer main located within this easement; and

WHEREAS, BHSC would like to expand its current building into the area occupied by the permanent utility easement; and

WHEREAS, the sewer main as currently constructed has inaccessible man holes and interferes with an area in which the City would like to construct future drainage improvements therefore the City would like to relocate the sewer main from the permanent utility easement to the street right-of way; and

WHEREAS, relocating the water main to the street right-of-way will also allow the City to better serve several residential customers; and

WHEREAS, it is the intent of the parties to enter into an agreement whereby the cost to relocate the sewer main to the street right-of-way will be equitably divided among them.

NOW THEREFORE, the parties hereby agree as follows:

1. BHSC will retain Sperlich Consulting Inc. ("Sperlich") to design a sewer main in Alta Vista Drive to replace the current sewer main within the permanent utility easement crossing BHSC's property. The design will include plans for reconstructing and/or rerouting the building service lines from Lots 30 and 31R, Block 18, of Robbinsdale #10 Subdivision as well as for abandoning the first two manholes to the east of Alta Vista Drive and shall conform to the City's

design criteria manuals, Standard Specifications for Public Works Construction 2007 Ed., as well as any relevant City codes. The estimated cost of this work is \$22,000. Upon completion of the design, Sperlich will submit an itemized invoice to each party detailing the total final cost of the design. Each party will be responsible for paying 50% of the final design cost.

2. The City shall be responsible for bidding out and administering construction of the public improvements described in the first paragraph of this agreement.

3. The parties agree to split the total cost of constructing the improvements described in the first paragraph 50/50. Prior to the City awarding the bid, BHSC will provide the City Finance Office with funds equivalent to 50% of the total cost of the lowest responsible bid. BHSC understands the City cannot legally award the contract until funds sufficient to cover the amount of the lowest responsible bid are actually in the City's possession. If BHSC fails to pay the City the required amount by the expiration of the period allowed for awarding the bid, the City is under no obligation to award the bid or construct the project. Any change orders increasing or decreasing the cost of the project will also be divided 50/50. If a change order increases the cost of the project, the City shall bill BHSC for its share of the increased cost. BHSC shall pay such bill within thirty (30) days. Once the project is completed, if the project cost less than the amount of the original bid any leftover money shall be divided equally between the parties. The City shall remit any excess funds paid by BHSC within Sixty (60) days of the project being closed out by the City.

4. The estimated cost to construct the improvements identified in the first paragraph is \$93,000. If the lowest responsible bid exceeds the engineer's estimate of the cost to construct the project, either party may decide not to proceed with the project. If the City decides not to award the bid under these circumstances, BHSC agrees to make no claim against the City. If BHSC chooses not to proceed with the project the City may abandon the project and reject the bids or may proceed at its sole expense.

5. After, or simultaneously with, the work described in the first paragraph, BHSC will undertake a project to expand its building. In conjunction with that project, BHSC will construct a new service line to discharge into the sewer at Anamaria Drive. They will also abandon the portion of the old service line, including two manholes within the existing easement not already abandoned by the City as part of the work described in the first paragraph. They will also disconnect it from the sewer main in 5<sup>th</sup> Street. The cost of this work will solely be the responsibility of BHSC. This work shall conform to the City's design criteria manuals, Standard Specifications for Public Works Construction 2007 Ed., as well as any relevant City codes.

6. BHSC agrees, as part of the work described in the fifth paragraph, to replace the existing manhole in 5<sup>th</sup> Street. The existing manhole in 5<sup>th</sup> Street does not meet current City specifications. BHSC will replace the existing manhole with a larger one that meets City specifications. The cost of this upgrade is estimated to be \$20,000 and will be paid entirely by the City. Due to the constraints of public bid law, the parties acknowledge that the maximum amount the City can spend on this work is \$25,000. Upon completion of the work and its acceptance by the City, BHSC shall send the City an itemized invoice detailing the final cost of upgrading the manhole. The City shall pay the invoice within sixty (60) days of its receipt.

7. Once the project has been completed, the City agrees to legally release the permanent utility easement across BHSC's property.

8. BHSC acknowledges that the City could legally keep the current sewer main in its present location which would prevent them from expanding their building. BHSC further acknowledges that the City's promise to abandon the current sewer main, release the easement and pay for 50% of the cost of constructing the new main is sufficient consideration for the promises it has made herein.

9. If any section(s), or provision 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 agreement if they can be given effect without the invalid section(s) or provisions.

10. This agreement is the entire agreement of the parties and can only be amended in writing with the consent of the parties hereto.

11. The parties' rights and obligations under this agreement shall be governed by, and construed in accordance with, the laws of the State of South Dakota. Any dispute concerning this agreement shall be venued and litigated in the Circuit Court for the Seventh Judicial Circuit, located in Rapid City, Pennington County, South Dakota.

Dated this \_\_\_ day of \_\_\_\_\_, 2008.

CITY OF RAPID CITY

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Finance Officer

BLACK HILLS SURGERY CENTER  
LLP

\_\_\_\_\_  
By: WJY

Its: CEO/General Counsel

STATE OF SOUTH DAKOTA        )  
  )ss.  
COUNTY OF PENNINGTON        )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2008, before me, the undersigned officer, personally appeared Alan Hanks and James F. Preston, who acknowledged themselves to be the Mayor and Finance Officer, respectively, of the City of Rapid City and that they, as such Mayor and Finance Officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing as such Mayor and Finance Officer of the City of Rapid City.

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

[SEAL]

\_\_\_\_\_  
Notary Public, State of South Dakota  
My Commission Expires: \_\_\_\_\_

STATE OF SOUTH DAKOTA        )  
  )ss.  
COUNTY OF PENNINGTON        )

On this 2nd day of December, 2008, before me, the undersigned officer, personally appeared William A. May, who acknowledged himself to be the CEO/General Counsel of Black Hills Surgery Center LLP and 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.

[SEAL] **DEBORAH A. SCHORTZMANN**  
NOTARY PUBLIC  
State of South Dakota

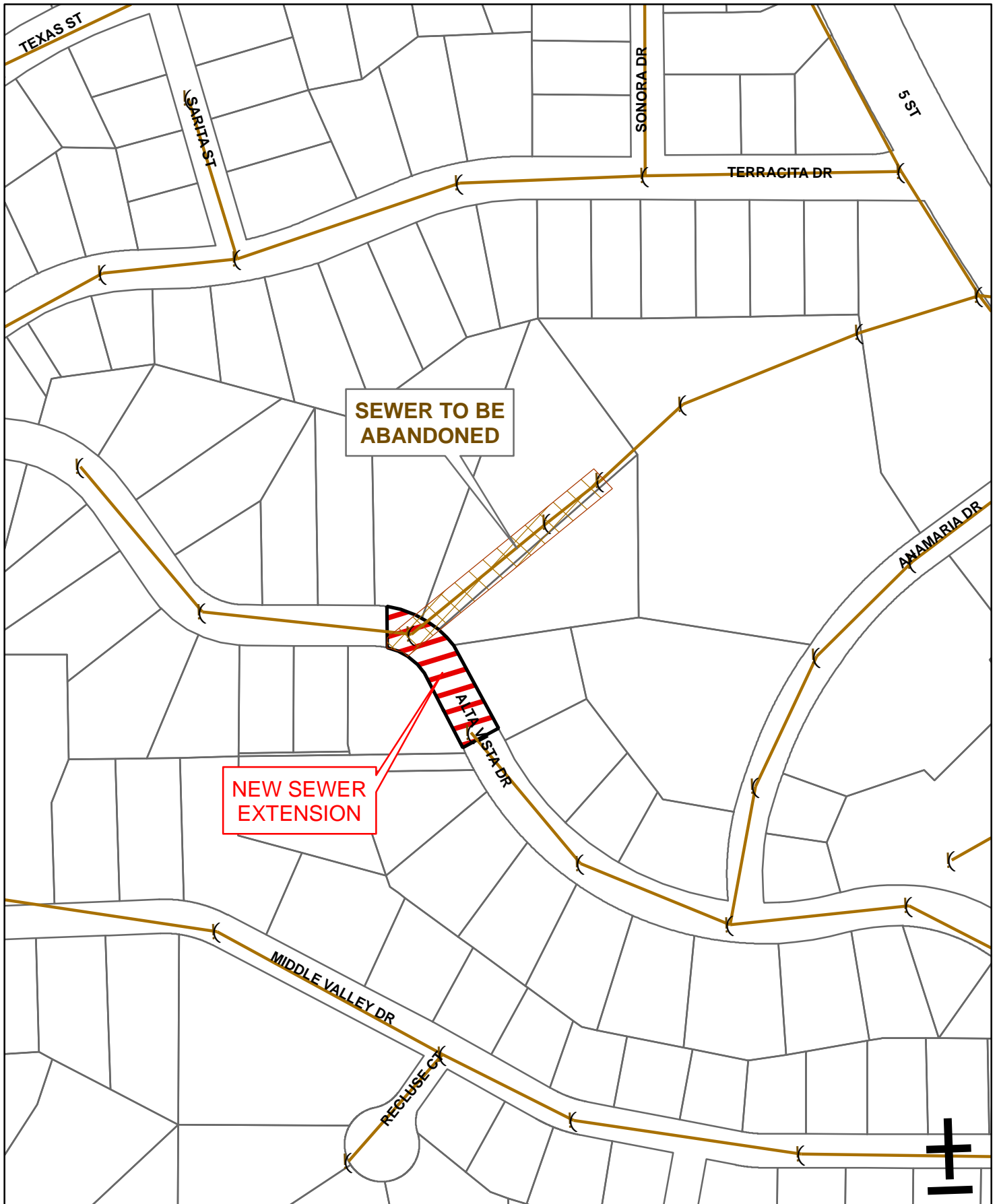
My Commission Expires July 27, 2011

Deborah A. Schortzmann  
Notary Public, State of South Dakota  
My Commission Expires: 07-27-11

APPROVED AS TO FORM  
CITY ATTORNEY'S OFFICE

[Signature]                            7-11-08  
Attorney                                Date

EXHIBIT "A"



ALTA VISTA DRIVE SEWER EXTENSION  
PROJECT NO. SS08-1713      CIP NO. 50541