

**AGREEMENT BETWEEN CITY OF RAPID CITY AND BLACK HILLS POWER, INC.
FOR REIMBURSEMENT OF UNDERGROUND UTILITY EXPENSES ON MOUNT
RUSHMORE ROAD BETWEEN ST PATRICK STREET AND KANSAS CITY STREET**

This Agreement is made and entered into between the CITY OF RAPID CITY, 300 Sixth Street, Rapid City, SD 57701, herein after referred to as "City" and BLACK HILLS POWER, INC., 625 Ninth Street, Rapid City, SD 57701, herein after referred to as "BHP."

WHEREAS, the City, in combination with the South Dakota Department of Transportation, is undertaking a project to re-construct Mt. Rushmore Road; and

WHEREAS, BHP utilizes the Mt. Rushmore Road right-of-way for its electrical utility distribution system, which consists of overhead power lines and service lines; and

WHEREAS, the design of the re-constructed Mt. Rushmore Road calls for all power lines to be either buried underground or relocated overhead off of Mt. Rushmore Road; and

WHEREAS, the City has agreed to pay the additional expense for BHP to bury its lines in the Mt. Rushmore Road right-of-way or relocate off of Mt. Rushmore Road, with the exception of three mid-block crossings described herein; and

WHEREAS, this Agreement shall apply only to the corridor along Mt. Rushmore Road/US Highway 16 from St. Patrick Street to St. James Street (Phase III) and St. James Street to Kansas City Street (Phase II) (collectively referred to as the "Corridor"); and

WHEREAS, the City and BHP desire to reduce their mutual agreements to writing.

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

1. Recitals. The recitals set forth above constitute an integral part of this Agreement and are incorporated herein by this reference as if fully set forth herein as agreements of the parties.

2. Relocation of Power Lines. BHP agrees to move its overhead power lines located in the Corridor as follows:

- a. All work on Phase II and Phase III will be performed as prioritized by the Department of Transportation;
- b. All overhead lines and service lines shall be buried underground or relocated off of the Corridor; and
- c. Between South Street and Kansas City Street, the parties agree that there will be three mid-block crossings of Mount Rushmore Road/US Highway 16 where overhead power lines shall be allowed, as more particularly shown on Exhibit A attached hereto and incorporated herein by this reference.

((b) and (c) together are referred to herein as the "Planned Relocation").

City of Rapid City
Attn: Public Works Director
300 Sixth Street
Rapid City, SD 57701

Black Hills Power, Inc.
Attn: Operations Manager
625 Ninth Street
Rapid City, SD 57701

10. Integration. This Agreement and the agreements and documents referred to herein (including any exhibits and schedules incorporated herein) contain the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersede all prior agreements, negotiations, and understandings, whether written or oral, relating to the subject matter hereof.

11. Amendments. This Agreement may only be amended by a written document duly executed by both parties.

12. Further Action. The parties covenant and agree that each shall execute and deliver such further instruments or documents as shall be necessary or convenient to effectuate the purposes contemplated by this Agreement.

13. Third Parties. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns. Nothing herein shall give or be construed to give any person or entity, other than the parties hereto, their respective successors, and permitted assigns, any legal or equitable rights hereunder.

14. Time of the Essence. Time is of the essence with respect to all provisions of this Agreement in which a definite time for performance is specified; provided, however, that the foregoing shall not be construed to limit or deprive a party of the benefits of any grace or use period provided for in this Agreement.

15. Waivers. The failure by one party to require performance of any provision herein shall not affect that party's right to require performance at any time thereafter, nor shall a waiver of any breach or default of this Agreement constitute a waiver of any subsequent breach or default or a waiver of the provision itself.

16. Enforceability. 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.

17. Counterparts. This Agreement may be executed in counterparts; each such counterpart shall be deemed an original and when taken together with other signed counterparts, shall constitute one Agreement.

18. Severability. If any provision of this Agreement is held unenforceable by a court of competent jurisdiction, such holding shall not affect the remaining provisions of this Agreement, which shall remain in full force and effect.

19. Construction. The language in all parts of this Agreement shall in all cases be construed as a whole according to its fair meaning and not strictly for nor against any party. The headings and numbering of the different paragraphs of this Agreement are inserted for convenience only and are not to control or affect the meaning, construction or effect of each provision. The parties agree that each party has reviewed this Agreement and has had the opportunity to have its

BHP may alter the Planned Relocation so long as the overhead power lines along the Corridor are either buried or relocated overhead off of the Corridor.

3. Service Lines. BHP agrees to coordinate with property owners along the project right-of-way and cause all necessary service line relocations and associated electrical wiring to be carried out.

4. Expense Reimbursement. The City agrees to reimburse BHP for its expenses in relocating its power lines and associated service lines in excess of the costs that BHP would otherwise incur to relocate its power lines overhead along the Corridor (the "Base Costs") in an amount not to exceed One Million Dollars (\$1,000,000). The Base Costs are set forth in Exhibit "B". If BHP's actual costs exceed this amount due to unknown conditions or circumstances that were unable to be foreseen, the City and BHP agree to negotiate in good faith an amendment to this Agreement to reimburse BHP for such unknown or unforeseeable expenses.

5. Claims for Reimbursement. BHP shall invoice the City for its expenses. BHP shall have the option to invoice on a monthly, quarterly, or one-time basis upon completion of part or all of the work contemplated hereunder on each Phase II and Phase III. BHP's invoice shall contain only the difference between the actual costs for each phase less the Base Costs attributable to each phase. Any invoice shall describe with particularity the work completed and the cost associated with such work.

6. Payment of Claims. Upon receipt of the claim for reimbursement submitted pursuant to ¶ 5, the City agrees to pay the claim within 45 days of the date the claim was submitted.

7. Relationship Between the Parties. This Agreement does not create an employment relationship between the City of Rapid City and the officers, directors, employees or agents of BHP. Nothing contained in this Agreement is intended to create a partnership or joint venture between the City of Rapid City and BHP.

8. Liability, Release and Indemnification. BHP assumes all liability for the work performed pursuant to this Agreement by its officers, employees, agents and assigns. BHP agrees to fully release, acquit and forever discharge the City from any and all actions, causes of action, claims, demands, damages, losses, and expenses of any kind, relating to work contemplated by the terms of this Agreement, with the exception of the reimbursement provided hereunder. BHP further agrees to defend, indemnify and hold the City, its officers, employees and agents harmless from and against any and all suit, claim, loss, liability, personal injury, property damage, costs and expenses (including reasonable attorneys' fees and expenses of litigation), relating in any way to or arising out of BHP's relocation of distribution and service lines as provided in this Agreement.

9. Notices. All notices and other communications required or permitted by this Agreement shall be in writing and shall be deemed given to a party when either (a) delivered to the appropriate address by hand or by nationally recognized overnight courier service (costs prepaid) or (b) received or rejected by the addressee, if sent by certified mail, return receipt requested, in each case to the addresses designated below (or such other address as a party may designate by notice to the other parties):

counsel review the same. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

20. Choice of Law. This Agreement shall be governed and construed in accordance with the laws of the state of South Dakota, without regard for its choice-of-law principles, and all claims relating to or arising out of this Agreement, or the breach of the terms thereof, whether sounding in contract, tort or otherwise, shall likewise be governed by the laws of the state of South Dakota, without regard for its choice-of-law principles.

21. Jurisdiction and Venue. The parties hereto explicitly agree to submit to the personal jurisdiction of South Dakota state courts, and any dispute relating to or arising out of this Agreement, or the breach of the terms thereof, whether sounding in contract, tort or otherwise, shall be decided solely and exclusively by the Circuit Court located in Rapid City, South Dakota.

Dated this _____ day of _____, 2015.

CITY OF RAPID CITY

By _____
Steve Allender, Mayor

ATTEST

Pauline Sumption, Finance Officer

(seal)

BLACK HILLS POWER, INC.

By Stuart Wevik
(Signature)

Stuart Wevik
(Printed Name)

Its VP-Utility Operations
(Printed Title)

EXHIBIT A



EXHIBIT B

MRR Phase II – Base Costs	\$150,000
St. James Street to Kansas City Street	
MRR Phase III – Base Costs	\$109,222
St. Patrick Street to St. James Street	
Total BHP Base Costs	\$259,222