

## **Spare Turbine Use Agreement**

This Spare Turbine Use Agreement (this “Agreement”) is effective as of January 1, 2022, by and among, Black Hills Power, Inc., a South Dakota corporation (“BHP”), Cheyenne Light, Fuel and Power Company, a Wyoming corporation (“CLFP”), and Black Hills Service Company, LLC, a South Dakota limited liability company (“BHSC”). BHP, CLFP, and BHSC may also be referred to herein individually as a “Party” or collectively the “Parties”.

### **1.0 RECITALS**

This Agreement is made with reference to the following facts, among others:

- 1.1. BHP owns a 100% interest in one (1) critical spare GE LM6000 combustion turbine generator (the “Spare Turbine”).
- 1.2. BHP owns a 58% interest and CLFP owns a 42% interest in two (2) GE LM6000 combustion turbine generators used in connection with combined-cycle operations at the combination simple-cycle/combined-cycle electric generating facility at the Cheyenne Prairie Generating Station having a nameplate generating capacity of 132 MW (“CPGS CC”).
- 1.3. CLFP owns a 100% interest in one (1) GE LM6000 combustion turbine generator used in connection with simple-cycle operations at the Cheyenne Prairie Generating Station, having a nameplate generating capacity of 37 MW (“CPGS SC”).
- 1.4. BHP owns a 100% interest in one (1) GE LM6000 combustion turbine generator used in connection with simple-cycle operations in Rapid City, South Dakota, known as Lange CT, having a nameplate generating capacity of 38 MW (“Lange CT”).
- 1.5. BHP owns a 100% interest in one (1) GE LM6000 combustion turbine generator used in connection with simple-cycle operations at Neil Simpson Complex in Gillette, Wyoming, known as CT1, having a nameplate generating capacity of 37 MW (“CT1”).
- 1.6. CPGS CC, CPGS CS, CT1, and Lange CT (each may be referred to herein as a “Plant” or collectively referred to as the “Plants”) are located near Cheyenne, Wyoming, Gillette, Wyoming, and Rapid City, South Dakota, respectively.
- 1.7. The Parties agree that (a) the Spare Turbine is available to support the operations at the Plants and (b) CLFP shall pay a fee as consideration for the availability, benefit, and use of the Spare Turbine at the CLFP Plants, plus CLFP’s respective share of the operations and maintenance costs and expenses associated with the Spare Turbine.

### **2.0 DEFINED TERMS**

The following terms, when used herein, have the meaning specified below:

- 2.1 “Affiliate” means, with respect to a specified person, another person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the specified person.
- 2.2 “BHP Plants” collectively refers to the Lange CT, CT1, and BHP’s 58% ownership share of the CPGS CC.
- 2.3 “CLFP Plants” collectively refers to the CPGS SC, and CLFP’s 42% ownership share of the CPGS CC.
- 2.4 “Losses” means any and all liabilities, taxes, losses, obligations, claims, damages, penalties, causes of action, suits, costs and expenses or judgments of any nature (including attorneys’ fees).
- 2.5 “Operator” means BHSC as the agent appointed by BHP and CLFP, for the purposes of operating, maintaining, and managing the Spare Turbine and administering the Agreement.
- 2.6 “Prudent Utility Practice” means those practices, methods and acts which: (a) when engaged in are commonly used in prudent engineering and operations to operate electric equipment and associated mechanical and civil facilities lawfully and with safety, reliability, efficiency and expedition or (b) in the exercise of reasonable judgment considering the facts known when engaged in, could have been expected to achieve the desired result consistent with applicable law, safety, reliability, efficiency and expedition. Prudent Utility Practice is not limited to the optimum practiced method or act, but rather a spectrum of possible practices, methods or acts.
- 2.7 “Spare Turbine” means the GE LM6000 spare turbine owned by BHP which is available to support the operations at the Plants for the benefit of BHP and CLFP.
- 2.8 “Spare Turbine Fee” means the fee paid by CLFP as consideration for the availability, benefit, and use of the Spare Turbine.

### **3.0 SPARE TURBINE ASSETS**

As of the date hereof, the assets set forth on Exhibit A attached hereto comprise the assets associated with the Spare Turbine. On or before December 10 of each year, BHP will deliver to CLFP an updated version of Exhibit A with a then-current list of the assets associated with the Spare Turbine, including the book value of the assets and the in-service date of the Spare Turbine assets.

### **4.0 STATEMENT OF INTENT**

The Parties hereby express their mutual intent and expectation that BHP will make the Spare Turbine available for use by CLFP, to support the operation of the Plants in accordance with the terms of this Agreement. The purpose of this Agreement is to help the Parties minimize overall life cycle cost and maximize site availability by providing the Spare Turbine when a BHP Plant and/or a CLFP Plant is unavailable due to overhaul or repair or in the event a necessary repair cannot be completed within a reasonable amount of time.

## 5.0 PAYMENTS

5.1. CLFP's obligations with respect to the payment of the Spare Turbine Fee is set forth in Exhibit B. BHP shall invoice CLFP for the Spare Turbine Fee on a monthly basis. The invoice shall be due and payable within thirty (30) days following receipt of the invoice. The first time period for which the Spare Turbine Fee shall be invoiced is the calendar month following the month in which the Spare Turbine is delivered to the Cheyenne Prairie Generating Station.

5.2. CLFP hereby agrees that it will make all payments and perform all other obligations by it to be made or performed pursuant to all of the terms, covenants and conditions contained in this agreement.

## 6.0 OPERATOR

6.1. Appointment of Operator. The Parties appoint BHSC as Operator for the purposes of operating, maintaining, and managing the Spare Turbine, and administering the Spare Turbine Use Agreement. BHP and CLFP shall provide Operator access to the Plants and the Spare Turbine for the performance of its obligations under this Agreement.

6.2. Responsibility for Spare Turbine; Standards of Conduct. The Operator will be responsible for the operation of the Spare Turbine, including all decisions of any nature whatsoever regarding the Spare Turbine, including with respect to maintenance, repairs, additions, replacements, retirements, engineering, design, planning, permitting, licensing, testing, commissioning, and reconstruction after casualty events. In connection therewith, Operator will:

- (a) Ensure that such operations activities are conducted, and that such decisions are made, (i) in good faith, (ii) in accordance with applicable laws, orders, and permits, and (iii) in accordance with Prudent Utility Practice; and
- (b) Consult with and consider in good faith any comments from BHP as owner of the Spare Turbine prior to making any material change with respect to the Spare Turbine; and
- (c) Not make or allow to be made any adverse distinction between any Plant with respect to the use and availability of the Spare Turbine.

6.3. Recordkeeping. The Operator will ensure that documents and records are kept with respect to the Spare Turbine (the "Spare Turbine Records") as necessary to (i) identify the Spare Turbine, (ii) determine the allocation of the Spare Turbine between the Plants, and (iii) calculate the Spare Turbine Fee. The Operator will ensure that the Spare Turbine Records are kept and maintained in accordance with applicable law. Furthermore, at the written request of BHP as owner of the Spare Turbine and at BHP's cost, the Operator will ensure that any Spare Turbine Records reasonably relating to any dispute involving BHP are retained until the dispute is resolved. BHP may, at its cost, during normal business hours, and following reasonable advance written notice to the Operator of not less than five business days, inspect the Spare Turbine Records.

6.4. Liability of Operator. The failure of Operator to meet any obligation under the

Agreement shall in no event subject Operator to any claims by or liabilities to BHP and CLFP other than to reperform the services and be compensated for the cost of reperforming such services.

6.5 Indemnification of Operator. BHP and CLFP shall defend, indemnify and hold harmless Operator, its agents and employees from all Losses, on account of, or resulting from the performance of any services performed on behalf of Operator pursuant to this Agreement, whether or not the same results or allegedly results from the claimed or actual negligence or breach of warranty of by Operator or any of its employees, agents, clients, or contractors.

6.6 Compensation of Operator. Operator shall be reimbursed for all direct and indirect costs associated with performing its obligations under this Agreement.

## **7.0 COVENANTS, RIGHTS, AND RESPONSIBILITIES**

7.1. Availability. BHP hereby covenants that, for so long as it or any of its Affiliates owns a controlling interest in any Spare Turbine, neither it nor any of its Affiliates will take any action (including by granting any right to use the Spare Turbine) with the intent to cause, and that causes, the Spare Turbine to be unavailable for the continued benefit of the Plants, consistent with past practice with respect to the Plants, unless BHP (a) obtains the prior written consent of the other Parties, which agree not to withhold their consent unreasonably, or (b) replaces, on commercially reasonable terms, the function provided by the Spare Turbine in respect of the affected Plant(s) (and provided that the costs reasonably expected to be borne by the Parties following such replacement, compared to the costs reasonably expected to be borne by BHP if such replacement were not to occur, shall be a factor in determining the commercial reasonableness of such terms). However, the covenants in this Section 7.1 shall not apply to (x) maintenance, repair, or other operating activities, actions, or decisions of Operator with respect to such Spare Turbine, if undertaken or made in accordance Prudent Utility Practice, including any decision to retire, replace, or temporarily or permanently shut down such Spare Turbine, or (y) any activities, actions, or decisions required by an applicable law, order, or permit.

7.2. Transfer Restrictions. BHP hereby covenants that it will not, and that it will not permit any of its Affiliates to, directly or indirectly transfer (including by operation of law or by the transfer of an Affiliate's stock or other equity interests) a controlling interest in the Spare Turbine to any non-Affiliate of BHP, unless BHP or one of its Affiliates obtains the prior written consent of the Parties, which agree not to withhold their consent unreasonably. For purposes of this Section 7.2, the costs reasonably expected to be borne by the Parties following such transfer or replacement, compared to the costs reasonably expected to be borne by BHP if such transfer or replacement were not to occur, shall be a factor in determining commercial reasonableness of the terms of such commitment or replacement.

7.3. Inspection Right. CLFP will have the right, exercisable from time to time after providing reasonable advance notice to the Operator, and without unreasonably interrupting or interfering with activities at the Plants, to meet with Operator and inspect the Spare Turbine. In exercising this right, CLFP will cause its representatives to comply with all safety, security, and other rules, regulations, and policies applicable to personnel at the Plants.

7.4. Routine Maintenance Expenses and Losses. With respect to the Spare Turbine, allocation of responsibility for routine maintenance expenses and Losses shall be reasonably estimated or determined by the Operator, based upon the nameplate capacity of each Plant

benefitting from the Spare Turbine, in proportion to all Plants benefitting from the Spare Turbine. Routine maintenance expenses shall not include expenses associated with major overhauls, hot sections, or similar major maintenance activities.

7.5. Storage. When not in use and operation by one of the Parties, the Spare Turbine shall be safely stored at the Cheyenne Prairie Generating Station facility in Cheyenne, Wyoming in accordance with all applicable manuals and instructions provided by the Spare Turbine manufacturer.

7.6. Transportation to Plants. Upon receiving written notification from CLFP that the available Spare Turbine is required for use at a CLFP Plant, BHP shall use reasonable diligence in making the Spare Turbine available to CLFP. To the extent that the Spare Turbine is required for use at a BHP Plant, BHP shall be responsible for arranging for transportation of the Spare Turbine from the Cheyenne Prairie Generating Station to the BHP Plant and its return to the Cheyenne Prairie Generating Station. BHP shall be responsible for all costs incurred in transporting the Spare Turbine.

7.7. Use and Operation at Plants. While under care, custody, and control, the Parties agree to:

1. Operate and maintain the Spare Turbine in accordance with all applicable manuals and instructions provided to Parties and also in accordance with all applicable laws and regulations.
2. Obtain and pay for all license and inspection fees, which may become due for use of the Spare Turbine.
3. Install and subsequently remove the Spare Turbine into/from the designated Plant. BHP will provide installation and removal technical assistance when requested by Parties.
4. Perform only those repairs, tests, or modifications to the Spare Turbine, which have been specifically authorized by BHP.
5. Maintain a log that describes maintenance events and utilization of the Spare Turbine while in Parties possession.
6. Perform or have performed a functional check of the Spare Turbine immediately after installation and immediately prior to removal of the Spare Turbine at the designated Plant.
7. Not permit any lien or encumbrance against the Spare Turbine.
8. Not remove any marking on the Spare Turbine which identifies the Spare Turbine as the property of BHP.

7.8. Title. Title to the Spare Turbine is, and shall remain, in BHP.

7.9. Excusable Delays. BHP shall be excused from and shall not be liable for any delays in its delivery or failure to deliver the Spare Turbine hereunder, and shall not be deemed to be in default for any failure or performance hereunder, due to causes beyond its reasonable control. Such causes shall include, but not be limited to, acts of God, acts (or failure to act) of CLFP or civil or military authority, government priorities, fires, strikes, labor disputes, work stoppage, floods, epidemics, war (declared or undeclared), riot and delays in transportation not

caused by BHP. In the event of any such delay, the date of delivery shall be extended for a period equal to the time lost by reason of the delay.

7.10. Return of Spare Engine from Plants. At the end of the period of use of the Spare Turbine, Parties will promptly cause the Spare Turbine to be returned in the same condition as it was received by the Parties, except for reasonable wear and tear due to operation within the Spare Turbine's intended purpose. CLFP agrees to pay BHP the price of repairing or replacing the Spare Turbine or any part thereof damaged or destroyed related to its use at a CLFP Plant.

## **8.0 TERM**

This Agreement shall commence on the date first set forth above and continue in effect (the "Term"), unless amended or otherwise terminated sooner by either Party upon three hundred sixty five (365) days notice.

## **9.0 RISK OF LOSS; REMEDIES**

9.1. No Special or Indirect Damages. Notwithstanding anything to the contrary herein, no Party (including Operator) will be liable to another Party (including Operator) under this Agreement for consequential, special, exemplary, or indirect damages, including loss of profit, cost of capital, loss of goodwill, loss of revenues from the sale of capacity or energy, or increased operating costs, irrespective of whether such damages were reasonably foreseeable or caused by the negligence of any party.

9.2. Specific Performance. The Parties each acknowledge and agree that in the event of a breach of this Agreement, the non-breaching Party may be irreparably harmed and may not be made whole by monetary damages. It is accordingly agreed that, in addition to the other remedies available under this Agreement or to which a Party may be entitled to at law or in equity, the Parties shall be entitled to compel specific performance of this Agreement.

## **10.0 REPRESENTATIONS AND WARRANTIES**

On the date first herein mentioned, each Party represents and warrants to the other Parties that: (i) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation; (ii) it has all regulatory approval necessary for it to legally perform its obligations under this Agreement; (iii) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it; (iv) this Agreement constitutes its legally valid and binding obligations enforceable against it in accordance with the respective terms (subject to applicable bankruptcy, reorganization, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application regardless of whether enforcement is sought in a proceeding in equity or at law); and (v) there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement.

## 11.0 MISCELLANEOUS

11.1. Execution in Counterparts; Electronic Delivery. This Agreement may be executed by the Parties on separate counterparts, each of which when so executed and delivered will be an original, but which together will constitute but one and the same instrument. This Agreement may be delivered by the facsimile or other electronic transmission of signed signature pages.

11.2. Section Headings. The Article and Section headings in this Agreement are for convenience of reference only and shall not be utilized in construing or interpreting this Agreement.

11.3. Construction. This Agreement will be construed as the joint and equal work product of each Party and will not be construed more or less favorably on account of its preparation or drafting. In this Agreement, (a) the word “including” means “including without limitation” and (b) words such as “herein,” “hereof,” “hereby,” and “hereunder” refer to this Agreement as a whole and not to any particular section or subsection. The words “year,” “month,” and “day,” refer to a calendar year, calendar month, and calendar day, respectively, unless otherwise specified.

11.4. Entire Agreement; Amendments. This Agreement constitutes the entire agreement between the Parties relating to the subject matter hereof, shall not be modified except by a written instrument signed by all Parties, and supersedes and replaces those provisions of all prior agreements and understandings, oral or written, to the extent relating to the Spare Turbine.

11.5. Waivers. Any waiver by any Party of any violation of, breach of, or default by the another Party under any provision of this Agreement, or any exhibit, schedule, or other document referred to in this Agreement, will not be construed as or constitute a waiver of any subsequent violation, breach of, or default under that provision or any violation, breach of, or default under any other provision of this Agreement or any other document referred to in this Agreement.

11.6. No Joint Venture. The Parties hereto shall in no event be construed or considered as joint venturers or partners.

11.7. Governing Law. This Agreement is subject to the applicable laws of the state of Wyoming, without regard to conflicts of law principles.

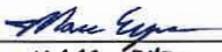
11.9 Assignment. No Party may assign its rights or obligations under this Agreement without the prior written consent of the other Parties.

11.10 Successors and Assigns. This Agreement and all terms and provisions hereof shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

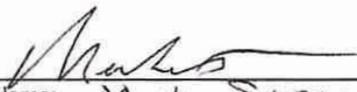
**[Signature Page Follows]**

IN WITNESS WHEREOF, the parties have executed this Agreement effective on the date first above written.

**Black Hills Power, Inc.**

  
Name: MARC EYRE  
Title: VP ELECTRIC OPERATIONS

**Cheyenne Light, Fuel and Power Company**

  
Name: Mark Stog  
Title: VP Wyoming Operations

**Black Hills Service Company, LLC**

  
Name: Mark L Lux  
Title: VP Power Delivery

**Exhibit A**

**Spare Turbine Assets**

**Black Hills Corporation  
BHP and CLFP  
Shared Turbine Agreement  
2022 Shared Turbine Fee**

<u>Asset Description</u>	<u>Book Value</u>	<u>Depreciation Method</u>
12/31/2021 Spare Turbine	\$ 4,519,408	Depreciation Rates for FERC account 344 approved in the most recent rate review for BHP or CLFP
12/31/2021 Spare Turbine - Hot Section (1)	\$ 2,000,000	
12/31/2021 Spare Turbine - Major Overhaul (2)	\$ 4,500,000	
	<u>\$ 11,019,408</u>	

- (1) Hot Section will be depreciated at 2.97%, until updated in a rate review of BHP or CLFP  
(2) Major Overhaul will be depreciated at 2.97%, until updated in a rate review of BHP or CLFP

**Exhibit B**

**Spare Turbine Fee**

**Spare Turbine Fee.**

(A) In consideration for the right to use the Spare Turbine, CLFP will pay an annual fee to BHP, payable in equal monthly installments and pro-rated for any partial year (the “Spare Turbine Fee”). The Operator will establish the Spare Turbine Fee on the basis of a “rate of return” calculation made by:

(i) Applying (A) BHP’s capital structure (including its debt-to-equity ratio, return on equity, and cost of debt) utilized by the South Dakota Public Utilities Commission in BHP’s then-most-recently concluded rate case to set rates for BHP’s electric utility customers in South Dakota; to (B) the net book value of the Spare Turbine attributable to the operations of each of the CLFP Plants, as reasonably estimated or determined by the Operator, based upon the nameplate capacity of the CLFP Plants benefiting from the Spare Turbine, in proportion to all Plants benefiting from the Spare Turbine, as of December 31 of the year in which the Spare Turbine Fee is established (so that, for instance, the estimated net book value as of December 31, 2021, would be used to calculate the Spare Turbine Fee for 2022); and

(ii) Adding the book depreciation, and amortization expenses, utilizing the depreciation rates established in the most recent rate review for either BHP or CLFP, as reasonably estimated by the Operator for the year in which the Spare Turbine Fee is established, attributable to such portion of the Spare Turbine (so that, for instance, the estimated depreciation and amortization expenses for 2021 would be used to calculate the Spare Turbine Fee for 2022).

(B) The Operator will establish the Spare Turbine Fee for each year on or before December 10 of the preceding year. The first such calculation shall be established on or before December 31, 2021, with the Spare Turbine Fee being prorated and effective January 1, 2022.

**EXECUTION DRAFT**

**Amended and Restated Spare Turbine Use Agreement**

This Amended and Restated Spare Turbine Use Agreement (this "Agreement") is effective as of August 1, 2022, by and among, Black Hills Power, Inc., a South Dakota corporation ("BHP"), Cheyenne Light, Fuel and Power Company, a Wyoming corporation ("CLFP"), and Black Hills Service Company, LLC, a South Dakota limited liability company ("BHSC"). BHP, CLFP, and BHSC may also be referred to herein individually as a "Party" or collectively the "Parties".

**1.0 RECITALS**

- 1.1. This Agreement is made with reference to the following facts, among others: On January 1, 2022, BHP and CLFP entered into a Spare Turbine Use Agreement which the Parties desire to restate and amend, with this Agreement superseding and replacing, in its entirety the Spare Turbine Agreement dated January 1, 2022.
- 1.2. BHP owns a 100% interest in one (1) critical spare GE LM6000 combustion turbine generator, with serial number 192-577 ("Spare Turbine One").
- 1.3. BHP owns a 100% interest in one (1) critical spare GE LM60000 combustion turbine generator, with serial number 192-581 ("Spare Turbine Two").
- 1.4. BHP owns a 58% interest and CLFP owns a 42% interest in two (2) GE LM6000 combustion turbine generators used in connection with combined-cycle operations at the combination simple-cycle/combined-cycle electric generating facility at the Cheyenne Prairie Generating Station having a nameplate generating capacity of 132 MW ("CPGS CC").
- 1.5. CLFP owns a 100% interest in one (1) GE LM6000 combustion turbine generator used in connection with simple-cycle operations at the Cheyenne Prairie Generating Station, having a nameplate generating capacity of 37 MW ("CPGS SC").
- 1.6. BHP owns a 100% interest in one (1) GE LM6000 combustion turbine generator used in connection with simple-cycle operations in Rapid City, South Dakota, known as Lange CT, having a nameplate generating capacity of 38 MW ("Lange CT").
- 1.7. BHP owns a 100% interest in one (1) GE LM6000 combustion turbine generator used in connection with simple-cycle operations at Neil Simpson Complex in Gillette, Wyoming, known as CT1, having a nameplate generating capacity of 37 MW ("CT1").
- 1.8. CPGS CC, CPGS CS, CT1, and Lange CT (each may be referred to herein as a "Plant" or collectively referred to as the "Plants") are located near Cheyenne, Wyoming, Gillette, Wyoming, and Rapid City, South Dakota, respectively.
- 1.9. The Parties agree that (a) Spare Turbine One and Spare Turbine Two are available to support the operations at the Plants and (b) CLFP shall pay a fee as consideration for the availability, benefit, and use of the Spare Turbines at the CLFP Plants, plus CLFP's respective share of the operations and maintenance costs and expenses associated with the Spare Turbines.

## 2.0 DEFINED TERMS

The following terms, when used herein, have the meaning specified below:

- 2.1 “Affiliate” means, with respect to a specified person, another person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the specified person.
- 2.2 “BHP Plants” collectively refers to the Lange CT, CT1, and BHP’s 58% ownership share of the CPGS CC.
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- 2.5 “Operator” means BHSC as the agent appointed by BHP and CLFP, for the purposes of operating, maintaining, and managing the Spare Turbine and administering the Agreement.
- 2.6 “Prudent Utility Practice” means those practices, methods and acts which: (a) when engaged in are commonly used in prudent engineering and operations to operate electric equipment and associated mechanical and civil facilities lawfully and with safety, reliability, efficiency and expedition or (b) in the exercise of reasonable judgment considering the facts known when engaged in, could have been expected to achieve the desired result consistent with applicable law, safety, reliability, efficiency and expedition. Prudent Utility Practice is not limited to the optimum practiced method or act, but rather a spectrum of possible practices, methods or acts.
- 2.7 “Spare Turbine One” means the GE LM6000 spare turbine, serial number 192-577, owned by BHP which is available to support the operations at the Plants for the benefit of BHP and CLFP.
- 2.8 “Spare Turbine Two” means the GE LM6000 spare turbine, serial number 192-581, owned by BHP which is available to support the operation at the Plants for the benefit of BHP and CLFP.
- 2.9 “Spare Turbines” means Spare Turbine One and Spare Turbine Two.
- 2.10 “Spare Turbine Fee” means the fee paid by CLFP as consideration for the availability, benefit, and use of the Spare Turbines.

## 3.0 SPARE TURBINE ASSETS

As of the date hereof, the assets set forth on Exhibit A attached hereto comprise the assets associated with the Spare Turbines. On or before December 10 of each year, BHP will deliver to

CLFP an updated version of Exhibit A with a then-current list of the assets associated with the Spare Turbines, including the book value of the assets and the in-service date of the Spare Turbine assets.

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The Parties hereby express their mutual intent and expectation that BHP will make the Spare Turbines available for use by CLFP, to support the operation of the Plants in accordance with the terms of this Agreement. The purpose of this Agreement is to help the Parties minimize overall life cycle cost and maximize site availability by providing the Spare Turbines when a BHP Plant and/or a CLFP Plant is unavailable due to overhaul or repair or in the event a necessary repair cannot be completed within a reasonable amount of time.

#### **5.0 PAYMENTS**

5.1. CLFP's obligations with respect to the payment of the Spare Turbine Fee is set forth in Exhibit B. BHP shall invoice CLFP for the Spare Turbine Fee on a monthly basis. The invoice shall be due and payable within thirty (30) days following receipt of the invoice. The first time period for which the Spare Turbine Fee shall be invoiced as outlined in this Amended and Restated Agreement is the calendar month following the month in which the Spare Turbines are delivered to the Cheyenne Prairie Generating Station. The first month for both Spare Turbine One and Spare Turbine Two to be included in the Spare Turbine Fee will be August of 2022.

5.2. CLFP hereby agrees that it will make all payments and perform all other obligations by it to be made or performed pursuant to all of the terms, covenants and conditions contained in this agreement.

#### **6.0 OPERATOR**

6.1. Appointment of Operator. The Parties appoint BHSC as Operator for the purposes of operating, maintaining, and managing the Spare Turbine, and administering the Amended and Restated Spare Turbine Use Agreement. BHP and CLFP shall provide Operator access to the Plants and the Spare Turbines for the performance of its obligations under this Agreement.

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- (a) Ensure that such operations activities are conducted, and that such decisions are made, (i) in good faith, (ii) in accordance with applicable laws, orders, and permits, and (iii) in accordance with Prudent Utility Practice; and
- (b) Consult with and consider in good faith any comments from BHP as owner of the Spare Turbines prior to making any material change with respect to the Spare Turbines; and

- (c) Not make or allow to be made any adverse distinction between any Plant with respect to the use and availability of the Spare Turbines.

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6.4. Liability of Operator. The failure of Operator to meet any obligation under the Agreement shall in no event subject Operator to any claims by or liabilities to BHP and CLFP other than to reperform the services and be compensated for the cost of reperforming such services.

6.5. Indemnification of Operator. BHP and CLFP shall defend, indemnify and hold harmless Operator, its agents and employees from all Losses, on account of, or resulting from the performance of any services performed on behalf of Operator pursuant to this Agreement, whether or not the same results or allegedly results from the claimed or actual negligence or breach of warranty of by Operator or any of its employees, agents, clients, or contractors.

6.6. Compensation of Operator. Operator shall be reimbursed for all direct and indirect costs associated with performing its obligations under this Agreement.

## 7.0 COVENANTS, RIGHTS, AND RESPONSIBILITIES

7.1. Availability. BHP hereby covenants that, for so long as it or any of its Affiliates owns a controlling interest in the Spare Turbines, neither it nor any of its Affiliates will take any action (including by granting any right to use the Spare Turbines) with the intent to cause, and that causes, the Spare Turbines to be unavailable for the continued benefit of the Plants, consistent with past practice with respect to the Plants, unless BHP (a) obtains the prior written consent of the other Parties, which agree not to withhold their consent unreasonably, or (b) replaces, on commercially reasonable terms, the function provided by the Spare Turbines in respect of the affected Plant(s) (and provided that the costs reasonably expected to be borne by the Parties following such replacement, compared to the costs reasonably expected to be borne by BHP if such replacement were not to occur, shall be a factor in determining the commercial reasonableness of such terms). However, the covenants in this Section 7.1 shall not apply to (x) maintenance, repair, or other operating activities, actions, or decisions of Operator with respect to the Spare Turbines, if undertaken or made in accordance Prudent Utility Practice, including any decision to retire, replace, or temporarily or permanently shut down the Spare Turbines, or (y) any activities, actions, or decisions required by an applicable law, order, or permit.

7.2. Transfer Restrictions. BHP hereby covenants that it will not, and that it will not permit any of its Affiliates to, directly or indirectly transfer (including by operation of law or by the transfer of an Affiliate's stock or other equity interests) a controlling interest in the Spare Turbines to any non-Affiliate of BHP, unless BHP or one of its Affiliates obtains the prior written consent of the Parties, which agree not to withhold their consent unreasonably. For purposes of this Section

7.2, the costs reasonably expected to be borne by the Parties following such transfer or replacement, compared to the costs reasonably expected to be borne by BHP if such transfer or replacement were not to occur, shall be a factor in determining commercial reasonableness of the terms of such commitment or replacement.

7.3. Inspection Right. CLFP will have the right, exercisable from time to time after providing reasonable advance notice to the Operator, and without unreasonably interrupting or interfering with activities at the Plants, to meet with Operator and inspect the Spare Turbines. In exercising this right, CLFP will cause its representatives to comply with all safety, security, and other rules, regulations, and policies applicable to personnel at the Plants.

7.4. Routine Maintenance Expenses and Losses. With respect to the Spare Turbines, allocation of responsibility for routine maintenance expenses and Losses shall be reasonably estimated or determined by the Operator, based upon the nameplate capacity of each Plant benefitting from the Spare Turbines, in proportion to all Plants benefitting from the Spare Turbines. Routine maintenance expenses shall not include expenses associated with major overhauls, hot sections, or similar major maintenance activities.

7.5. Storage. When not in use and operation by one of the Parties, the Spare Turbines shall be safely stored at the Cheyenne Prairie Generating Station facility in Cheyenne, Wyoming in accordance with all applicable manuals and instructions provided by the Spare Turbine manufacturer.

7.6. Transportation to Plants. Upon receiving written notification from CLFP that an available Spare Turbine is required for use at a CLFP Plant, BHP shall use reasonable diligence in making the Spare Turbine available to CLFP. To the extent that a Spare Turbine is required for use at a BHP Plant, BHP shall be responsible for arranging for transportation of the Spare Turbine from the Cheyenne Prairie Generating Station to the BHP Plant and its return to the Cheyenne Prairie Generating Station. BHP shall be responsible for all costs incurred in transporting the Spare Turbines.

7.7. Use and Operation at Plants. While under care, custody, and control, the Parties agree to:

1. Operate and maintain the Spare Turbines in accordance with all applicable manuals and instructions provided to Parties and also in accordance with all applicable laws and regulations.
2. Obtain and pay for all license and inspection fees, which may become due for use of the Spare Turbines.
3. Install and subsequently remove the Spare Turbines into/from the designated Plant. BHP will provide installation and removal technical assistance when requested by Parties.
4. Perform only those repairs, tests, or modifications to the Spare Turbines, which have been specifically authorized by BHP.
5. Maintain a log that describes maintenance events and utilization of the Spare Turbines while in Parties possession.

6. Perform or have performed a functional check of the Spare Turbines immediately after installation and immediately prior to removal of the Spare Turbines at the designated Plant.
7. Not permit any lien or encumbrance against the Spare Turbines.
8. Not remove any marking on the Spare Turbines which identifies the Spare Turbines as the property of BHP.

7.8. Title. Title to the Spare Turbines is, and shall remain, in BHP.

7.9. Excusable Delays. BHP shall be excused from and shall not be liable for any delays in its delivery or failure to deliver the Spare Turbines hereunder and shall not be deemed to be in default for any failure or performance hereunder, due to causes beyond its reasonable control. Such causes shall include, but not be limited to, acts of God, acts (or failure to act) of CLFP or civil or military authority, government priorities, fires, strikes, labor disputes, work stoppage, floods, epidemics, war (declared or undeclared), riot and delays in transportation not caused by BHP. In the event of any such delay, the date of delivery shall be extended for a period equal to the time lost by reason of the delay.

7.10. Return of Spare Turbines from Plants. At the end of the period of use of a Spare Turbine, Parties will promptly cause the Spare Turbine to be returned in the same condition as it was received by the Parties, except for reasonable wear and tear due to operation within the Spare Turbines' intended purpose. CLFP agrees to pay BHP the price of repairing or replacing a Spare Turbine or any part thereof damaged or destroyed related to its use at a CLFP Plant.

## **8.0 TERM**

This Agreement shall commence on the date first set forth above and continue in effect (the "Term"), unless amended or otherwise terminated sooner by either Party upon three hundred sixty five (365) days notice.

## **9.0 RISK OF LOSS; REMEDIES**

9.1. No Special or Indirect Damages. Notwithstanding anything to the contrary herein, no Party (including Operator) will be liable to another Party (including Operator) under this Agreement for consequential, special, exemplary, or indirect damages, including loss of profit, cost of capital, loss of goodwill, loss of revenues from the sale of capacity or energy, or increased operating costs, irrespective of whether such damages were reasonably foreseeable or caused by the negligence of any party.

9.2. Specific Performance. The Parties each acknowledge and agree that in the event of a breach of this Agreement, the non-breaching Party may be irreparably harmed and may not be made whole by monetary damages. It is accordingly agreed that, in addition to the other remedies available under this Agreement or to which a Party may be entitled to at law or in equity, the Parties shall be entitled to compel specific performance of this Agreement.

## 10.0 REPRESENTATIONS AND WARRANTIES

On the date first herein mentioned, each Party represents and warrants to the other Parties that: (i) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation; (ii) it has all regulatory approval necessary for it to legally perform its obligations under this Agreement; (iii) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it; (iv) this Agreement constitutes its legally valid and binding obligations enforceable against it in accordance with the respective terms (subject to applicable bankruptcy, reorganization, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application regardless of whether enforcement is sought in a proceeding in equity or at law); and (v) there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement.

## 11.0 MISCELLANEOUS

11.1. Execution in Counterparts; Electronic Delivery. This Agreement may be executed by the Parties on separate counterparts, each of which when so executed and delivered will be an original, but which together will constitute but one and the same instrument. This Agreement may be delivered by the facsimile or other electronic transmission of signed signature pages.

11.2. Section Headings. The Article and Section headings in this Agreement are for convenience of reference only and shall not be utilized in construing or interpreting this Agreement.

11.3. Construction. This Agreement will be construed as the joint and equal work product of each Party and will not be construed more or less favorably on account of its preparation or drafting. In this Agreement, (a) the word "including" means "including without limitation" and (b) words such as "herein," "hereof," "hereby," and "hereunder" refer to this Agreement as a whole and not to any particular section or subsection. The words "year," "month," and "day," refer to a calendar year, calendar month, and calendar day, respectively, unless otherwise specified.

11.4. Entire Agreement; Amendments. This Agreement constitutes the entire agreement between the Parties relating to the subject matter hereof, shall not be modified except by a written instrument signed by all Parties, and supersedes and replaces those provisions of all prior agreements and understandings, oral or written, to the extent relating to the Spare Turbines.

11.5. Waivers. Any waiver by any Party of any violation of, breach of, or default by the another Party under any provision of this Agreement, or any exhibit, schedule, or other document referred to in this Agreement, will not be construed as or constitute a waiver of any subsequent violation, breach of, or default under that provision or any violation, breach of, or default under any other provision of this Agreement or any other document referred to in this Agreement.

11.6. No Joint Venture. The Parties hereto shall in no event be construed or considered as joint venturers or partners.

11.7. Governing Law. This Agreement is subject to the applicable laws of the state of Wyoming, without regard to conflicts of law principles.

11.9 Assignment. No Party may assign its rights or obligations under this Agreement without the prior written consent of the other Parties.

11.10 Successors and Assigns. This Agreement and all terms and provisions hereof shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

**[Signature Page Follows]**

IN WITNESS WHEREOF, the parties have executed this Agreement effective on the date first above written.

**Black Hills Power, Inc.**

*Marc Eyre*

Name: Marc Eyre

Title: VP Electric Operations

**Cheyenne Light, Fuel and Power Company**

*Mark Stege*

Name: Mark Stege

Title: VP Planning Operations

**Black Hills Service Company, LLC**

*Mark L. Lut*

Name: Mark L. Lut

Title: VP Power Delivery

**Exhibit A**

**Spare Turbine Assets**

**Black Hills Corporation  
BHP, CLFP and BHSC  
Amended and Restated Shared Turbine Agreement  
2022 Spare Turbine Fee as of August 2022**

<u>Asset Description</u>	<u>Book Value</u>	<u>Depreciation Method</u>
12/31/2021 Spare Turbine One	\$ 4,519,408	
12/31/2021 Spare Turbine One - Hot Section (1)	\$ 2,000,000	Depreciation Rates for FERC account 344 approved in the most recent rate review for BHP or CLFP
12/31/2021 Spare Turbine One - Major Overhaul (2)	\$ 4,500,000	
8/10/2022 Spare Turbine Two	\$ 5,960,885	
8/10/2022 Spare Turbine Two - Hot Section (1)	\$ 2,000,000	
8/10/2022 Spare Turbine Two - Major Overhaul (2)	\$ 4,500,000	
	<u>\$ 23,480,293</u>	

- (1) Hot Section will be depreciated at 2.97% until updated in a rate review of BHP or CLFP  
(2) Major Overhaul will be depreciated at 2.97% until updated in a rate review of BHP or CLFP

**Exhibit B**

**Spare Turbine Fee**

**Spare Turbine Fee.**

(A) In consideration for the right to use the Spare Turbines, CLFP will pay an annual fee to BHP, payable in equal monthly installments and pro-rated for any partial year (the "Spare Turbine Fee"). The Operator will establish the Spare Turbine Fee on the basis of a "rate of return" calculation made by:

(i) Applying (A) BHP's capital structure (including its debt-to-equity ratio, return on equity, and cost of debt) utilized by the South Dakota Public Utilities Commission in BHP's then-most-recently concluded rate case to set rates for BHP's electric utility customers in South Dakota; to (B) the net book value of the Spare Turbines attributable to the operations of each of the CLFP Plants, as reasonably estimated or determined by the Operator, based upon the nameplate capacity of the CLFP Plants benefiting from the Spare Turbines, in proportion to all Plants benefiting from the Spare Turbines, as of December 31 of the year in which the Spare Turbine Fee is established (so that, for instance, the estimated net book value as of December 31, 2021, would be used to calculate the Spare Turbine Fee for 2022); and

(ii) Adding the book depreciation, and amortization expenses, utilizing the depreciation rates established in the most recent rate review for either BHP or CLFP, as reasonably estimated by the Operator for the year in which the Spare Turbine Fee is established, attributable to such portion of the Spare Turbines (so that, for instance, the estimated depreciation and amortization expenses for 2021 would be used to calculate the Spare Turbine Fee for 2022).

(B) The Operator will establish the Spare Turbine Fee for each year on or before December 10 of the preceding year. The first such calculation shall be established on or before December 31, 2021, with the Spare Turbine Fee being prorated and effective January 1, 2022.