



City of Spearfish

Legal, Finance and Public Safety Committee Agenda

May 27, 2020 4:15 p.m.

City Council Chambers, 625 N. 5th Street, Spearfish

1. City Attorney

- A. Approve the Renewable Ready Subscriber Agreement with Black Hills Power.

2. Finance

- A. Transfer \$111,543 from 603-Hydro Electric Fund to 606-Airport Fund as budgeted.
- B. Approve 2020 grant reductions as presented for General Fund, Second Penny Sales Tax Fund and Hospitality Tax Fund.
- C. Restrict monthly payments to Visit Spearfish from the Convention Center BID fund to not expend reserves, if monthly allocation results in projected use of reserves the monthly payment will be limited to prior months actual receipts to maximum of 2020 budget authority.

3. Planning & Zoning

- A. Initiate a change of zoning for airport property from Agriculture (AG) and Light/Restrictive Industrial (LI) to Airport Zoning District (APZ).
- B. Initiate the annexation and change of zoning for two parcels located at the airport.

4. Public Comment

AGENDA ITEM SUMMARY**DEPARTMENT/ENTITY:** City Administration/Finance Office**REQUEST:**

Approve the Renewable Ready Subscriber Agreement with Black Hills Power

JUSTIFICATION: (attach any additional justification and/or documentation)

Under this agreement, a share of the city's power it receives from Black Hills Power at the service locations listed in the agreement will be from renewable sources. In May, 2019, Council issued a nonbinding letter of intent
[SPECIFICS ABOUT DIFFERENCES BETWEEN THIS ARRANGEMENT AND OUR CURRENT ARRANGEMENT]

FUNDING: _____**RECOMMENDATION:** Approve**COMMITTEE DATES****LFPS:** 05/27/2020 **PW:** _____**Deadline:** Friday 5:00pm prior to committee, send electronically to the Finance Office.**Departments provide requests/reports to committee:**

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Public Works: City Administration may report to both committees. Public Works, Library, Parks and Recreation, and Engineering.

Renewable Ready Subscriber Agreement

This Renewable Ready Subscriber Agreement (the “Agreement”) is entered into on ___/___/2020 (the “Agreement Date”) by and between Black Hills Power, Inc., d/b/a Black Hills Energy, a South Dakota corporation (the “Company”) and **City of Spearfish** (“Customer”) (individually “Party” and together, “Parties”). The “Effective Date” of Agreement will begin either the date the Renewable Ready program begins producing renewable energy or the Agreement Date, whichever occurs last.

1. **General terms.** The Company agrees to sell and the Customer agrees to buy renewable energy through the Company’s Renewable Ready program, subject to this Agreement and the terms and conditions of service as specified in the Company’s Electric Tariff (“Electric Tariff”), including without limitation the Renewable Ready Service Tariff, on file with the South Dakota Public Utilities Commission, as the same may be changed from time to time. A copy of the Electric Tariff is available from the Company’s website www.blackhillsenergy.com. In the event of any conflict between the terms of this Agreement and the Electric Tariff, the provisions of the Electric Tariff shall control.
2. **Subscription Premises.** Subscription Premises are those premises selected by the Customer and the Company, with preference given to locations where the metered usage is 50,000 kWh or more annually. The Customer’s Subscription Premises are as follows:

Service Location	City	State	Account Number	Service Agreement	Service Point ID	Subscribed Energy (kWh)
625 N 5 th St (City Hall)	Spearfish	SD	2470662751	2470661753	3743902813	244,560
637 St Joe St (COR Hill St)	Spearfish	SD	2470662751	2470665520	9779532778	208,641
1055 N Tinton Rd (Pump)	Spearfish	SD	2470662751	2470661089	7020341475	84,570
415 E Dakota St (Well)	Spearfish	SD	2470662751	2470668841	6582023200	68,380
560 Winterville Dr	Spearfish	SD	681755781	681753397	2464300799	62,220
705 E Colorado Blvd (Pump)	Spearfish	SD	2227392878	2227398136	1793833212	55,152

723,523

3. **Representations.** Customer hereby makes the following representations and warranties to Company:
 - a) Customer warrants the person signing this Agreement on behalf of Customer is individually authorized and competent to sign this Agreement and bind Customer to the terms herein; and
 - b) Customer currently receives electric service from Company at the Subscription Premises set forth above, and either (1) has an aggregate usage across all accounts of 300,000 kWh or more per year; or (2) is classified as a governmental account(s).
4. **Renewable Energy Source.** The source of the renewable energy for service under this Agreement will be a 52.5MW wind project to be located west of Cheyenne, Wyoming (the “Corriedale Project”). The Customer will begin to receive energy as described in Paragraph 5 following when the Corriedale Project is commercially operating.
5. **Selection of Subscription Share.** The Customer has elected to subscribe to **0.56%** share of the output of the Company’s portion (32.5 MW) of the renewable energy produced by the Corriedale Project (“Subscription Share”). The Subscription Share was determined by the Company and the Customer based on the Customer’s last twelve-month usage, or its projected usage if Customer has not received service for a prior period of twelve months. Each month the Company will use the Customer’s Subscription Share and the amount of renewable energy produced by the Company’s portion of the

Corriedale Project to calculate the Customer's amount of renewable energy. The Customer will be charged and credited for its renewable energy pursuant to the terms of this agreement and the Company's Renewable Ready Service Tariff with the South Dakota Public Utilities Commission. The Company makes no representation as to the actual monthly output of the Corriedale Project.

6. **Renewable Ready Charge and Credit.** The Renewable Ready Charge for the term of this Agreement is **\$0.024** per kWh as set forth in the Renewable Ready Tariff effective on the date of execution of this Agreement. The Renewable Ready Credit is adjusted on an annual basis along with the Company's Energy Cost Adjustment filing and will be adjusted on Customer billing. The Renewable Ready Credit effective on the date of execution of this Agreement is **\$0.02346** per kWh.
7. **Agreement Term and Renewal.** The term of this Agreement is **15 years** ("Initial Term") beginning on the Effective Date. The Agreement will automatically renew for successive one-year terms (each a "Renewal Term") at the expiration of the Customer's Initial Term or any Renewal Term. All terms of this Agreement shall apply to any Renewal Term. Either party to the Agreement may cancel the automatic renewal of the Agreement and terminate the Agreement upon expiration of the then-existing term by providing written notice at least ninety (90) days prior to the end of the applicable term, without incurring an Early Termination Fee. If no written notice is received by either party, the Agreement will automatically renew for a successive Renewal Term.
8. **Customer Changes to Subscription.** Based on the availability of renewable energy in the program, the Company may make available to subscribing customers the opportunity to increase their subscription share at any point during the Initial Term or any subsequent Renewal Term.
9. **Subscription Transfer.** If a Customer transfers electric service to a new premises within the Company's South Dakota certificated territory, the Company will transfer the Renewable Ready Service to the new premises for a charge of \$250. If the Customer has multiple premises within the Company's South Dakota certificated territory, the Customer shall have the option to transfer the Renewable Ready Service from a premises that is discontinuing service to another premises within the Company's South Dakota certificated territory for a charge of \$250. The Customer must provide the Company with at least thirty (30) days prior written notice of any request for a transfer of service under this paragraph and will further cooperate with any necessary amendments to this Agreement in order to effectuate the transfer.
10. **Transfer of Ownership.** If the Customer transfers all of its interest in the premises identified in this Agreement, the Customer may transfer its Subscription Share in the Renewable Ready Service Tariff to the new owner of the premises with prior written approval from the Company. The Customer and the new owner shall notify the Company in writing at least thirty (30) days prior to ownership transfer and cooperate with the Company provide all information necessary for the Company to evaluate the new owner for service under the Renewable Ready Service Tariff. Approval or denial of the transfer of the Subscription Share is within the reasonable discretion of the Company, however, Company shall not unreasonably withhold approval, condition approval or delay approval. Any denial of the transfer will result in an Early Termination Fee as set forth in Paragraph 14.
11. **Annual Review.** The Company shall conduct an annual review of Customer's aggregate usage over the prior twelve month period, or prorated usage if the Customer has not received service for a prior period of twelve months. If Customer's aggregate usage falls below 90% of the subscribed energy, the Company will proportionally reduce the Subscription Share and, in that event, Customer will be subject to a pro-rated Early Termination Fee as set forth in Paragraph 14 of this Agreement. Written notice of the reduction and associated Early Termination Fee will be provided to the Customer.

12. **Customer Relocates Outside of Service Area.** Except in a situation as described in Paragraph 21, if the Customer relocates to a premise outside of the Company's South Dakota certificated service territory, the Customer's subscription under the Renewable Ready Service Tariff will be terminated and the Customer will be charged the Early Termination Fee as set forth in Paragraph 14.
13. **Customer Ceases Operations or Terminates Service.** Except in a situation as described in Paragraph 21, if the Customer ceases operations or terminates service from the Company at its premises within the Company's South Dakota certificated service territory, the Customer's subscription under the Renewable Ready Service Tariff will be terminated and the Customer will be charged the Early Termination Fee as set forth in Paragraph 14.
14. **Early Termination Fee.** Early termination of this Agreement will result in an Early Termination Fee of **\$4,550** multiplied by the number of years remaining in the current Agreement Term or Renewal Term at the time of the termination (the "Early Termination Fee"). Reduction of aggregate usage below 90 percent of Customer's Subscription Share as described in Paragraph 11 of this Agreement, will result in a pro-rated Early Termination Fee based on the proportional difference between the Customer's prior Subscription Share and the reduced Subscription Share. The entire amount of any Early Termination Fee will be immediately due upon receipt of notice from the Company. If Customer's Subscription is fully re-subscribed by a similarly situated customer within ninety (90) days of notification or termination, Customer's Early Termination Fee may be waived by the Company.
15. **Renewable Energy Credits.** Any Renewable Energy Credits associated with the renewable energy allocated to the Customer based on its Subscription Share and the production of the Company's portion of the Corriedale Project will be transferred to or retired on behalf of the Customer.
16. **Termination by Company.** The Company shall have the unilateral right to terminate this Agreement at any time if the renewable energy facilities supporting the Renewable Ready program do not achieve commercial operation or do not perform pursuant to the industry standard expectations for a facility similar to the Corriedale Project.
17. **Choice of Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of South Dakota.
18. **Waiver.** Failure of either Party to enforce any term or condition of this Agreement shall not constitute a waiver of that term or condition or of any other term or condition of this Agreement.
19. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which is deemed original but all constitute one and the same instrument. The Parties agree that an electronic copy of a signature will be deemed original and binding.
20. **Third Party Beneficiaries.** Except as otherwise specifically provided herein, this Agreement is not intended to, and shall not, create rights, remedies, or any benefits of any character whatsoever, in favor of any person, corporation or other entity other than the Parties hereto, and the obligations herein assumed are for the use and benefit of the Parties, their successors in interest, and permitted assigns.
21. **Limitation of Early Termination Fee.** Customer shall not be subject to the Early Termination Fee for reduction of aggregate usage, relocation outside of Company's service area, cessation of operations, or termination of services if such reduction, relocation, cessation, or termination arise out of any cause or event beyond Customer's control including, without limitation, power or other mechanical failure either in Company's services or otherwise, natural disaster, flood or other water damage to Customer's facility, fire, or governmental action by a governmental entity other than Customer.

Signatures on following page(s)

As a qualified Black Hills Power, Inc. customer, I have read, understand, and agree to the terms of the Agreement set forth above:

For City of Spearfish:

By:

Its:

Date:

For Black Hills Power, Inc.:

By:

Its:

Date:

AGENDA ITEM SUMMARY**DEPARTMENT/ENTITY:** Finance**REQUEST:**

Transfer \$111,543 from 603-Hydro Electric Fund to 606-Airport Fund as budgeted.

JUSTIFICATION: (attach any additional justification and/or documentation)

The transfer is to cover the City's share of AIP project funding and \$100,000 estimate for the non-AIP project of the wildlife fence previously approved by council.

FUNDING: budgeted in 603-Hydro fund**RECOMMENDATION:** Approve**COMMITTEE DATES****LFPS:** 05/13/2020**PW:** _____**Deadline:** Friday 5:00pm prior to committee, send electronically to the Finance Office.**Departments provide requests/reports to committee:**

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AGENDA ITEM SUMMARY**DEPARTMENT/ENTITY:** Finance**REQUEST:**

Approve 2020 grant reductions as presented for General Fund, Second Penny Sales Tax Fund, and Hospitality Tax Fund.

JUSTIFICATION: (attach any additional justification and/or documentation)

Projecting future revenue decreases of 50% to Hospitality Tax Fund and 65% in Hotel BID Fund reductions of grant awards are needed to maintain compliance with reserve requirements. All grantees were notified of the reductions via letter. Those that had already received their entire grant award were asked to return the award if their organization hasn't seen increased needs so the award can be re-allocated to other organizations. Reductions were allocated on a proportionate basis of overall grant awards for each funding source. General fund award reductions are allocated at 50% - 100% of remaining grants to be distributed.

For DC Booth Society we would authorize finance to pay net proceeds from 2 campground spots (formerly occupied by volunteers of the fish hatchery) for the 2020 season as replacement for cut from hospitality tax fund.

FUNDING: n/a**RECOMMENDATION:** approve**COMMITTEE DATES****LFPS:** 05/13/2020**PW:** _____**Deadline:** Friday 5:00pm prior to committee, send electronically to the Finance Office.**Departments provide requests/reports to committee:**

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2020 Grants Reduction Recommendations

Fund	Organization	2020 Allocated	Paid already	Remaining to be paid	Recommended Reduction	Net Grant
101	211 Helpline	\$500	\$500	\$0		\$500
	Aquatics Club	\$1,500	\$1,500	\$0	-\$1,500	\$0
	BH Gold Swimming	\$5,000	\$5,000	\$0		\$5,000
	BSHU RSVP	\$6,500		\$6,500	-\$6,500	\$0
	CASA	\$4,000	\$4,000	\$0		\$4,000
	Compass Point	\$2,500	\$2,500	\$0		\$2,500
	Good Shepherd Clinic	\$3,000	\$3,000	\$0		\$3,000
	Historic Preservation	\$300		\$300	-\$300	\$0
	Humane Society	\$3,000	\$3,000	\$0		\$3,000
	Neighborworks	\$4,000	\$4,000	\$0		\$4,000
	Parents Who Care	\$300	\$300	\$0		\$300
	Prairie Hills Transit	\$45,000	\$22,500	\$22,500	-\$22,500	\$22,500
	Recreation Grants	\$500		\$500	-\$500	\$0
	Senior Center	\$500	\$500	\$0		\$500
	Spearfish Nutrition Site	\$5,000	\$5,000	\$0		\$5,000
	Teen Court	\$2,500	\$2,500	\$0		\$2,500
	Victims of Violence	\$3,500	\$3,500	\$0		\$3,500
		\$87,600	\$57,800	\$29,800	-\$31,300	\$56,300
201	Prairie Hills Transit (vehicle match)	\$25,000		\$25,000	-\$25,000	\$0
	SEDC	\$36,000	\$9,000	\$27,000	-\$15,768	\$20,232
	Spearfish Ambulance	\$25,000	\$25,000	\$0		\$25,000
		\$86,000	\$34,000	\$52,000	-\$40,768	\$45,232
202	BHSU Green & Gold Orientation	\$2,500	\$0	\$2,500	-\$1,461	\$1,039
	Booth Society Inc	\$34,000	\$17,000	\$17,000	-\$9,937	\$24,063
	Chamber - Leadership Spearfish	\$1,500	\$1,500	\$0		\$1,500
	Chamber - Relocation Guide	\$3,500	\$3,500	\$0		\$3,500
	Community Band	\$300	\$300	\$0		\$300
	High Plains Heritage Center	\$77,000	\$38,500	\$38,500	-\$22,504	\$54,496
	Historic Preservation	\$6,200	\$0	\$6,200	-\$3,624	\$2,576
	July 4th Band	\$300	\$0	\$300	-\$175	\$125
	Matthew's Opera House	\$48,000	\$24,000	\$24,000	-\$14,029	\$33,971
	Recreation Scholarships/Donations	\$500	\$0	\$500	-\$500	\$0
	SEDC	\$49,000	\$12,250	\$36,750	-\$21,482	\$27,518
	SOSD (Special Olympics)	\$1,000	\$0	\$1,000	-\$1,000	\$0
	Spearfish Downtown Business Assoc.	\$1,000	\$0	\$1,000	-\$585	\$415
	Visit Spearfish	\$215,000	\$123,000	\$92,000	-\$53,777	\$161,223
		\$439,800	\$220,050	\$219,750	-\$129,074	\$310,726
213	Visit Spearfish	\$210,000	\$70,000	\$140,000	\$0	\$210,000
		\$210,000	\$70,000	\$140,000	\$0	\$210,000
291	Fassbender	\$20,000	\$20,000	\$0	\$0	\$20,000
		\$20,000	\$20,000	\$0	\$0	\$20,000
	Totals	\$893,400	\$401,850	\$441,550	-\$201,142	\$642,258

AGENDA ITEM SUMMARY**DEPARTMENT/ENTITY:** Finance**REQUEST:**

Restrict monthly payments to Visit Spearfish from the Convention Center BID fund to not expend reserves; if monthly allocation results in projected use of reserves the monthly payment will be limited to prior months actual receipts to maximum of 2020 budget authority.

JUSTIFICATION: (attach any additional justification and/or documentation)

Projecting future revenue decreases of 65% to Hotel BID Fund indicated reductions of grant awards are needed to maintain compliance with reserve requirements. A meeting was held with Visit Spearfish and the Hotel BID Board and the above restriction was agreed upon. The monthly payments of \$17,500 will be allowed until cash balance of the fund is reduced to the reserve requirement of \$42,000, then future monthly payments will be limited to the prior month's receipts from participating hotels.

FUNDING: n/a**RECOMMENDATION:** approve**COMMITTEE DATES****LFPS:** 05/27/2020**PW:** _____**Deadline:** Friday 5:00pm prior to committee, send electronically to the Finance Office.**Departments provide requests/reports to committee:**

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AGENDA ITEM SUMMARY**DEPARTMENT/ENTITY:** Planning and Zoning**REQUEST:**

Initiate a change of zoning for airport property from Agriculture (AG) and Light/Restrictive Industrial (LI) to Airport Zoning District (APZ)

JUSTIFICATION: (attach any additional justification and/or documentation)

This action would allow the city to clarify the zoning of the airport area by beginning the process of assigning the Airport Zoning District (APZ) to all airport parcels. This will also set the uses and boundaries of the airport area and clean up a few errors discovered in the airport's zoning history.

FUNDING: na**RECOMMENDATION:** _____**COMMITTEE DATES****LFPS:** 05/27/2020 **PW:** _____**Deadline:** Friday 5:00pm prior to committee, send electronically to the Finance Office.**Departments provide requests/reports to committee:**

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Interstate 90

Rainbow Road

AGENDA ITEM SUMMARY**DEPARTMENT/ENTITY:** Planning and Zoning**REQUEST:**

Initiate the annexation and change of zoning for two parcels located at the airport

JUSTIFICATION: (attach any additional justification and/or documentation)

The airport was annexed into the city in 2001 via Resolution 2001-33 which annexed the majority of the airport area, however, there were two parcels not included, Tract A in S1/2 S1/2 and Tract A in NE1/4 SW1/4 - SE1/4 NW1/4. The resolution should have included these parcels by their legal description because, while located in the geographic areas annexed, they are separate legal parcels from the said geographic area.

The city owns these properties and this action would allow for the city to clarify the annexed territory and assign APZ zoning to the parcels.

FUNDING: na**RECOMMENDATION:** _____**COMMITTEE DATES****LFPS:** 05/27/2020 **PW:** _____**Deadline:** Friday 5:00pm prior to committee, send electronically to the Finance Office.**Departments provide requests/reports to committee:**

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Tract A S1/2 S1/2

Interstate 90

Tract A NE1/4 SW1/4 - SE1/4 NW1/4