

**STATE OF SOUTH DAKOTA
BOARD OF WATER AND NATURAL RESOURCES
ACTING AS THE SOUTH DAKOTA CONSERVANCY DISTRICT**

RESOLUTION NO. 2020-_____

WHEREAS, the South Dakota Conservancy District (the “District”) is duly constituted as an instrumentality of the State of South Dakota exercising public and governmental functions under the operation, management and control of the South Dakota Board of Water and Natural Resources (the “Board of Water and Natural Resources”), pursuant to SDCL Chapters 46A-1 and 46A-2 (the “Act”); and

WHEREAS, pursuant to the Act and the federal Clean Water Act, the District has established a state revolving fund program (the “Clean Water Program”); and

WHEREAS, pursuant to the Act and the federal Safe Drinking Water Act, the District has established a state revolving fund program (the “Drinking Water Program”); and

WHEREAS, pursuant to the Act, the District is authorized to make loans to eligible borrowers in connection with the Clean Water Program and the Drinking Water Program (each a “Program” and collectively, the “Programs”); and

WHEREAS, the Board of Water and Natural Resources heretofore determined that it was necessary and expedient that the District enter into a Master Trust Indenture dated as of March 1, 1994, as amended and supplemented by a First Supplement to Master Trust Indenture dated as of January 1, 1995, collectively (the “Original Clean Water Master Trust Indenture”) with The First National Bank in Sioux Falls, as Trustee, pursuant to which the District issued bonds from time to time and loaned the proceeds thereof to political subdivisions in furtherance of the Clean Water Program; and

WHEREAS, the Board of Water and Natural Resources heretofore determined that it was necessary and expedient that the District enter into a Master Trust Indenture dated as of June 1, 1998 (the “Original Drinking Water Indenture”) with The First National Bank in Sioux Falls, as Trustee pursuant to which the District issued bonds from time to time and loaned the proceeds thereof to eligible private and public entities for drinking water projects in furtherance of the Drinking Water Program; and,

WHEREAS, the District has heretofore determined that it is desirable to finance the Programs under a common indenture, and the District has determined that in order to accomplish such consolidation it is necessary and appropriate to amend and restate the Original Clean Water Indenture and the Original Drinking Water Indenture into a single, consolidated Amended and Restated Master Trust Indenture dated as of July 1, 2004, as amended by a First Amendment to Amended and Restated Master Trust Indenture dated October 1, 2005, a Second Amendment to Amended and Restated Master Trust Indenture dated April 1, 2006, a Third Amended and Restated Master Trust Indenture dated March 1, 2008, the Series 2008 Supplemental Indenture dated March 1, 2008, a Fourth Amended and Restated Master Trust Indenture dated August 1,

2009, a Fifth Amended and Restated Master Trust Indenture dated September 1, 2010, and a First Amendment to Fifth Amended and Restated Master Trust Indenture dated February 17, 2015, (as hereafter amended or supplemented, the “Master Trust Indenture”); and

WHEREAS, effective April 24, 2017 The First National Bank in Sioux Falls, as Trustee was succeeded by U.S. Bank National Association as Successor Trustee (the “Trustee”); and

WHEREAS, the Board of Water and Natural Resources has determined that it is necessary and expedient that the District issue bonds from time to time pursuant to the Master Trust Indenture and to loan the proceeds thereof to Borrowers in furtherance of the Programs through the purchase of Loan Obligations from time to time as the District shall determine necessary or appropriate to carry out the purposes of either the Clean Water Act (PL 92-500), as amended by the Water Quality Act of 1987 (PL 100-4), 33 U.S.C. 1251, et seq., and any subsequent amendments thereto, or the Safe Drinking Water Act, Chapter 6A of the Public Health Service Act, 42 U.S.C. §§300f through 300j-26, and any subsequent amendments thereto (the applicable federal act to be identified herein as the “Relevant Federal Act”); and

WHEREAS, capitalized terms used but not defined herein or in the Master Trust Indenture as supplemented by the Series Resolution (and as now or hereafter amended or supplemented being herein collectively referred to as the “Indenture”) shall have the meanings given thereto in the Loan Agreement; and,

WHEREAS, the Deer Mountain Sanitary District (the “Borrower”) has applied to the Board for financial assistance in the principal amount not to exceed \$2,174,000, for purposes authorized and permitted by the Relevant Federal Act; and,

WHEREAS, the Borrower will adopt a Resolution (the “Applicant Resolution”) describing the Project and approving a Loan Agreement (the “Loan Agreement”) between the Borrower and the District and a Borrower Bond of the Borrower (the “Loan Obligation”) pursuant to SDCL Chapters 34A-5, 9-26 and 6-8B, copies of which Loan Agreement and Loan Obligation are presently on file with the District;

NOW, THEREFORE, THE MEMBERS OF THE SOUTH DAKOTA BOARD OF WATER AND NATURAL RESOURCES (ACTING IN THE CAPACITY OF GOVERNING BODY FOR AND ON BEHALF OF THE SOUTH DAKOTA CONSERVANCY DISTRICT PURSUANT TO SDCL §46A-2-2) HEREBY FIND, DETERMINE AND RESOLVE AS FOLLOWS:

1. The Board of Water and Natural Resources hereby approves a State Revolving Fund Loan up to a maximum Committed Amount of \$2,174,000 [with up to _____% principal forgiveness not to exceed \$_____] as is set forth with particularity in the Loan Agreement and Loan Obligation contingent upon the Applicant Resolution becoming effective following its publication. Borrower is a Public Entity within the meaning of SDCL §46A-2-4, and the purpose of the proposed Loan is authorized by the Relevant Federal Act and any currently applicable District/EPA Agreements.

2. Borrower does not propose to make a private loan of any proceeds of the loan or to permit the facilities financed with the proceeds of the loan to be used directly or indirectly by any person who is not a Governmental Unit (all within the meaning of Section 141 of the Code).

3. The Loan Agreement and Loan Obligation are to be secured by the full faith, credit, and resources of the Borrower, and ad valorem taxes are to be levied on all taxable property within the boundaries of the Borrower, and the Loan Agreement contains the applicable rate covenant and additional debt test required of the Borrower.

4. The Loan will not be subordinate to any other outstanding debt of the Borrower.

5. Borrower has represented that it will levy ad valorem taxes within statutory and constitutional limits when and as needed to pay debt service on the Loan Agreement and Loan Obligation out of the sources therein specified.

6. Before execution of the Loan Agreement, the District shall be satisfied by a written opinion of the Attorney General as required by SDCL §46A-1-51 and shall receive the written opinion of Davenport, Evans, Hurwitz & Smith, LLP, as Bond Counsel, in substantially the form attached as Appendix D to the Loan Agreement.

7. As required by SDCL §46A-1-52, before entering into the Loan Agreement, the Board has conducted an independent review of the feasibility of the project proposed to be financed by the Loan to ensure the projected water consumption, operation costs, construction costs, revenues and other statistics are reliable and that such project will be able to pay its costs and expenses. The Board hereby states its findings from its independent review that the projected water consumption, operation and maintenance expenses, construction costs, and ad valorem taxes levied are reliable, and the Board is satisfied, based on reliable statistics, that Borrower will be able to pay the debt service under the Loan Agreement and Loan Obligation. A summary of such independent review is presently on file with the Secretary of the Board of Water and Natural Resources.

8. No portion of the proceeds of the Loan shall be used to reimburse the Borrower for costs paid prior to the date of this Loan Agreement of a Project the construction or acquisition of which occurred or began earlier than July 1, 1993 for a drinking water project, or before March 7, 1985 for a clean water project. No portion of the proceeds of the Loan shall be used to refinance indebtedness incurred to pay the costs of the Project paid prior to Closing of the Loan. The proceeds of the Loan will be used to reimburse the Borrower for expenditures made prior to the Closing, and the Borrower represents that such costs were incurred and paid in anticipation of reimbursement from the proceeds of the Loan and consistent with any requirements of the Loan Agreement.

9. The proceeds from the Loan shall not be applied directly or indirectly for the purpose of refinancing an obligation the interest on which is exempt from federal income tax or excludable from gross income for purposes of federal income taxation.

10. The Loan will not be closed unless the District receives the documents required by the Loan Agreement, the Relevant Federal Act, as amended, the applicable District/EPA Agreements and the following documents, certificates and opinions:

- (a) The opinion of Davenport, Evans, Hurwitz & Smith, LLP, as Bond Counsel;
- (b) The opinion of the Attorney General described above;
- (c) The executed Loan Obligation;
- (d) The executed Loan Agreement;
- (e) A certificate of the Borrower as to its current population and number of System customers and indicating the amount of any outstanding System Debt;
- (f) A certified copy of the Applicant Resolution;
- (g) A certified copy of any other approvals of the levy of ad valorem taxes described in the Applicant Resolution;
- (h) Any item required for disbursement of the Loan, if any, at Closing;
- (i) Evidence of required insurance relating to Borrower's System;
- (j) Any Collateral Document required by the Loan Agreement; and,
- (k) Such other documents, certificates and other instruments required by the District, Bond Counsel, or the Attorney General.

11. To the extent the form of the Loan Agreement, Loan Obligation and various Appendices thereto are modified from the forms previously approved by the Board, it is hereby determined that, in the judgment of the Board, such modifications are not to the material prejudice of the Bondholders.

12. The Board of Water and Natural Resources authorizes its Chairman to execute the Loan Agreement, accept the Loan Obligation, and execute and deliver such other documents and perform all acts necessary to effectuate the loan approved herein in accordance with all terms herein set forth and the Indenture.

13. The Board hereby designates the Secretary, Department of Environment and Natural Resources as the representative of the Board to do all things on its behalf allowable under ARSD 74:05:08 and ARSD 74:05:11 with reference to the Loan Agreement and Loan Obligation, and those acts as specified in the Loan Documents to be performed by the Board; provided, that the Secretary is hereby empowered to delegate such authority in writing to those persons under the Secretary's supervision as the Secretary deems appropriate.

Dated this _____ day of _____, 2020.

(SEAL)

SOUTH DAKOTA CONSERVANCY DISTRICT

Chairman, Board of Water and
Natural Resources

ATTEST:

Secretary, Board of Water and
Natural Resources