

**ECONOMIC DEVELOPMENT FINANCE AUTHORITY
GOED CONFERENCE ROOM, 711 E WELLS AVE, PIERRE, SD
WEDNESDAY, JULY 8, 2020, 10:30 A.M. CT**

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Notice is further given to persons with disabilities that this meeting is being held in a physical accessible place. Please notify the above mentioned office within 48 hours of the public hearing if you have special needs for which this agency will make the necessary arrangements.

**ECONOMIC DEVELOPMENT FINANCE AUTHORITY
GOED CONFERENCE ROOM, 711 E WELLS AVE, PIERRE, SD
WEDNESDAY, JULY 8, 2020, 10:30 A.M. CT**

Motion Sheet

Board
Members

Jeff Erickson

Don
Kettering

Sharon
Casey

Tom Jones

Mike Luken

Jim Schmidt

Matt Judson

EDFA Meeting: Please note times:

Call To Order: _____

Executive Session: _____

Regular Session: _____

Adjournment: _____

Agenda

Motion to approve the Agenda as presented.

Motion made by _____ and seconded by _____

Minutes

Motion to approve the minutes of March 24, 2020 and June 25, 2020, as presented.

Motion made by _____ and seconded by _____.

Public Comments

Commissioners Comments

Dorsey & Whitney LLP

Motion to approve the Dorsey & Whitney LLP contract as presented.

Motion made by _____ and seconded by _____.

Executive Session

Motion to enter into executive session to discuss contract matters and commercial and financial information relating to loan and other assistance to applicants.

Motion made by _____ and seconded by _____.

Chairman: Declare board out of executive session. [a.m.]. Chairman: The EDFA entered into executive session to discuss contract matters and commercial and financial information relating to loan and other assistance to applicants. No action was taken.

Motion to approve the chairman's report from executive session.

Motion made by _____ and seconded by _____.

Bills

Motion to approve the bill payable to Dorsey & Whitney LLP in the amount of \$4,867.

Motion made by _____ and seconded by _____.

Adjourn

Motion made by _____ and seconded by _____.

A

**ECONOMIC DEVELOPMENT FINANCE AUTHORITY
GOED CONFERENCE ROOM, 711 E WLLS AVE, PIERRE, SD
WEDNESDAY, JULY 8, 2020, 10:30 A.M. CT**

The meeting will start upon conclusion of the meeting of the Board of Economic Development, but not sooner than 10:30 a.m.

REGULAR SESSION AGENDA

- 10:30 A.M. Call To Order, Chairman, Jeff Erickson
- 10:35 A.M. **Approve Agenda**
RECOMMENDED ACTION: Motion to approve Agenda as provided or amended.
- Approve Minutes**
RECOMMENDED ACTION: Motion to approve Minutes as provided or amended.
- Public Comments**
- Approve Dorsey & Whitney LLP Contract**
RECOMMENDED ACTION: Motion to approve the Dorsey & Whitney LLP contract as presented.
- 10:45 A.M. **Commissioner's Comments**
- 10:50 A.M. **Executive Session**
RECOMMENDED ACTION: Motion to enter into executive session to discuss contract matters and commercial and financial information relating to loan and other assistance applicants.
- 11:00 A.M. **Report from Executive Session**
RECOMMENDED ACTION: Approve Chairman's report from Executive Session.
- Bill
Dorsey & Whitney LLP - \$4,867.00

Notice is further given to persons with disabilities that this meeting is being held in a physically accessible place. Please notify the above mentioned office within 48 hours of the public hearing if you have special needs for which this agency will make the necessary arrangements.

Participation in the meeting can be at GOED at 711 E Wells Ave, Pierre, SD, the GOED office at the Zeal Center for Entrepreneurship at 2329 N. Career Avenue, Sioux Falls, SD or the GOED office at the Ascent Innovation Center at 525 University Loop.

B

**Economic Development Finance Authority
GOED Conference Room, 711 E Wells Ave, Pierre, SD
Friday, April 24, 2020, 11:00 a.m. CT**

Members Present

Chairman Jeff Erickson, Don Kettering, Sharon Casey, Tom Jones, Mike Luken and Jim Schmidt

Staff Present

Commissioner Steve Westra, Deputy Commissioner Mary Lehecka Nelson, Cassie Stoesser, Ashley Moore, LaJena Gruis, Terri LaBrie and Cassidy Kulesa

Call to Order

Chairman Erickson called the meeting to order at 11:01 a.m.

Agenda

A motion was made by Jim Schmidt and seconded by Sharon Casey to approve the agenda as presented.

Motion passed by a roll call vote.

Minutes

A motion was made by Don Kettering and seconded by Mike Luken to approve the minutes of December 30, 2019 as presented.

Motion passed by a roll call vote.

Donation of Funds

A motion was made by Don Kettering and seconded by Mike Luken to grant \$1,500,000 from the agricultural processing and export (APEX) fund to Governor Noem's Small Business Relief Fund created by SB 192. The Commissioner of GOED is hereby authorized to take all steps reasonably necessary to transfer the grant funds.

Motion passed by a roll call vote.

Public Comment Period - none

Adjourn

The Chairman declared the meeting adjourned at 11:15 a.m.

Motion passed by a roll call vote.

Matt Judson, Secretary/Treasurer

**SOUTH DAKOTA
VALUE ADDED FINANCE AUTHORITY
MINUTES OF THE MEETING
June 25, 2020**

The South Dakota Value Added Finance Authority (VAFA) board held its regularly scheduled meeting on Thursday, June 25, 2020, at the GOED Conference Room, Dolly Reed Plaza, Pierre, South Dakota and via teleconference.

Board Members Present:

Bob Hull, Chairman
Mark Gross, Vice-Chairman
Jim Schmidt
Jim Doolittle
Marcia Hendrickson
Nathan Jensen
Chuck Jepson

Board Members Absent:

Staff Present:

Cassie Stoesser, Terri LaBrie, Ashley Moore, LaJena Gruis and Cassidy Kulesa

Others Present:

Cheri Rath

Call to Order: Chairman Bob Hull opened the meeting at 8:32 a.m. CT and asked for roll call. A quorum was present.

Agenda: Chairman Hull asked for any additions to the agenda, none were mentioned. A motion to approve the agenda was made by Jim Doolittle and seconded by Mark Gross. Motion passed by unanimous roll call vote.

Conflict of Interest: Chairman Hull asked for any conflicts of interest. None were mentioned.

Minutes: A motion to approve the minutes dated May 28, 2020 was made by Jim Doolittle and seconded by Chuck Jepson. Motion passed by unanimous roll call vote.

CLR #2015.01.AG Loan Forgiveness: Ms. LaBrie informed the board CLR is asking the board to forgive their loan as they are not going through with the project due to new challenges in the industry. Ms. LaBrie recommended to approve forgiving the loan. A motion to approve staff recommendation was made by Chuck Jepson and seconded by Mark Gross. Motion passed by unanimous roll call vote.

Executive Director Report: Ms. LaBrie gave a brief recap of everything the VAFA Board has accomplished over the years.

Adjourn: A motion to adjourn was made by Mark Gross and seconded by Marcia Hendrickson. Motion passed by unanimous roll call vote and the meeting adjourned at 8:43 a.m. CT.

Matt Judson, Secretary/Treasurer

Date

C

**STATE OF SOUTH DAKOTA
BOND COUNSEL CONTRACT/LETTER OF AGREEMENT
FOR BOND COUNSEL SERVICES BETWEEN:**

Dorsey & Whitney LLP 801 Grand, Suite 4100 Des Moines, IA 50309 Hereafter referred to as Bond Counsel	Economic Development Finance Authority C/O Governor's Office of Economic Development 711 East Wells Avenue Pierre, SD 57501 Hereafter referred to as Authority or EDFA
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The Authority hereby enters into an Agreement for Legal Services with Bond Counsel in consideration of and pursuant to the terms and conditions set forth herein.

I. Bond Counsel.

1. Bond Counsel agrees to perform services as bond counsel in connection with the Beginning Farmer, Agribusiness, and Livestock Nutrient Management programs and related services, including the provision of legal advice related to any initial SEC rule 15c2-12 continuing disclosure undertakings, as well as all advice and opinions on other matters customarily provided by bond counsel related to the issuance of bonds. At the request of Authority, Bond counsel will also provide services relating to post issuance compliance, IRS inquiries, audits and other procedures and other post issuance matters (the "Post Issuance Services").
2. Bond Counsel's services under this Agreement shall commence July 1, 2020 and end at 11:59 p.m. on June 30, 2022 unless sooner terminated pursuant to the terms hereof.
3. Neither Bond Counsel nor any of Bond Counsel's employees are Authority employees and will not use Authority equipment, supplies, or facilities.
4. Bond Counsel, at all times during the term of this Agreement and for two years following the termination of this Agreement, shall obtain and provide proof acceptable to the Authority of insurance covering professional errors, omissions or negligent acts with limits of not less than \$15,000,000. Bond Counsel shall be financially responsible for the premiums and deductibles on such insurance. Further, Bond Counsel shall procure and maintain workers' compensation and employers' liability insurance if required by South Dakota law.
5. Bond Counsel agrees to indemnify and hold the Authority, its officers, agents and employees, harmless from and against any and all actions, suits, damages, liability or other proceedings which may arise as the result of performing services hereunder. This section does not require Bond Counsel to be responsible for or defend against claims or damages arising solely from the errors or omissions of the Authority, its officers, agents or employees or from the errors or omissions of third parties that are not officers, employees or agents of Bond Counsel, unless such errors or omissions resulted from the acts or omissions of Bond Counsel. Nothing in this contract is intended to impair the insurance coverage of Bond Counsel or any subrogation rights of Bond Counsel's insurers.
6. While performing services hereunder, Bond Counsel is an independent contractor and not an officer, agent, or employee of the Authority.

7. Bond Counsel agrees that if Bond Counsel represents a client in a matter in which the client's interests are adverse to the interests of the Value Added Finance Authority, Bond Counsel will so notify the Authority in writing of any such adverse interest. The Authority may, at its discretion, waive any conflict that may arise from such representation, terminate this Agreement, or reach any other accommodation with Bond Counsel as may be in the best interests of the Authority.
8. Bond Counsel will comply with all federal, state, and local laws, regulations, ordinances, guidelines, permits and requirements applicable to providing services pursuant to this Agreement, including sales or use tax licensing, reporting and payment requirements, and will be solely responsible for obtaining current information on such requirements.
9. Bond Counsel may not use subcontractors to perform the services described herein without the express prior written consent of the Authority. If Bond Counsel is given approval to use subcontractors, Bond Counsel will include provisions in its subcontracts requiring its subcontractors to comply with the applicable provisions of this Agreement and to provide insurance coverage for the benefit of the Authority in a manner consistent with this Agreement. Bond Counsel will cause its subcontractors, agents, and employees to comply with applicable federal, state and local laws, regulations, ordinances, guidelines, permits and requirements and will adopt such review and inspection procedures as are necessary to assure such compliance.

II. The Authority.

1. Unless previously approved by the Authority, payment for Services provided herein will not exceed \$30,000.00 annually for the Beginning Farmer Bond Program. Unless previously approved by the Authority, services herein provided for the Agribusiness and Livestock Nutrient Management Programs will not exceed \$90,000 annually. Unless previously approved by the Authority, payment for any Post Issuance Services (as defined below), including related expenses, will not exceed \$25,000.00 annually. For the purposes of this Agreement, the term "annually" means the Authority's then-current fiscal year.
2. The Authority will make payment for services performed under this Agreement based upon the following fee schedules:
 - A. For the Beginning Farmer Program:

<u>Size of Bond Issue</u>	<u>Fee (Dollars/\$1,000)</u>
Up to \$50,000	Minimum fee \$250
Next \$50,000	\$4.65/\$1,000
Next \$50,000	\$4.30/\$1,000
Next \$50,000	\$3.95/\$1,000
Next \$50,000	\$3.60/\$1,000
Remaining Balance	\$3.60/\$1,000

B. For the Agribusiness and Livestock Nutrient Management Programs:

Fees for Issuer Counsel when Borrower has own Bond Counsel:

Bonds up to \$300,000	\$4,500
Bonds from \$300,001 to \$1 million	\$6,000
Over \$1 million up to \$15 million	Add .10% of principal amount over \$1 million
Over \$15 million	Add .05% of principal amount over \$15 million

Fees when Bond Counsel acts as Bond Counsel and Issuer Counsel:

Bonds up to \$ 1million	\$6,000
Over \$1 million up to \$15 million	Add .275% of principal amount over \$1 million
Over \$15 million	Add .15% of principal amount over \$15 million

C. For Post Issuance Services:

For the purposes of this Agreement, the term "Post Issuance Services" means any services performed for the Authority with respect to bonds issued by the Authority after their date of issuance except for services relating to the initial filing of IRS Form 8038 relating to such bonds. Bond Counsel will be paid for its services by the Authority at standard hourly rates of the attorneys performing the services which are listed in the attached schedule, and will be reimbursed for its direct expenses for such things as postage, overnight delivery services, faxes, photocopying, filing fees, electronic research, and other expenses as shown on the attached schedule. Bond Counsel will perform such Post Issuance Services only after written approval of the scope of the Post Issuance Services to be performed. Authority will pay Bond Counsel for performance of such Post Issuance Services whether or not the Authority is reimbursed for its payment thereof by third parties.

3. Except in connection with Post Issuance Services, the Authority will not pay Bond Counsel expenses as a separate item. Notwithstanding this provision, any expense incurred from third parties in connection with the initial transmittal or filing of a 15c2-12 report, including electronic filing or transmission charges shall be an expense payable out of the administrative funds or accounts (herein, "Administrative Accounts") relating to bonds issued, and shall not be an expense of Bond Counsel, and if initially paid by Bond Counsel, Bond Counsel shall be entitled to reimbursement from the Administrative Accounts.

III. Other Provisions.

1. This Agreement may be terminated by either party hereto upon thirty (30) days written notice and may be terminated by the Authority for cause at any time, with or without notice.
2. This Agreement may not be assigned without the express prior written consent of the Authority. This Agreement may not be amended except in writing, which writing shall be expressly identified as a part hereof and be signed by an authorized representative of each of the parties involved.

3. This Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota. Any lawsuit pertaining to or affecting this Agreement shall be venued in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.
4. Any notice of other communication required under this Agreement shall be in writing and sent to the address set forth above. Notices shall be given by and to Cassie Stoesser, Economic Development Finance Authority, C/O SD Governor's Office of Economic Development, 711 E. Wells Avenue, Pierre, SD 57501, on behalf of the Authority, and by and to Cris Kuhn, 801 Grand, Suite 4100, Des Moines, IA 50309 on behalf of Bond Counsel or such authorized designees as either party may from time to time designate in writing. Notices or communications to or between the parties as shall be deemed to have been delivered when mailed by first class mail, provided that notice of default or termination shall be sent by registered or certified mail, or, if personally delivered, when received by such party.
5. This Agreement depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. This Agreement will be terminated by the Authority if the Legislature fails to appropriate funds or grant expenditure authority. Termination for this reason is not a default by the Authority nor does it give rise to a claim against the Authority.
6. Bond Counsel agrees to report to the Authority any event encountered in the course of performance of this Agreement which results in injury to any person or property, or which may otherwise subject Bond Counsel, the Authority or the Authority's officers, agents or employees to liability. Bond Counsel shall report any such event to the Authority immediately upon discovery.

Bond Counsel's obligation under this section shall only be to report the occurrence of any event to the Authority and to make any other report provided for by Bond Counsel's duties or applicable law. Bond Counsel's obligation to report shall not require disclosure of any information subject to privilege or confidentiality under law (e.g., attorney-client communications.) Reporting to the Authority under this Article shall not excuse or satisfy any obligation of Bond Counsel to report any event to law enforcement or other entities under the requirements of any applicable law.
7. In the event that any provision of this Agreement shall be held unenforceable or invalid by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.
8. All other prior discussions, communications and representations concerning the subject matter of this Agreement are superseded by the terms of this Agreement, and except as specifically provided herein, this Agreement constitutes the entire agreement with respect to the subject matter hereof.

[SIGNATURES ON FOLLOWING PAGE]

In Witness whereof, the parties signify their agreement by signatures affixed below:

DATED this _____ day of _____, 2020.

BOND COUNSEL
DORSEY & WHITNEY LLP

BY: Cristina Kuhn
ITS: _____

DATED this _____ day of _____, 2020.

AUTHORITY

ECONOMIC DEVELOPMENT FINANCE

Matt Judson, Secretary/Treasurer
Economic Development Finance Authority

ATTACHMENT TO CONTRACT BETWEEN DORSEY & WHITNEY LLP

and

SOUTH DAKOTA ECONOMIC DEVELOPMENT FINANCE AUTHORITY

HOURLY RATE SCHEDULE

Bond Attorney	\$270 - \$440
Senior Bond Attorney	\$545
Senior Tax Counsel	\$655

In addition to our fees for legal services we would expect to receive reimbursement on a cost basis for customary expenses incurred in doing the work, such as photocopying, transcript expenses, secretarial overtime, messenger service, and travel expenses. The listing is below:

STANDARD SERVICE CHARGES

Dorsey & Whitney service charges which appear on fee statements are based on the following rates:

PHOTOCOPYING/PRINTING (Printing of Documents of 25 pages or more)	0.12/Page
Special paper and services are provided at an additional charge	
BINDING (Spring Post)	\$30.00/book
OVERNIGHT DELIVERY	Equal to vendors' rates
TRANSCRIPT BINDING / COPYING	Equal to vendors' rates
INTERNAL MESSENGERS	\$12
Special services are provided at an additional charge	
COMPUTERIZED LEGAL RESEARCH	Equal to vendors' rates
TRAVEL EXPENSES	Equal to vendors' rates
AFTER HOURS SECRETARIAL SUPPORT	\$40/hour

F

**Economic Development Finance Authority
July 8, 2020**

BILLS REQUIRING ACTION

Dorsey & Whitney LLP

\$4,867.00



MINNEAPOLIS OFFICE
612-340-2600

(Tax Identification No. 41-0223337)

STATEMENT OF ACCOUNT FOR PROFESSIONAL SERVICES

South Dakota Economic
Development Finance Authority
711 East Wells Avenue
Capitol Lake Plaza
Pierre, SD 57501
Attn: Cassie Stoesser

June 10, 2020
Invoice No. 3586485

Client-Matter No.: 634411-01000
General Bond Matters

For Legal Services Rendered Through May 31, 2020

INVOICE TOTAL

Total For Current Legal Fees	\$4,867.00
Total For Current Invoice	\$4,867.00

For your convenience, please remit payment to the address below or we offer the option of remitting payment electronically by wire transfer. If you have any questions regarding this information, please contact the lawyer you are working with on this project or Dorsey's Accounts Receivable Department at 1-800-861-0760. Thank you.

Mailing Instructions:
Dorsey & Whitney LLP
P.O. Box 1680
Minneapolis, MN 55480-1680

Wire Instructions:
U.S. Bank National Association
800 Nicollet Mall
Minneapolis, MN 55402

(This account is only for Wire/ACH payments)
ABA Routing Number: 091000022
Account Number: 1047-8339-8282
Swift Code: USBKUS44IMT

Please make reference to the invoice number

Service charges are based on rates established by Dorsey & Whitney. A schedule of those rates has been provided and is available upon request. Disbursements and service charges, which either have not been received or processed, will appear on a later statement.

ALL INVOICES ARE DUE 30 DAYS FROM DATE OF INVOICE UNLESS OTHERWISE EXPRESSLY AGREED BY DORSEY & WHITNEY