

**ECONOMIC DEVELOPMENT FINANCE AUTHORITY
GOED CONFERENCE ROOM, 711 E WELLS AVE, PIERRE, SD
WEDNESDAY, JULY 10, 2024, 9:30 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 10, 2024, 9:30 A.M., CT**

Motion Sheet

EDFA Meeting: Please note times:

Call To Order: _____

Executive Session: _____

Regular Session: _____

Adjournment: _____

Board
Members

Jeff Erickson

Don
Kettering

Sharon
Casey

Tom Jones

Mike Luken

Jim Schmidt

Matt Judson

Agenda

Motion to approve the agenda as presented.

Motion made by _____ and seconded by _____.

Minutes

Motion to approve the minutes of April 9, 2024 as presented.

Motion made by _____ and seconded by _____.

Public Comments

Dorsey & Whitney LLP

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

Motion made by _____ and seconded by _____.

Commissioners Comments

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. SDCL 1-16B-14.1

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 _____.

New Business

Brookings Biogas, LLC and/or their affiliates

Motion to accept the Livestock Nutrient Management Bond application from Brookings Biogas, LLC and/or their affiliates and passing Resolution A to recognize qualified tax-exempt project costs of up to \$20,000,000 for which a bond issue up to that amount will later be requested.

Motion made by _____ and seconded by _____.

Lakeside Biogas, LLC and/or their affiliates

Motion to accept the Livestock Nutrient Management Bond application from Lakeside Biogas, LLC and/or their affiliates and passing Resolution A to recognize qualified tax-exempt project costs of up to \$20,000,000 for which a bond issue up to that amount will later be requested.

Motion made by _____ and seconded by _____.

Novilla RNG, LLC: Five Shot RNG, LLC

Motion to accept the Livestock Nutrient Management Bond application from Novilla RNG, LLC: Five Shot RNG, LLC and passing Resolution A to recognize qualified tax-exempt project costs of up to \$20,000,000 for which a bond issue up to that amount will later be requested.

Motion made by _____ and seconded by _____.

Novilla RGN, LLC: Moccasin Creek RNG, LLC

Motion to accept the Livestock Nutrient Management Bond application from Novilla RNG, LLC: Moccasin Creek RNG, LLC and passing Resolution A to recognize qualified tax-exempt project costs of up to \$20,000,000 for which a bond issue up to that amount will later be requested.

Motion made by _____ and seconded by _____.

Adjourn

Motion made by _____ and seconded by _____.

A

**ECONOMIC DEVELOPMENT FINANCE AUTHORITY
GOED CONFERENCE ROOM, 711 E WELLS AVE, PIERRE, SD
WEDNESDAY, JULY 10, 2024, 9:30 A.M., CT**

The public may participate by the following:

Call In Number: (669) 900-9128 Meeting ID: 96677988449 Participant Id: # Passcode: 421401
www.zoom.com Meeting ID: 96677988449 Passcode: 421401

REGULAR SESSION AGENDA

- 9:30 A.M. Call To Order, Chairman, Jeff Erickson
- 9:35 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.
- 9:40 A.M. **Commissioner's Comments**
- 9:45 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 to applicants. SDCL 1-16B-14.1
- 9:55 A.M. **Report from Executive Session**
RECOMMENDED ACTION: Approve Chairman's report from Executive Session.
- Other Motions**
Brookings Biogas, LLC and/or their affiliates
Lakeside Biogas, LLC and/or their affiliates
Novilla RNG, LLC: Five Shot RNG, LLC
Novilla RNG, LLC: Moccasin Creek RNG, LLC

Adjournment

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.

B

**Economic Development Finance Authority
GOED Conference Room, 711 E Wells Ave, Pierre, SD
Wednesday, June 12, 2024, 9:30 a.m. CT**

Members Present

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

Staff Present

Ashley Moore, Jack Valentine, Stephanie Deyo, Lexxy Phillips, Nick Rabern, Joe Fiala, Nadine Agneau, Adam Molseed, Katherine Kirby, Ann Gesick-Johnson, Tanner Beukelman and Alissa Sendelbach

Others Present

Bob Mercer – Keloland News
Joshua Haiar – South Dakota Searchlight

Call to Order

Chairman Erickson called the meeting to order at 9:30 a.m.

Agenda

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

Motion passed by a voice vote.

Minutes

A motion was made by Mike Luken and seconded by Tom Jones to approve the minutes of April 9, 2024, as presented.

Motion passed by a voice vote.

Public Comment Period – none

Casey Peterson, LTD Accounting Contract

A motion was made by Sharon Casey and seconded by Don Kettering to approve the Casey Peterson, LTD accounting contract as presented.

Motion passed by a voice vote.

Executive Session

A motion was made by Mike Luken and seconded by Don Kettering to enter into Executive Session at 9:32 a.m. to discuss contract matters and commercial and financial information relating to loan and other assistance to applicants. SDCL 1-16B-14.

Motion passed by a voice vote.

Executive Session

The Chairman declared the board out of Executive Session at 9:41 a.m. The Economic Development Finance Authority 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.

A motion was made by Mike Luken and seconded by Don Kettering to approve the chairman's report from Executive Session.

Motion passed by a voice vote.

New Business

Plainview Dairy, LLC

A motion was made by Tom Jones and seconded by Mike Luken to accept the Livestock Nutrient Management Bond application from Plainview Dairy, LLC, passing Resolution A to recognize qualified project costs of up to \$25,000,000 and acknowledge the Frazier Lanier disclosure letter.

Motion passed by a voice vote.

Wildrose Dairy, LLC

A motion was made by Don Kettering and seconded by Mike Luken to accept the Livestock Nutrient Management Bond application from Wildrose Dairy, LLC and passing Resolution A to recognize qualified project costs of up to \$4,800,000.

Motion passed by a voice vote.

Adjourn

A motion was made by Mike Luken and seconded by Don Kettering to adjourn the meeting at 9:45 a.m.

Motion passed by a voice vote.

Matt Judson, Secretary/Treasurer

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, 2024, and end at 11:59 p.m. on June 30, 2026, 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 three 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, employees, and representatives 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, agents or representatives 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, except as against the Authority and its officers, agents, employees, and representatives, in favor of which Bond Counsel shall obtain a waiver of subrogation from 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 Economic Development 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 \$200,000.00 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 (each paid not by the Authority but by the borrower, underwriter, or other party to the transaction):

A. For the Beginning Farmer Program:

<u>Size of Bond Issue</u>	<u>Fee (Dollars/\$1,000)</u>
Up to \$50,000	Minimum fee \$500
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	\$6,000
Bonds from \$300,001 to \$1 million	\$6,000
Over \$1 million up to \$10 million	Add .10% of principal amount over \$1 million
Over \$10 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 .200% of principal amount over \$15 million

Fees when Bond Counsel acts as Disclosure Counsel to the Authority (in addition to Issuer and/or Bond Counsel):

Bonds up to \$ 1million	\$6,000
Over \$1 million up to \$15 million	Add .175% of principal amount over \$1 million
Over \$15 million	Add .100% of principal amount over \$15 million

For Bonds issued over \$100,000,000, fees may be increased depending upon the financing structure, with the approval of the Authority and such fees shall not exceed a factor of .300% for such principal amount over \$100,000,000.

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 Travis Dovre, 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 Cristina 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. By signing this Agreement, Bond Counsel certifies that neither Bond Counsel nor its principals are presently debarred, suspended, proposed for debarment or suspension, or declared ineligible from participating in transactions by the federal government or any state or local government department or agency. Bond Counsel further agrees they will immediately notify the Authority if during the term of this Agreement Bond Counsel or its principals become subject to debarment, suspension, or ineligibility from participating in

transactions by the federal government, or by any state or local government department or agency.

8. 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.
9. 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 _____, 2024.

BOND COUNSEL
DORSEY & WHITNEY LLP

BY: Cristina Kuhn
ITS: Partner

DATED this _____ day of _____, 2024.

ECONOMIC DEVELOPMENT
FINANCE AUTHORITY

Matt Judson, Secretary/Treasurer
Economic Development Finance Authority