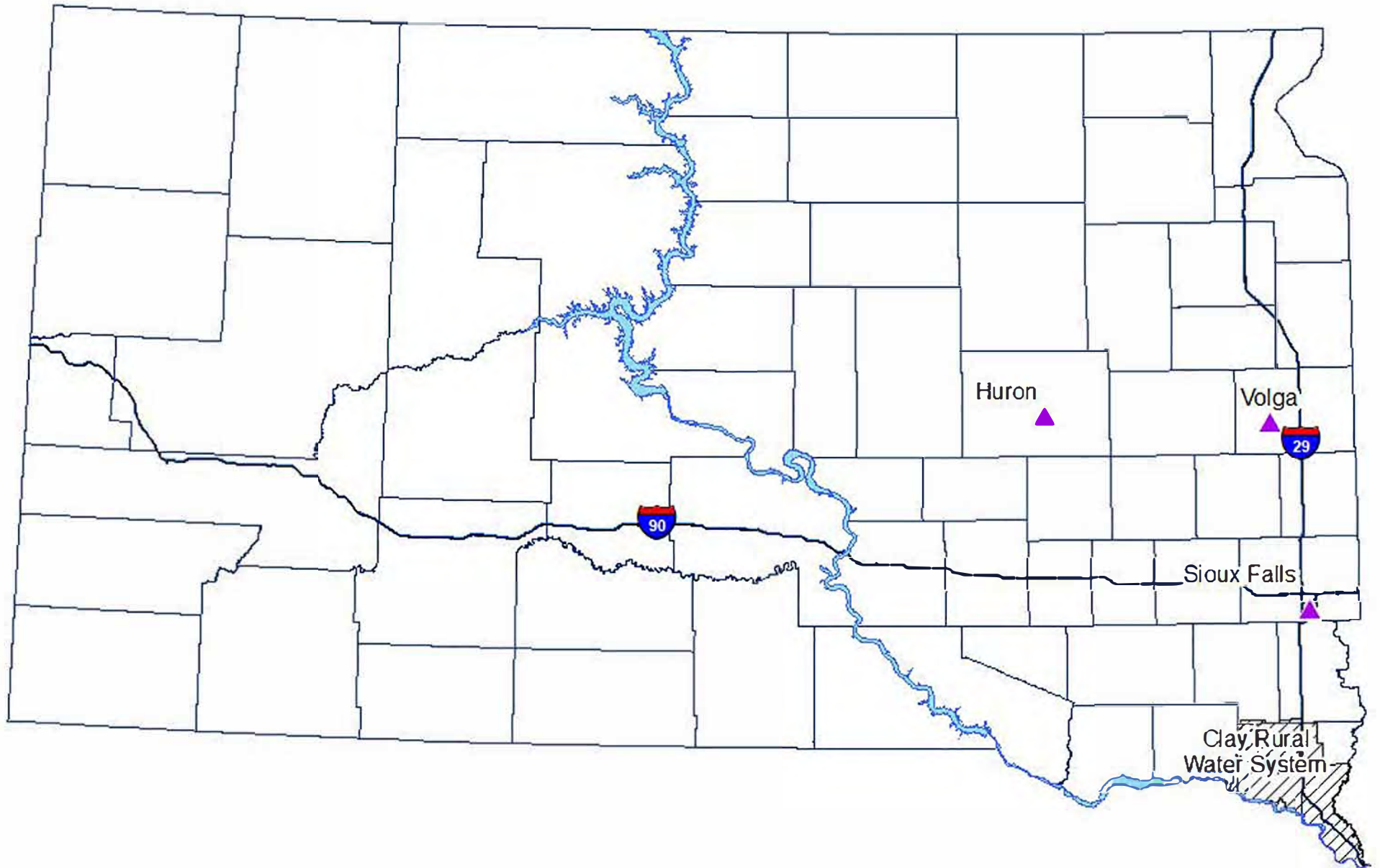


State Water Plan Applications September 2019



Staff recommends that the following projects be placed on the State Water Facilities Plan:

- Clay Rural Water System
- Huron
- Sioux Falls
- Volga

Staff recommends that the following projects be added to *Attachment I – Project Priority* list of the 2019 Clean Water SRF Intended Use Plan:

Priority Points	Loan Recipient	Estimated Loan Amount	Expected Loan Rate & Term
24	Huron	\$14,945,500	2.75%, 30 years
12	Sioux Falls	\$9,457,466	1.25%, 10 years
10	Lennox	\$1,000,000	2.75%, 30 years

Staff recommends that the following projects be added to *Attachment I – Project Priority* list of the 2019 Drinking Water SRF Intended Use Plan:

Priority Points	Loan Recipient	Estimated Loan Amount	Expected Loan Rate & Term
67	Ree Heights	\$590,000	2.50%, 30 years
20	Volga	\$2,790,000	2.75%, 30 years
17	Clay Rural Water System	\$2,158,500	2.75%, 30 years
10	Lennox	\$375,000	2.50%, 30 years

September 2019 Available Funds Summary

CONSOLIDATED WATER FACILITIES CONSTRUCTION PROGRAM

Available Funds:	\$	1,601,524
Reversions:	\$	24,985
Available for Award:	\$	1,626,509

DRINKING WATER SRF LOANS

Available Prior Year Funds (30-Sept-2018):	\$	9,220,644
FFY-19 Cap Grant & Match:	\$	11,869,560
FFY-19 Repayments:	\$	8,000,000
Leveraged Bonds:	\$	45,000,000
Deobligations/Recissions:	\$	1,320,057
FFY-19 Awards to Date:	\$	(57,686,000)
Available for Award:	\$	17,724,261

DRINKING WATER SRF PRINCIPAL FORGIVENESS

Prior Year Principal Forgiveness Allocations:	\$	39,031,400
FFY-19 Maximum Allocation:	\$	2,200,800
Reverted Principal Forgiveness:	\$	105,108
Awarded to Date:	\$	(39,030,607)
Available For Award:	\$	2,306,701
Princ. Forg. for Disadvantaged Communities:	\$	8,298,000
FFY-19 Maximum Allocation:	\$	3,851,400
Reverted Principal Forgiveness:	\$	-
Awarded to Date:	\$	(10,121,600)
Available for Award:	\$	2,027,800
Total Available for Award:	\$	4,334,501

September 2019 Available Funds Summary

CLEAN WATER SRF WATER QUALITY GRANTS

Available Funds:	\$	743,853
2019 IUP Allocation:	\$	1,000,000
Reversions:	\$	9,196
2019 SCPG Allotment:	\$	(100,000)
Awarded to Date:	\$	<u>(1,653,000)</u>
Available for Award:	\$	49

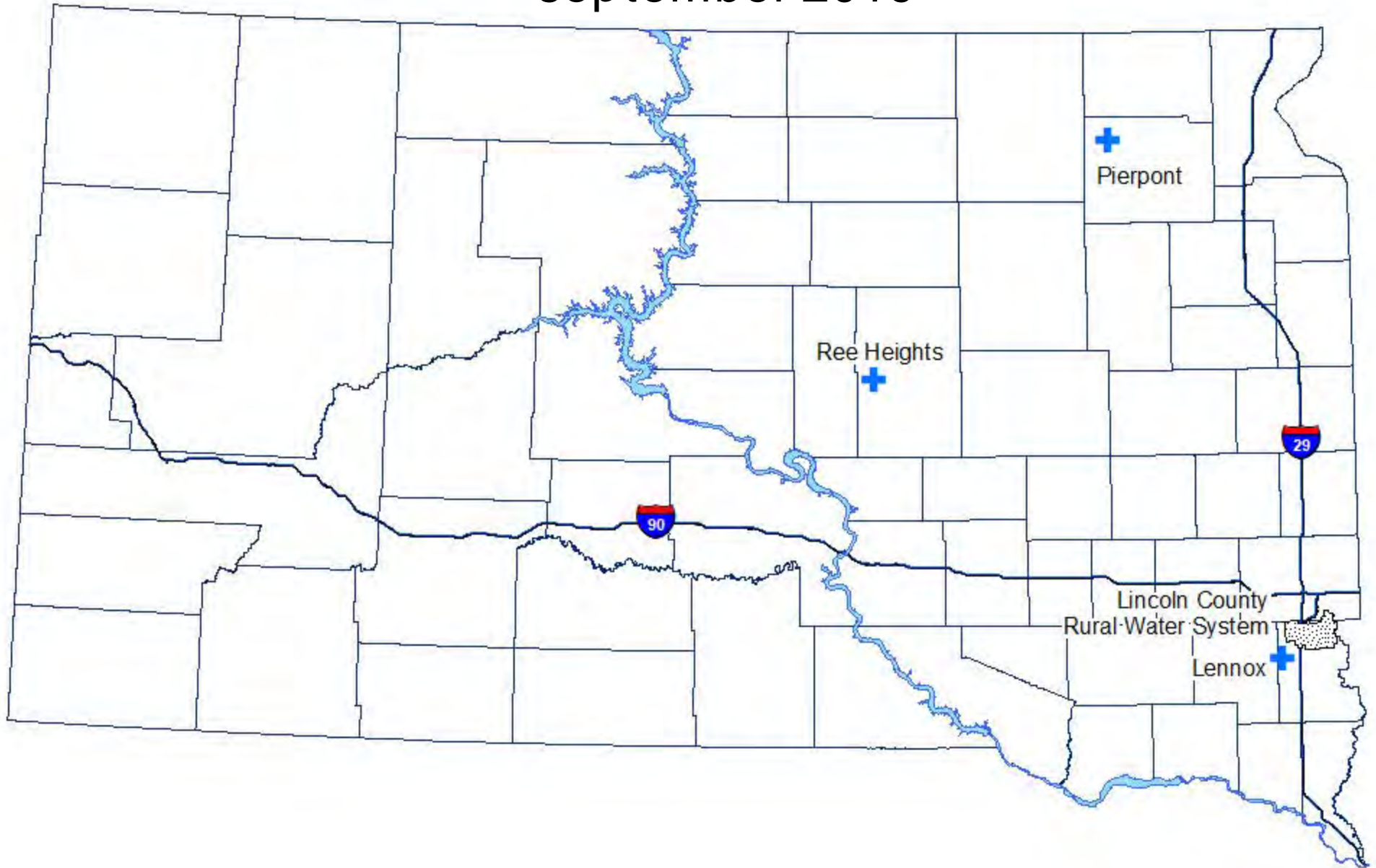
CLEAN WATER SRF LOANS

Available Prior Year Funds (30-Sept-2018):	\$	24,243,171
FFY-19 Cap Grant & Match:	\$	8,849,220
FFY-19 Repayments:	\$	9,500,000
Leveraged Bonds:	\$	66,000,000
Deobligations/Recissions:	\$	3,260,320
FFY-19 Awards to Date:	\$	<u>(49,186,550)</u>
Available For Award:	\$	62,666,161

CLEAN WATER SRF PRINCIPAL FORGIVENESS

Prior Year Principal Forgiveness Allocations:	\$	19,208,299
FFY-19 Maximum Allocation:	\$	3,111,600
Reverted Principal Forgiveness:	\$	33,651
Awarded to Date:	\$	<u>(19,691,013)</u>
Available For Award:	\$	2,662,537

Drinking Water Facilities Funding Applications September 2019



DRINKING WATER FACILITIES FUNDING APPLICATION

FINANCIAL ANALYSIS SUMMARY

APPLICANT: Ree Heights (DW-02)

Total Project Cost: \$1,020,000
BWNR Funding Assistance Requested: \$590,000
Rate/Term: 2.5% / 30 years
Security Pledged For Repayment Of Loan: Project Surcharge

Staff Analysis

- 1) In June 2018, the Board approved a \$430,000 DWSRF loan with 100% principal forgiveness for this project. After opening bids and costs being much higher than originally estimated Ree Heights has applied for additional funding for the project.
- 2) With the previous funding awarded and staff's current recommendation for new funding, \$158,000 will be needed to fully fund the estimated cost. Mid-Dakota RWS has agreed to provide \$79,000 in their funds towards the project. Ree Heights will provide the remaining \$79,000 in local cash to complete the funding package.
- 3) After project completion, Ree Heights will be served by Mid-Dakota RWS as individual customers. Mid-Dakota's current rate for individual customers is \$65.75 per 5,000 gallons.

Funding Recommendation: Award a \$432,000 Drinking Water SRF loan with 100% as principal forgiveness

Debt Service Coverage: N/A

Loan Contingencies:

- 1) Contingent upon the Borrower adopting a bond resolution and the resolution becoming effective.

**DRINKING WATER FACILITIES FUNDING APPLICATION
FINANCIAL ANALYSIS SUMMARY**

APPLICANT: Pierpont (CW-01)

Total Project Cost:	\$132,000
BWNR Funding Assistance Requested:	\$132,000
Rate/Term:	2.25%/10 years
Security Pledged For Repayment Of Loan:	Project Surcharge

Staff Analysis

- 1) If all funding is provided as loan, Pierpont would have to establish a surcharge of approximately \$19.00. Current rates in Pierpont are \$58/5,000 gallons. The surcharge would increase rates to \$77/5,000 gallons.
- 2) Pierpont has an existing DWSRF loan for which they established a \$11.00 surcharge for payment of the loan. Pierpont could reduce the surcharge to \$9.00 and still provide the required 110% coverage, which would leave \$2 from their current rates to be applied to the surcharge required to repay the new loan.

Funding Recommendation: Award a \$132,000 Clean Water SRF loan, with 89.4% principal forgiveness not to exceed \$118,000.

Debt Service Coverage: 110% based on a \$2.00 surcharge

Loan Contingencies:

- 1) Contingent upon the Borrower adopting a bond resolution and the resolution becoming effective.
- 2) Contingent upon the Borrower establishing a surcharge sufficient to provide the required debt coverage.

DRINKING WATER FACILITIES FUNDING APPLICATION FINANCIAL ANALYSIS SUMMARY

APPLICANT: Lennox (DW-04)

Total Project Cost: \$375,000

BWNR Funding Assistance Requested: \$375,000

Rate/Term: 2.75%/30 years

Security Pledged For Repayment Of Loan: Project Surcharge

Staff Analysis

- 1) A portion of the work was bid in the spring of 2019 and costs exceeded engineers estimate. The engineer projects a shortfall of \$375,000 between current funding and actual costs to complete the water main portion of the project.
- 2) If all funding is provided as loan, Lennox will have to establish a surcharge of \$1.65 per user, current rates are \$53.42 for 5,000 gallons.
- 3) Staff analysis indicates that based on the funding recommendation, the city can restructure current rates to accommodate the required surcharge and not raise rates.

Funding Recommendation: Award a \$375,000 Drinking Water SRF loan.

Debt Service Coverage: 110% based on a surcharge of \$1.65.

Loan Contingencies:

- 1) Contingent upon the Borrower adopting a bond resolution and the resolution becoming effective.
- 2) Contingent upon the Borrower establishing a surcharge at a level sufficient to provide the required debt coverage.

DRINKING WATER FACILITIES FUNDING APPLICATION FINANCIAL ANALYSIS SUMMARY

APPLICANT: Lincoln County Rural Water System (DW-02)

Total Project Cost: \$2,090,000

BWNR Funding Assistance Requested: \$750,000

Rate/Term: 2.75%/30 Years

Security Pledged For Repayment Of Loan: System Revenue

Staff Analysis

- 1) If funding is provided as all loan, Lincoln County Rural Water System would have 815% coverage based on the current rate of \$64.75 per 7,000 gallons.

Funding Recommendation: Award a \$750,000 Drinking Water SRF loan.

Debt Service Coverage: 815% based off current rates

Loan Contingencies:

- 1) Contingent upon the Borrower adopting a resolution approving the form of the loan agreement, the promissory note, and the pledge of revenues for repayment of the loan.
- 2) Contingent upon the Borrower approving a security agreement and mortgage.
- 3) Contingent upon an Intercreditor Agreement being approved and executed by Rural Utilities Service, Lincoln County Rural Water System and the District.

Sanitary/Storm Sewer Facilities Funding Applications September 2019



**SANITARY/STORM SEWER FACILITIES FUNDING APPLICATION
FINANCIAL ANALYSIS SUMMARY**

APPLICANT: Sioux Falls (CW-41)

Total Project Cost:	\$41,625,000
BWNR Funding Assistance Requested:	\$41,625,000
Rate/Term:	2.5% / 20 years
Security Pledged For Repayment Of Loan:	Sewer System Revenue

Staff Analysis

- 1) If funding is provided as all loan, Sioux Falls would have 144% coverage based on estimated wastewater revenue and expenses projected in 2022.
- 2) Sioux Falls current rate is \$34.47/5,000 gallons. However, Sioux Falls has already approved annual rate increases through 2023. The rate in 2023 will be \$41.06/5,000 gallons.

Funding Recommendation: Award a \$41,625,000 Clean Water SRF loan.

Debt Service Coverage: 144% based on approved rates for 2022.

Loan Contingency:

- 1) Contingent upon the Borrower adopting a bond ordinance and the ordinance becoming effective.

**DRINKING WATER FACILITIES FUNDING APPLICATION
FINANCIAL ANALYSIS SUMMARY**

APPLICANT: Viborg (CW-03)

Total Project Cost:	\$2,862,000
BWNR Funding Assistance Requested:	\$1,833,000
Rate/Term:	2.75% / 30yrs
Security Pledged For Repayment Of Loan:	Project Surcharge

Staff Analysis

- 1) If funding is provided as all loan, the city will have to establish a surcharge of approximately \$20.90 per month. Current rates are \$26.10 for 5,000 gallons which would bring rates to approximately \$47/month.
- 2) Viborg is also seeking a \$600,000 DOT Community Access Grant and \$429,000 Community Development Block Grant to complete the funding package. Decisions on both these requests have not been made and are not anticipated until November or December. If either of these grants are not awarded additional funds from this board would likely be needed to complete the project.

Funding Recommendation: Defer funding application until January 2020.

**SANITARY/STORM SEWER FACILITIES FUNDING APPLICATION
FINANCIAL ANALYSIS SUMMARY**

APPLICANT: Lennox (CW-08)

Total Project Cost: \$1,000,000
BWNR Funding Assistance Requested: \$1,000,000
Rate/Term: 2.75%/30 years
Security Pledged For Repayment Of Loan: Project Surcharge

Staff Analysis

- 1) A portion of the work was bid in the spring of 2019 and costs exceeded engineers estimate. The engineer projects a shortfall of \$1,000,000 between current funding and actual costs to complete the sanitary and storm sewer portion of the project.
- 2) If all funding is provided as loan, Lennox will have to establish a surcharge of \$4.35 per user, current rates are \$54.46 flat fee.
- 3) The District has already provided a \$2,000,000 Consolidated grant which is the maximum allowed for a project without Legislative action.

Funding Recommendation: Award a \$1,000,000 Clean Water SRF loan @2.75%/30 years.

Debt Service Coverage: 110% based on a surcharge of \$4.35.

Loan Contingencies:

- 1) Contingent upon the Borrower adopting a bond resolution and the resolution becoming effective.
- 2) Contingent upon the Borrower establishing a surcharge at a level sufficient to provide the required debt coverage.

**SANITARY/STORM SEWER FACILITIES FUNDING APPLICATION
FINANCIAL ANALYSIS SUMMARY**

APPLICANT: Hartford (CW-07)

Total Project Cost:	\$1,334,000
BWNR Funding Assistance Requested:	\$1,334,000
Rate/Term:	2.75%/30 Years
Security Pledged For Repayment Of Loan:	System Revenue

Staff Analysis

- 1) If all funding is provided as loan, the city would have 190% coverage based on the current rate of \$43.52 for 5,000 gallons usage.

Funding Recommendation: Award a \$1,334,000 Clean Water SRF Loan.

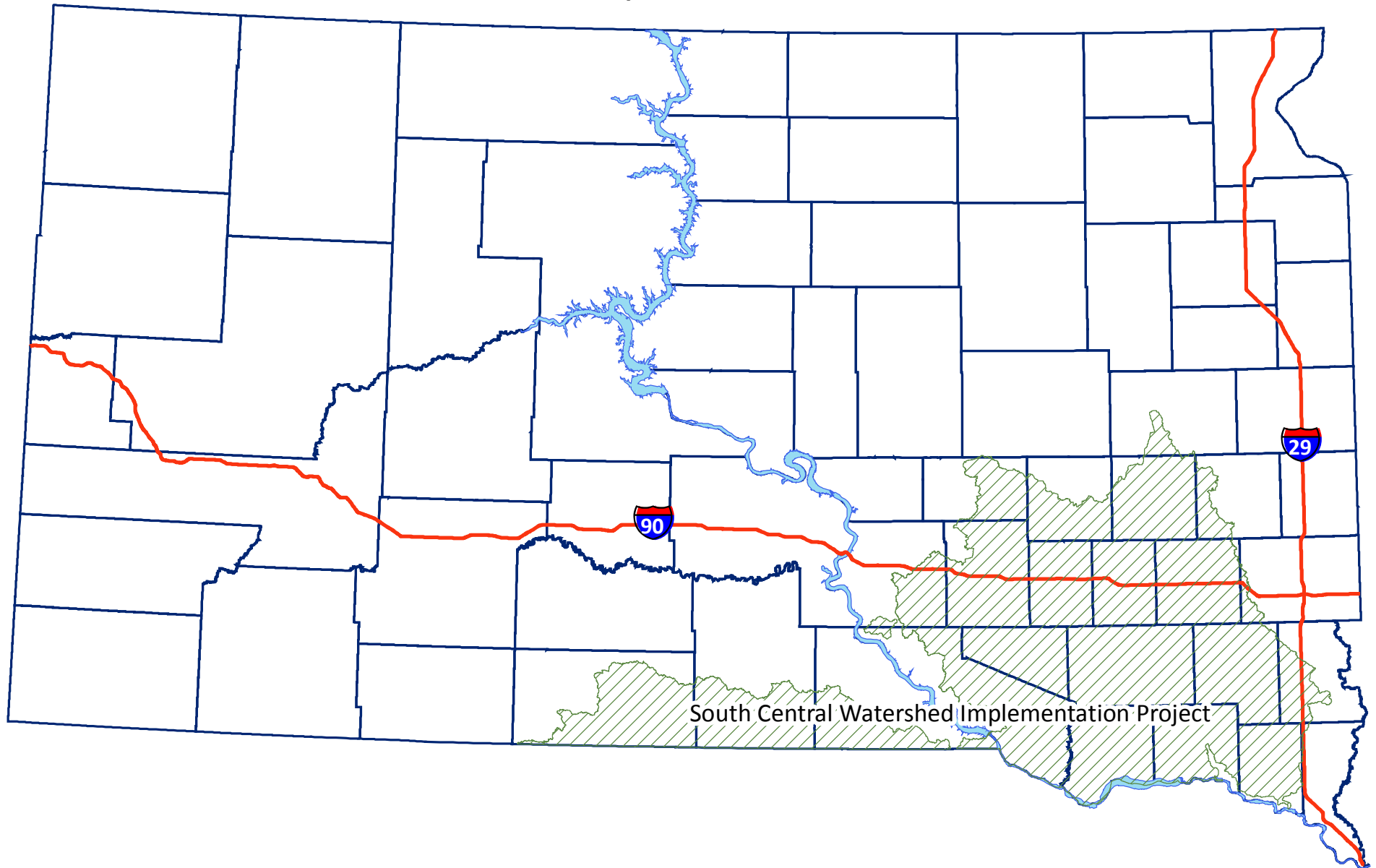
Debt Service Coverage: 190% based on current rates

Loan Contingencies:

- 1) Contingent upon the Borrower adopting a bond resolution and the resolution becoming effective.

Watershed Restoration Project Application

September 2019



**WATERSHED RESTORATION PROJECT FUNDING APPLICATION
FINANCIAL ANALYSIS SUMMARY**

APPLICANT: James River Water Development District

Total Project Cost:	\$19,425,792
BWNR Funding Assistance Requested:	\$500,000
Rate/Term:	n/a
Security Pledged For Repayment Of Loan:	n/a

Staff Analysis

- 1) This project is the first segment of a locally planned 10 to 15 year effort to implement Best Management Practices (BMPs) in the Lewis and Clark Lake watershed, Lake Andes, Geddes, and Platte Lake Watersheds, and the impaired reaches of the lower James River watershed and its tributaries. This effort is aimed at restoring water quality to meet designated beneficial uses and address TMDLs established, and to be established, for water bodies in these watersheds.
- 2) The grant funding will provide up to 15 percent cost share for up to eight animal waste management systems.

Funding Recommendation: Award a \$500,000 Consolidated grant.

September 2019 Available Funds Summary

CONSOLIDATED WATER FACILITIES CONSTRUCTION PROGRAM

Available Funds:	\$	1,601,524
Reversions:	\$	24,985
Available for Award:	\$	<u>1,626,509</u>
Recommended:	\$	<u>(750,000)</u>
Balance:	\$	876,509

DRINKING WATER SRF LOANS

Available Prior Year Funds (30-Sept-2018):	\$	9,220,644
FFY-19 Cap Grant & Match:	\$	11,869,560
FFY-19 Repayments:	\$	8,000,000
Leveraged Bonds:	\$	45,000,000
Deobligations/Recissions:	\$	1,320,057
FFY-19 Awards to Date:	\$	<u>(57,686,000)</u>
Available for Award:	\$	17,724,261
Recommended PF:	\$	(432,000)
Recommended Loan:	\$	<u>(1,125,000)</u>
Balance:	\$	16,167,261

DRINKING WATER SRF PRINCIPAL FORGIVENESS

Prior Year Principal Forgiveness Allocations:	\$	39,031,400
FFY-19 Maximum Allocation:	\$	2,200,800
Reverted Principal Forgiveness:	\$	105,108
Awarded to Date:	\$	<u>(39,030,607)</u>
Available For Award:	\$	2,306,701
Recommended:	\$	(432,000)
Balance:	\$	1,874,701
Princ. Forg. for Disadvantaged Communities:	\$	8,298,000
FFY-19 Maximum Allocation:	\$	3,851,400
Reverted Principal Forgiveness:	\$	-
Awarded to Date:	\$	<u>(10,121,600)</u>
Available for Award:	\$	2,027,800
Recommended:	\$	-
Balance:	\$	2,027,800
Total Balance:	\$	3,902,501

September 2019 Available Funds Summary

CLEAN WATER SRF WATER QUALITY GRANTS

Available Funds:	\$	743,853
2019 IUP Allocation:	\$	1,000,000
Reversions:	\$	9,196
2019 SCPG Allotment:	\$	(100,000)
Awarded to Date:	\$	<u>(1,653,000)</u>
Available for Award:	\$	49
Recommended:	\$	<u>-</u>
Balance:	\$	49

CLEAN WATER SRF LOANS

Available Prior Year Funds (30-Sept-2018):	\$	24,243,171
FFY-19 Cap Grant & Match:	\$	8,849,220
FFY-19 Repayments:	\$	9,500,000
Leveraged Bonds:	\$	66,000,000
Deobligations/Recissions:	\$	3,260,320
FFY-19 Awards to Date:	\$	<u>(49,186,550)</u>
Available For Award:	\$	62,666,161
Recommended PF:	\$	(118,000)
Recommended Loan:	\$	<u>(43,723,000)</u>
Balance:	\$	18,825,161

CLEAN WATER SRF PRINCIPAL FORGIVENESS

Prior Year Principal Forgiveness Allocations:	\$	19,208,299
FFY-19 Maximum Allocation:	\$	3,111,600
Reverted Principal Forgiveness:	\$	33,651
Awarded to Date:	\$	<u>(19,691,013)</u>
Available For Award:	\$	2,662,537
Recommended:	\$	(118,000)
Balance:	\$	2,544,537

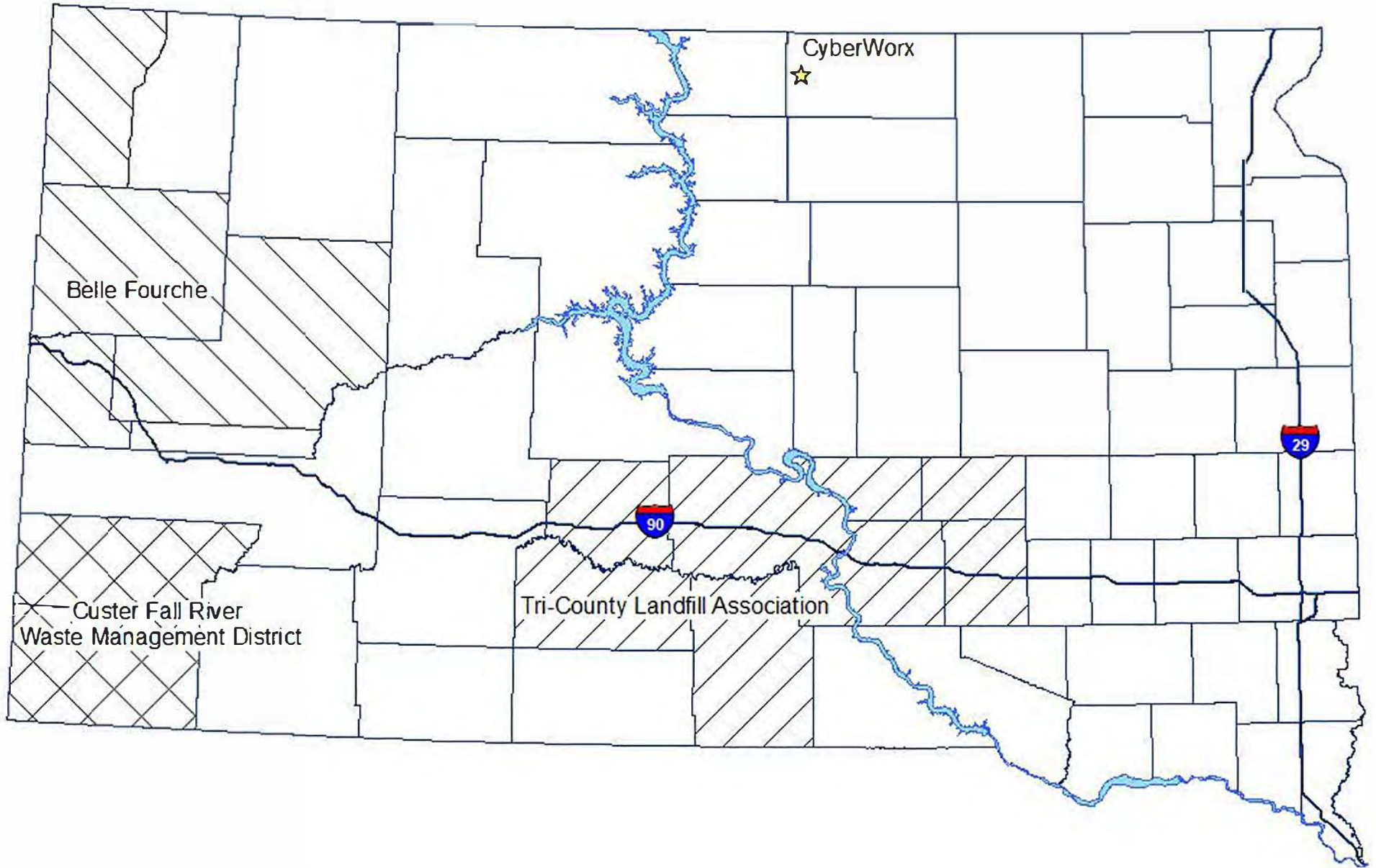
September 2019

Dedicated Solid Waste Management Fees

Solid Waste Management Program (SWMP)

Available Funds:	\$	3,720,878
Reversions:	\$	17,991
Available for Award:	\$	<u>3,738,869</u>

Solid Waste Management Program Funding Applications September 2019



**SOLID WASTE MANAGEMENT PROGRAM FUNDING APPLICATION
FINANCIAL ANALYSIS SUMMARY**

APPLICANT: Belle Fourche

Total Project Cost: \$525,000

BWNR Funding Assistance Requested: \$262,500

Rate/Term: NA

Security Pledged For Repayment Of Loan: NA

Staff Analysis

- 1) The existing landfill scale is beyond its useful life and does not meet the current needs of the facility Belle Fourche is requesting grant funding to purchase a new, larger scale for the landfill to accommodate larger incoming loads and improve traffic flows.

Funding Recommendation: Award a Solid Waste Management Program grant at 20% of eligible costs, not to exceed \$105,000.

**SOLID WASTE MANAGEMENT PROGRAM FUNDING APPLICATION
FINANCIAL ANALYSIS SUMMARY**

APPLICANT: Custer Fall River

Total Project Cost:	\$397,190
BWNR Funding Assistance Requested:	\$198,585
Rate/Term:	NA
Security Pledged For Repayment Of Loan:	NA

Staff Analysis

- 1) Custer Fall River has requested grant funding to purchase a new compactor as the existing compactor is old and in need of replacement.

Funding Recommendation: Award a Solid Waste Management Program grant at 20.2% of eligible costs, not to exceed \$80,000.

**SOLID WASTE MANAGEMENT PROGRAM FUNDING APPLICATION
FINANCIAL ANALYSIS SUMMARY**

APPLICANT: CyberWorx

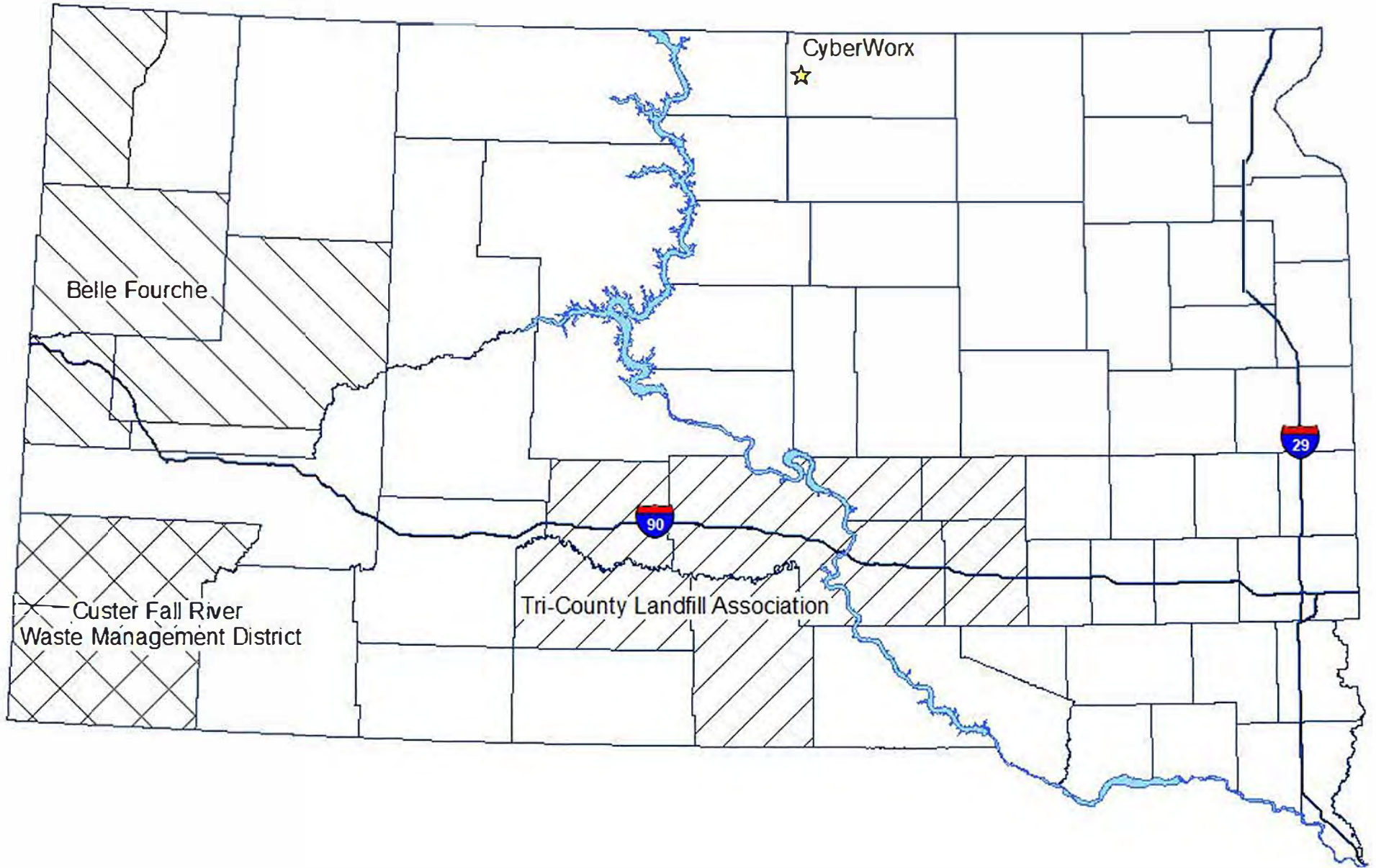
Total Project Cost: \$1,271,000
BWNR Funding Assistance Requested: \$997,000
Rate/Term: 2.25%/10 Years
Security Pledged For Repayment Of Loan: Revenues

Staff Analysis

- 1) CyberWorx is a recycling company that will specialize in recovery, refurbishment, and resale of electronic waste with a service area of North and South Dakota.
- 2) There are other electronic waste recycling companies throughout the State of South Dakota.
- 3) CyberWorx is requesting funding to expand their business through several improvements including purchase and development of existing and new business property, a backup generator, purchasing capital equipment for use in processing and repairing eWaste, and working capital for small tools and equipment.
- 4) The application contains \$400,000 of items ineligible for funding
- 5) The South Eastern Council of Governments performs loan analyses for private entities applying to the Solid Waste Management Program and conducted the financial review for the CyberWorx application. Financial Information is considered **Confidential** in accordance with SDCL46A-1-98 for private entities.

Funding Recommendation: No funding.

Solid Waste Management Program Funding Applications September 2019



**SOLID WASTE MANAGEMENT PROGRAM FUNDING APPLICATION
FINANCIAL ANALYSIS SUMMARY**

APPLICANT: Tri-County Landfill Association

Total Project Cost: \$600,000
BWNR Funding Assistance Requested: \$600,000
Rate/Term: 2.25% / 7 Years
Security Pledged For Repayment Of Loan: System Revenue

Staff Analysis

- 1) Tri-County is seeking funding for expansion of disposal cell 3, which will add an additional 44,000 square feet of landfill capacity. Expansion is required to continue operating landfill as the landfill will run out of capacity within two years based on current volumes.

Funding Recommendation: Award a \$360,000 Solid Waste Management Program loan at 2.25% for 7 years and award a Solid Waste Management Program grant at 40% not to exceed \$240,000.

Debt Service Coverage: 125% based on current revenues

Loan Contingencies:

- 1) The Borrower adopting a resolution approving the form of the loan agreement, the promissory note, and the pledge of revenues for repayment of the loan.
- 2) The Borrower approving a security agreement and mortgage

September 2019

Dedicated Solid Waste Management Fees

Solid Waste Management Program (SWMP)

Available Funds:	\$	3,720,878
Reversions:	\$	17,991
Available for Award:	\$	<u>3,738,869</u>
Recommended:	\$	<u>(785,000)</u>
Balance:	\$	2,953,869

June 2019 Available Funds Summary

CONSOLIDATED WATER FACILITIES CONSTRUCTION PROGRAM

Available Funds:	\$	3,781,457
Reversions:	\$	1,070,067
Available for Award:	\$	<u>4,851,524</u>
Recommended:	\$	<u>(3,250,000)</u>
Balance:	\$	1,601,524

DRINKING WATER SRF LOANS

Available Prior Year Funds (30-Sept-2018):	\$	9,220,644
FFY-19 Cap Grant & Match:	\$	11,869,560
FFY-19 Repayments:	\$	8,000,000
Leveraged Bonds:	\$	45,000,000
Deobligations/Recissions:	\$	1,320,057
FFY-19 Awards to Date:	\$	<u>(44,348,000)</u>
Available for Award:	\$	31,062,261
Recommended PF:	\$	(4,342,000)
Recommended Loan:	\$	<u>(8,996,000)</u>
Balance:	\$	17,724,261

DRINKING WATER SRF PRINCIPAL FORGIVENESS

Prior Year Principal Forgiveness Allocations:	\$	39,031,400
FFY-19 Maximum Allocation:	\$	2,200,800
Reverted Principal Forgiveness:	\$	105,108
Awarded to Date:	\$	<u>(38,685,607)</u>
Available For Award:	\$	2,651,701
Recommended:	\$	<u>(345,000)</u>
Balance:	\$	2,306,701
Princ. Forg. for Disadvantaged Communities:	\$	8,298,000
FFY-19 Maximum Allocation:	\$	3,851,400
Reverted Principal Forgiveness:	\$	-
Awarded to Date:	\$	<u>(6,124,600)</u>
Available for Award:	\$	6,024,800
Recommended:	\$	<u>(3,997,000)</u>
Balance:	\$	2,027,800
Total Balance:	\$	4,334,501

June 2019
Available Funds Summary

CLEAN WATER SRF WATER QUALITY GRANTS

Available Funds:	\$	743,853
2019 IUP Allocation:	\$	1,000,000
Reversions:	\$	9,196
2019 SCPG Allotment:	\$	(100,000)
Awarded to Date:	\$	<u>(1,333,000)</u>
Available for Award:	\$	320,049
Recommended:	\$	<u>(320,000)</u>
Balance:	\$	49

CLEAN WATER SRF LOANS

Available Prior Year Funds (30-Sept-2018):	\$	24,243,171
FFY-19 Cap Grant & Match:	\$	8,849,220
FFY-19 Repayments:	\$	9,500,000
Leveraged Bonds:	\$	66,000,000
Deobligations/Recissions:	\$	2,849,704
FFY-19 Awards to Date:	\$	<u>(42,748,550)</u>
Available For Award:	\$	68,693,545
Recommended PF:	\$	(2,300,000)
Recommended Loan:	\$	<u>(4,138,000)</u>
Balance:	\$	62,255,545

CLEAN WATER SRF PRINCIPAL FORGIVENESS

Prior Year Principal Forgiveness Allocations:	\$	19,208,299
FFY-19 Maximum Allocation:	\$	3,111,600
Reverted Principal Forgiveness:	\$	33,651
Awarded to Date:	\$	<u>(17,391,013)</u>
Available For Award:	\$	4,962,537
Recommended:	\$	<u>(2,300,000)</u>
Balance:	\$	2,662,537

June 2019
Dedicated Solid Waste Management Fees

Solid Waste Management Program (SWMP)

Available Funds:	\$	4,355,172
Reversions:	\$	115,706
Available for Award:	\$	<u>4,470,878</u>
Recommended:	\$	<u>(750,000)</u>
Balance:	\$	3,720,878



Customer Account Agreement

This Customer Account Agreement (the “**Agreement**”) is by and among Wells Fargo Securities, LLC (“**WFS**”) and you (“**Customer**”). Subject to the terms and conditions of this Agreement, WFS will maintain an account or accounts (the “**Accounts**”) and provide services as described in Section 1 below. This Agreement supersedes and replaces any previous customer or client agreement you have entered into with WFS concerning the Accounts and subject matter contained herein.

1. NATURE OF SERVICES.

Subject to the terms of this Agreement, WFS will execute securities transactions accepted by it and/or will provide such other clearance, settlement and custody services in connection with carrying the Accounts and engaging in Activities with or for the Accounts. For purpose of this Agreement, “**Activity**” or “**Activities**” shall mean executing transactions and the provision of all services, including clearing transactions, the provision of custody or other services, forwarding account statements, trade confirmations and other reports as required or as WFS and Customer otherwise agree. All transactions for the Accounts are at Customer’s risk and subject to both Applicable Laws as defined in Section 2 below and the customs and usage of the marketplace where executed.

2. APPLICABLE LAWS, RULES AND REGULATIONS.

Customer acknowledges and agrees that this Agreement, the Accounts and all Activities shall be subject to all applicable federal, state, governmental agency, self-regulatory organization, exchange, market, depository and clearing house laws, rules and regulations of any nature, including, without limitation, those of all U.S. and, if applicable, non-U.S., authorities having jurisdiction over the parties or any Activity, in each case as in effect from time to time, including, the Employee Retirement Income Security Act of 1974, as amended (“**ERISA**”) and the ERISA regulations (“**Applicable Laws**”).

3. TRADING AUTHORIZATION

Customer hereby designates the following individuals and their successors in office as fully authorized and empowered to direct transactions in the Accounts and purchase, sell, transfer, endorse, assign, set over and deliver any and all securities, funds and other property held in the Accounts on its behalf. There are no restrictions on the nature or type of transactions that can be entered for the Accounts except as confirmed by Customer to WFS in writing.

Name	Title	Signature
<u>Michael Perkovich</u>	<u>Program Administrator</u>	
<u>David Ruhnke</u>	<u>Grant & Loan Specialist II</u>	
<u>Jonathan Peschong</u>	<u>Grant & Loan Specialist II</u>	

Unless WFS receives from Customer prior written notice revoking their authority, WFS may accept and process from the authorized representatives identified above or any other authorized representatives who are designated by Customer in writing now or in the future, without any inquiry or investigation: (i) orders for the purchase or sale of securities for the Accounts, (ii) instructions for the transfer or delivery of securities, funds or property to Customer or third parties from the Accounts, and (iii) any other instructions concerning the Accounts or the property contained therein (including instructions to provide information to third parties for performance

reporting or other purposes). WFS may rely upon, and shall have no liability for reliance upon, any instructions it reasonably believes to have been given by an authorized representative of Customer.

4. RIGHT TO DECLINE ORDERS.

Customer agrees that WFS shall have the right, exercisable in its sole discretion, to refuse to accept orders, cancellations or any other instruction for the Accounts from Customer or any other authorized third party at any time. WFS shall not be liable in the event it declines to accept an order for the Accounts.

5. SATISFACTION OF CUSTOMER'S LIABILITIES AND SECURITY INTEREST.

Customer agrees to satisfy each and every obligation Customer owes to WFS, on demand, when due, including, without limitation (i) payment of amounts owed with respect to purchases executed for the Accounts; (ii) payment of any amounts advanced to Customer in anticipation of its delivery of securities in connection with sales executed for the Accounts; (iii) payment of any debit balance in any of the Accounts; (iv) payment of any fees, costs or expenses due and payable with respect to the Accounts, and (v) in the event of a sell or redemption order by Customer, any loss or expense incurred by WFS as the result of Customer's failure to deliver, in good deliverable form, the applicable security by the time required by WFS and in time to allow WFS to make delivery of the relevant security, if the applicable security is not held in or credited to the Accounts at the time such order is placed or settled (collectively "**Customer's Obligations**").

Customer hereby grants WFS a security interest and lien in, and a right of set-off with respect to all securities and other property that are now or in the future, held, carried, or maintained in the Accounts and any Wells Fargo Bank, N.A. ("**WFBNA**") safekeeping accounts associated with or linked to the Accounts as security for Customer's Obligations.

6. CUSTOMER REPRESENTATIONS, WARRANTIES AND COVENANTS.

Customer represents, warrants and covenants, as applicable, as of the date hereof, which representations and warranties will be deemed repeated on an ongoing basis on each date on which this Agreement is in effect, that:

- a) Customer is validly existing under the laws of the jurisdiction of Customer's organization;
- b) Customer is authorized to enter into this Agreement and each Activity and to perform Customer's Obligations and no consent of any person and no authorization or other action by, and no notice to, or filing with, any governmental or regulatory authority or any other person is required that has not already been obtained in order to do so;
- c) this Agreement is legal, valid, binding and enforceable against Customer and Customer's estate, administrators, successors and assigns; and
- d) the undersigned is duly authorized by Customer to sign this Agreement on its behalf and make the representations, warranties and covenants contained herein.

7. INVESTMENT ADVISOR REPRESENTATIONS.

Customer agrees that in the event that it is an investment advisor registered under the Investment Advisers Act of 1940 (the "**Advisers Act**"), an investment advisor registered under state law as required by the National Securities Markets Improvement Act of 1996 or a bank as defined under the Advisers Act and exempt from the Advisers Act (an "**Investment Adviser**") that the additional representations, warranties, covenants and agreements set forth in the Investment Adviser Representations, Warranties, Covenants and Agreements attached as Annex I to this Agreement and incorporated herein by reference shall be applicable to the Accounts and deemed to be repeated on each date on which this Agreement is in effect and at all times until Customer's Obligations have been satisfied.

8. CONFIRMATIONS AND ACCOUNT STATEMENTS.

Confirmations of transactions executed for the Accounts shall be conclusive if Customer does not object in writing within three (3) calendar days after such documents are transmitted electronically or five (5) calendar days if transmitted by mail. Statements for the Accounts shall be conclusive if Customer does not promptly report any inaccuracy or discrepancy in writing in accordance with any terms or requirements contained therein. In all cases, WFS reserves the right to challenge Customer's objections and to correct any error on any confirmation or account statement at any time. In the event Customer receives portfolio performance, risk or other reports from WFS, Customer hereby agrees and acknowledges that the official statement of the activity, positions and balances in the Accounts is set forth in the confirmations and account statements provided.

Customer agrees that WFS will not send confirmations for transactions in money market mutual funds unless Customer has requested such delivery and understands that all money market mutual fund transactions (including purchases, redemptions, dividends and dividend reinvestments) will appear on its account statements.

9. TRADE SETTLEMENT AND CLEARANCE.

Customer agrees that in the event that it executes purchases or sales through a third-party broker-dealer and requests that WFS settle or clear such transactions for its Accounts, that: 1) Customer will provide WFS with all trade related information promptly upon execution of the transaction in accordance with WFS requirements as to content, manner and timeliness of delivery; 2) Customer bears all risks and costs related to settlement and clearance, including non-performance by any third-party broker-dealer; 3) if either Customer or the third-party broker-dealer fails for any reason to settle the trade within a reasonable period of time, as determined by WFS, Customer will be solely liable to WFS for any loss, expenses or other costs associated with the trade. Customer further agrees that WFS may decline to settle or clear any trade in the event that the Accounts do not hold securities or funds sufficient to settle or clear a trade and that WFS shall be under no obligation to loan securities or funds in connection with trades that Customer executes through third-party broker-dealers.

10. CUSTODY AND SIPC COVERAGE.

Customer understands and agrees, unless explicitly stated otherwise, that the Accounts, any transactions hereunder and securities or funds held in any account by WFS (i) are not insured by the Federal Deposit Insurance Corporation or any government agency, (ii) are not deposits or obligations of, or guaranteed by, **WFBNA** or any other bank; and (iii) involve market and investment risks, including possible loss of the principal amount invested. WFS is a member of SIPC, which protects cash and securities held for a customer (as such term is defined under the Securities Investor Protection Act of 1970, as amended) up to \$500,000.00, of which up to \$250,000.00 can be a cash claim. Any cash or free credit balance in the Accounts is protected by SIPC only when held in an account for the purpose of investing or reinvesting in securities. Customer may obtain information about SIPC, including the SIPC brochure, by contacting SIPC at www.sipc.org or 202-371-8300. Customer also understands and agrees that SIPC coverage or protection does not apply to any cash or securities held in WFBNA safekeeping accounts associated with or linked to the Accounts.

11. ELECTRONIC SERVICES.

WFS may from time to time directly or indirectly make available or provide or arrange access for Customer to various electronic systems and services (collectively, "**Electronic Services**"). Access to Electronic Services may be provided through one or more identifiers and/or security devices or prescribed security procedures relating to use or access to some or all of Electronic Services, which may include, but may not be limited to, any digital certificate(s), unique identifiers, user name(s) and/or password(s) or any other access methods that may be required to use the Electronic Services as WFS specifies (collectively, "**Security Credentials**"). It is Customer's responsibility to ensure that the Security Credentials are known to, and used only by, persons who have been properly authorized by Customer to access the Electronic Services ("**Authorized Users**"). If Customer uses the Electronic Services, the terms and conditions of use must be accepted and agreed to by each Authorized User. Customer agrees that any agreement, consent or assent to terms and conditions

of use of Electronic Services communicated through Customer's Security Credential will be Customer's duly signed writing, sufficient to bind Customer thereto. Customer shall be responsible for all transactions entered using the Security Credentials and agrees to indemnify WFS [to the extent permitted by SDCL § 3-21-13 and § 3-22-1](#) and hold it harmless for any losses sustained as the result of Customer's or any Authorized User's use of the Electronic Services unless it previously requested in writing that WFS revoke the Security Credentials used to conduct those transactions. Any use of the Electronic Services prior to execution of the terms and conditions of use made available in connection with such Electronic Services shall be deemed to be subject to such terms and conditions of use as if Customer had already executed such terms and conditions prior to use. WFS reserves the right to terminate Customer's access to the Electronic Services at any time in its sole discretion.

12. DESIGNATION OF WELLS FARGO BANK, N.A. ACCOUNT.

In the event that Customer has authorized WFS to credit and debit a bank account that Customer maintains with WFBNA (a "**WFBNA Account**") for the purpose of: (1) crediting amounts due to the Customer from WFS and (2) paying amounts due WFS from Customer, it also authorizes and directs WFBNA to accept such credit and debit instructions from WFS. This authorization will remain in effect until terminated by Customer giving WFS written notice of such termination. If an error or omission is made by WFS in debiting or crediting the WFBNA Account, Customer must give WFS or WFBNA written notice of such error or omission within thirty (30) calendar days following the date which Customer is sent the monthly statement on which the error or omission first appears. The liability of WFS or WFBNA for any such error or omission shall be limited to debiting or crediting the WFBNA Account, as appropriate, within a reasonable period of time after receipt of the written notice indicated above, in an amount equal to the difference between any amount originally debited or credited and the amount which should have been debited or credited. In no event shall WFS or WFBNA incur any additional liability for any such error or omission.

13. GOVERNING LAW; WAIVER OF JURY TRIAL.

THIS AGREEMENT AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER, INCIDENTAL TO OR RELATED TO THIS AGREEMENT, THE ACCOUNTS, THE RELATIONSHIP OF THE PARTIES, AND/OR THE INTERPRETATION AND ENFORCEMENT OF THE RIGHTS AND DUTIES OF THE PARTIES WILL BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO ANY CONFLICTS OF LAW PRINCIPLES, UNLESS CUSTOMER IS A GOVERNMENTAL ENTITY, MUNICIPALITY, PUBLIC INSTRUMENTALITY OR AGENCY THEREOF, OR OTHER PUBLIC ENTITY AND APPLICABLE STATE LAW REQUIRES THAT ITS LAWS SHALL APPLY. TO THE EXTENT PERMITTED BY APPLICABLE LAW EACH PARTY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING IN CONNECTION WITH THIS AGREEMENT OR ANY ACTIVITY.

14. AGENTS AND SUB-CUSTODIANS.

WFS may appoint agents or sub-custodians in connection with its performance of services under this Agreement. WFS will exercise reasonable skill, care and diligence in the selection of any such agent or sub-custodian and will be responsible to Customer for satisfying itself as to the ongoing ability of such agent or sub-custodian to provide custodial services, will maintain an appropriate level of supervision over such agent or sub-custodian and will make appropriate inquiries periodically to confirm that the obligations of such agent or sub-custodian continue to be competently discharged. The appointment of any such agent or sub-custodian pursuant to this Agreement shall not relieve WFS of any of its obligations under this Agreement. Notwithstanding the foregoing, no securities depository shall be considered an agent or sub-custodian of WFS and WFS shall have no liability for any loss or damage arising out of the insolvency, acts or omissions of any depository used by it or one of its agents or sub-custodians.

15. LIMITATION OF LIABILITY.

WFS shall not be responsible for any loss, liability, damage or expense except to the extent that such loss, liability, damage or expense arises from its gross negligence or willful misconduct.

Notwithstanding the foregoing, to the extent permitted by Applicable Laws, WFS and Customer agree that neither party shall have liability for any consequential, indirect, incidental, or any similar damages and irrevocably and unconditionally waive any right either party may have to claim or recover any such damages (even if either party has informed the other party of the possibility or likelihood of such damages).

16. GENERAL TERMS.

- a) **Other Agreements.** The rights and remedies granted herein to each party are in addition to any other rights and remedies arising under any other agreements between WFS and Customer concerning the Accounts (“**Other Agreements**”). The provisions of this Agreement shall supersede any inconsistent provisions of any Other Agreement entered into between Customer and WFS concerning the subject matter hereof, unless such Other Agreement expressly states that the terms thereof shall supersede this Agreement. Except as set forth above, this Agreement represents the entire agreement and understanding between Customer and WFS concerning the Accounts and the subject matter hereof.
- b) **PATRIOT Act.** WFS is committed to complying with U.S. statutory and regulatory requirements designed to prevent terrorist financing and money laundering. To help fight the funding of terrorism and money-laundering activities, U.S. federal law requires financial institutions to obtain, verify and record information that identifies each customer (individuals and businesses). When Customer establishes a new relationship, WFS will ask for Customer’s name, address, tax identification number, beneficial ownership and other information that will allow WFS to identify Customer and the beneficial owners of the Accounts to the extent required to satisfy applicable statutory and regulatory requirements. As part of this process, WFS may also ask to see identifying documents. The information that WFS obtains will be used to verify Customer’s identity in accordance with provisions of the PATRIOT Act Section 326. Customer authorizes WFS and any agent or service provider of WFS to collect such information from Customer. Until Customer provides the required information or documents, WFS may not be able to open or otherwise decline to open or maintain an account or effect any transaction for Customer.
- c) **Credit Information and Investigation; Sharing of Information.** Customer authorizes WFS to make and obtain reports concerning Customer’s credit standing and business conduct. Customer may make a written request within a reasonable period for a description of the nature and scope of the reports made or the information received by WFS pursuant to the foregoing authorization. Customer acknowledges that WFS and its affiliates share many computer systems and employees, and also share information concerning their respective customers for the purpose of monitoring and approving credit, legal, regulatory and underwriting exposures and administration of the customer’s accounts with and transactions with or through any WFS affiliate. Such information will be treated by each WFS affiliate pursuant to its policies and procedures designed to protect the confidentiality and security of customer information and to ensure that such information is used only in a manner that is consistent with Applicable Laws.
- d) **Telephone and Electronic Communications.** Customer and WFS hereby acknowledge and agree that each shall have the right to monitor and/or record any or all telephone and/or electronic communications with the other and its employees, representatives and agents and that any such recordings may be used in connection with a dispute between the parties. It is further understood and agreed that each party may determine to not make or keep such recordings and that such determination shall not affect the other party’s rights.
- e) **Disclosure to Issuers.** Under Rule 14b-1(b) promulgated pursuant to the Securities Exchange Act of 1934, as amended, WFS is required to disclose to an issuer the name, address, and securities position of customers who are beneficial owners of that issuer’s securities unless Customer objects. Subject to Applicable Law, Customer may object to such disclosure by providing WFS with written notice of such objection.
- f) **Legally Binding.** Customer hereby waives any and all defenses that any instruction with respect to any of the Accounts was not in writing as may be required by the Statute of Frauds or any similar Applicable Laws.

- g) Force Majeure. WFS shall not be liable for losses caused directly or indirectly by suspension of trading, wars (whether declared or undeclared), acts of terrorism, riots, civil disturbances, terrorism, natural calamities, disease outbreaks, accidents, adverse weather, strikes, labor disputes, labor or material shortages, government restrictions, market disruptions, acts or omissions of exchanges, specialists, markets, clearance organizations or information providers, electrical failures, delays in mails, delays or inaccuracies in the transmission of orders or information, unavailability of the Federal Reserve Bank wire or telex, governmental, Exchange or SRO laws, rules or actions, or any other causes beyond its control that may prevent or delay the performance of its obligations.
- h) Amendment. WFS may amend this Agreement at any time in any respect, effective upon thirty (30) calendar days written notice. Customer may not amend this Agreement, and no term or condition of this Agreement may be waived, altered or modified above unless in a writing executed by an authorized official of WFS or an amendment pursuant to the preceding sentence.
- i) Termination. Customer may close any of the Accounts at any time upon written notice to WFS, provided that Customer has satisfied all of Customer's Obligations and all security interests granted in favor of WFS shall be continuing until all of Customer's Obligations have been satisfied in full. WFS reserves the right to terminate this Agreement or the Accounts at any time for any reason. The provisions of this Agreement shall survive termination of this Agreement and/or closure of the Accounts insofar as they relate to Customer's Obligations, actions or failures to take action relating to, arising in or with respect to the period prior to termination of this Agreement or closure of the Accounts.
- j) Assignment. This Agreement shall be binding upon the parties and their successors and permitted assigns. Customer agrees that WFS shall have the right to transfer or assign this Agreement in its discretion upon written notice of such assignment and not be required to obtain Customer's consent to that assignment. This Agreement and Customer's Obligations hereunder may not be assigned or delegated by Customer without the prior written consent of WFS. Any attempted assignment by Customer in violation of this Agreement shall be null, void and without effect. Any permitted assignee of a party's rights and obligations, including Customer's Obligations, hereunder in accordance with the terms hereof shall become vested with all the rights and obligations of the assigning party. .
- k) Severability. If and to the extent any term or provision herein is or should become invalid or unenforceable, then (i) the remaining terms and provisions hereof shall be unimpaired and remain in full force and effect and (ii) the invalid or unenforceable provision or term shall be replaced by a term or provision that is valid and enforceable and that comes closest to expressing the intention of such invalid or unenforceable term or provision, as determined by WFS in its sole discretion.
- l) Section Headings. The headings of the provisions of this Agreement are for descriptive purposes only and shall not modify or qualify any of the rights or obligations set forth in such provisions.
- m) Waiver and Notices. Neither the failure by WFS to insist at any time upon strict compliance with the terms of this Agreement, failure to exercise or delay in exercise of any right or remedy hereunder or any single or partial exercise of any right or remedy hereunder, nor any continued course of such conduct on its part shall constitute or be considered a waiver by WFS of any of its rights or privileges hereunder. Notices and other communications to Customer may be delivered, faxed, sent by electronic mail, sent by express delivery service or mailed to the address provided by Customer until WFS has received notice in writing of a different address.

[Signature Block is Contained on Next Page]

BY SIGNING THIS AGREEMENT, CUSTOMER ACKNOWLEDGES THAT:

CUSTOMER HAS RECEIVED, READ AND UNDERSTANDS THIS AGREEMENT AND AGREES TO ITS TERMS AND CONDITIONS.

South Dakota Conservancy District

Signature: _____

Name (Print): -Jerry Soholt

Title: —Chairman, South Dakota Conservancy District acting through the Board of Water and Natural Resources

Date: _____

ANNEX I

INVESTMENT ADVISER REPRESENTATIONS, WARRANTIES, COVENANTS AND AGREEMENTS

In connection with the execution, delivery and performance of the Customer Account Agreement between Customer and Wells Fargo Securities, LLC (the "Agreement") to which this Annex I (the "Annex") is attached and incorporated by reference and the transactions entered into thereunder, Customer represents, warrants, covenants and agrees that:

1. it is an Investment Adviser as defined within the Agreement;
2. it is duly formed and validly existing under the laws of its jurisdiction of formation;
3. the person(s) executing the Agreement has/have been authorized by Customer to do so; Customer is authorized to perform its obligations, under the Agreement and that performance will not cause Customer to violate Applicable Laws or Customer's constituent documents; and no consent of any person and no authorization or other action by, and no notice to, or filing with, any governmental or regulatory authority or any other person is required that has not already been obtained in order to do so;
4. this Annex and the representations, warranties, covenants and agreements set forth herein are legal, valid, binding and enforceable against Customer;
5. it has all the requisite authority in conformity with Applicable Law to advise and act on behalf of the Accounts;
6. it has entered into investment management agreements (the "**Investment Management Agreements**") which authorize it to take all action with respect to transactions under the Agreement on behalf of the Accounts (including, without limitation, to open Accounts with WFS, and to enter into trades on behalf of the Accounts and to give instructions to WFS, and to take all actions necessary for the execution, clearance and settlement of trades;
7. it has examined all applicable trust instruments, corporate charters, by-laws or authorizations, partnership agreements, trust indentures or other authorizing documentation for the Accounts it opens on behalf of its advisory clients and is satisfied that the person (or persons) signing the investment management or similar agreements with the Accounts was properly authorized to do so;
8. it is entering into each transaction under the Agreement on behalf of the Accounts as agent; WFS may rely on the representations of the Customer respecting its authority to act on behalf of the Accounts until WFS shall have received written notice of a change in, revocation or rescission of such authority; no change in, revocation or rescission of such authority shall affect in any manner the rights and indemnities inuring to WFS with respect to Customer's obligations arising prior to actual receipt by WFS of written notice of such change in, revocation or rescission; the Investment Management Agreements provide that Customer will be responsible as principal for any transactions incorrectly represented as being made for the Accounts on an agency basis;
9. it will enter into a transaction only when the assets in the Accounts under its control are sufficient to meet the obligations resulting from such transaction;
10. neither it nor any person having a beneficial interest in the Accounts, or any person for whom it acts as agent or nominee in connection with the Agreement is: (i) an individual or entity,

- country or territory, that is named on a list issued by OFAC, or an individual or entity that resides, is organized or chartered, or has a place of business, in a country or territory subject to OFAC's various sanctions/embargo programs, (ii) a resident in, or organized or chartered under the laws of (A) a jurisdiction that has been designated by the PATRIOT Act as warranting special measures and/or as being of primary money laundering concern, or (B) a jurisdiction that has been designated as non-cooperative with international anti-money laundering principles by a multinational or inter-governmental group such as the Financial Action Task Force on Money Laundering of which the United States is a member, (iii) a financial institution that has been designated by the Secretary of the Treasury as warranting special measures and/or as being of primary money laundering concern, (iv) a "senior foreign political figure," or any "immediate family" member or "close associate" of a senior foreign political figure, in each case within the meaning of Section 5318(i) of Title 31 of the United States Code or regulations issued thereunder or (v) a prohibited "foreign shell bank" as defined in Section 5318(j) of Title 31 of the United States Code or regulations issued thereunder, or a U.S. financial institution that has established, maintains, administers or manages an account in the U.S. for, or on behalf of, a prohibited "foreign shell bank." To the best of Customer's knowledge and after conducting reasonable due diligence, all of the sources of the Accounts' funds are legitimate and it will maintain and make records of such due diligence available to WFS upon request;
11. it is not a person (i) subject to an SEC order issued under Section 203(f) of the Advisers Act, (ii) convicted within the previous 10 years of any felony or misdemeanor involving conduct described in Section 203(e)(2)(A-D) of the Advisers Act, (iii) who has been found by the SEC to have engaged, or has been convicted of engaging in any of the conduct specified in paragraph 1, 5 or 6 of Section 203(e) of the Advisers Act or (iv) subject to an order, judgment or decree described in Section 203(e)(4) of the Advisers Act;
 12. it agrees to indemnify WFS, to the fullest extent permitted by law, from and against any loss, liability, cost, claim, action, demand or expense on a current basis as incurred (including, without limitation, reasonable costs, expenses and disbursements of legal counsel), whether direct, indirect, incidental or consequential, resulting from, arising out of or relating to (x) any claim that any transaction entered into by it for the Accounts was not suitable, (y) any claim that any transaction entered into by it for the Accounts was without authority and (z) any breach by it of any representation, warranty, covenant or agreement contained herein;
 13. neither the execution of the Agreement nor any transaction entered into or contemplated thereunder will violate any Applicable Law (including any provision of ERISA or the ERISA Regulations, Section 4975 of the Internal Revenue Code of 1986, as amended (the "**Code**"), any tax "qualification" rule under the Code, or any similar rule), orders or awards binding on Customer or Customer's property;
 14. it is not and is not acting on behalf of (i) an "employee benefit plan" within the meaning of Section 3(3) of ERISA that is subject to Part 4 of Subtitle B of Title I of ERISA, (ii) a "plan" within the meaning of Section 4975(e)(1) of the Code, to which Section 4975 of the Code applies, (iii) an entity whose underlying assets include "plan assets" subject to Title I of ERISA or Section 4975 of the Code by reason of Section 3(42) of ERISA, U.S. Department of Labor Regulation 29 CFR Section 2510.3-101 or otherwise, or (iv) a "governmental plan" (as defined in ERISA or the Code) or another type of plan (or an entity whose assets are considered to include the assets of any such governmental or other plan) that is subject to any law, rule or restriction that is substantially similar to Section 406 of ERISA or Section 4975 of the Code ("**Similar Law**"). Customer will provide prompt written notice to WFS if it is aware of a breach of this representation and warranty or is aware that with the passing of time, giving of notice or expiry of any applicable grace period there will be a breach of this representation and warranty and, upon WFS' request, it will immediately terminate any and all Activities prior to the Accounts' assets becoming subject to such laws; or

15. in the event that assets held in any of the Accounts constitute, directly or indirectly, “plans assets” of any “employee benefit plan” as defined in and subject to ERISA and/or a “plan” as defined in and subject to Section 4975 of the Code for purposes of ERISA and/or Section 4975 of the Code or constitute “plan assets” of an employee benefit plan or arrangement for purposes of Similar Law, the following additional representations, warranties, covenants, acknowledgments and agreements shall apply:

a) it represents, warrants, covenants and agrees (which representations, warranties, covenants and agreements shall be deemed to be repeated on each date on which an Activity is effected for such Accounts and at all times until all of Customer’s Obligations have been satisfied) that:

(i) it is an “investment manager” (as defined in Section 3(38) of ERISA) with respect to each of the Accounts subject to ERISA and a fiduciary with respect to each of the Accounts subject to Section 406 of ERISA, Section 4975 of the Code and/or any Similar Law and has full power and authority on behalf of each of the Accounts to execute and deliver the Agreement and each Other Agreement, to enter into each Activity covered by the Agreement and any Other Agreement and to cause each of the Accounts to perform all its obligations under the Agreement and each Other Agreement;

(ii) In connection with the negotiation, execution and delivery of the Agreement and each Other Agreement, it is a “qualified professional asset manager” or “QPAM” within the meaning of Part VI of the U.S. Department of Labor Prohibited Transaction Class Exemption 84-14, as amended (the “**QPAM Exemption**”) and in such capacity has negotiated and approved the Agreement and each Other Agreement and each Activity covered by the Agreement and any Other Agreement;

(iii) The entering into and performance of the Agreement and any Other Agreement and each Activity covered by the Agreement and any Other Agreement, regardless of when entered into, do not and will not constitute a prohibited transaction under Section 406 of ERISA and Section 4975 of the Code due to the application of the QPAM Exemption or another exemption identified and described to WFS by it before it relies on such exemption for purpose of this provision, which other exemption is acceptable to WFS in its sole discretion;

(iv) WFS is not acting as a fiduciary in respect of the assets of the Accounts (including in connection with the retention or exercise of its rights under the Agreement or any Other Agreement) or has any responsibility under the standards governing the conduct of fiduciaries, investment advisors or investment managers, and any information or advice provided by WFS under or in connection with the Agreement, any Other Agreement or any Activity covered by the Agreement or any Other Agreement does not and will not serve as a primary basis of any investment decision by it;

(v) The entering into and performance of the Agreement or Other Agreement or any Activity covered by the Agreement or any Other Agreement will not result in a violation of any applicable Similar Law;

(vi) it will be in full compliance with constituent documents applicable to the Accounts, and the Activities that it directs on behalf of the Accounts are and will be authorized transactions;

(vii) It will not regard any assets pledged as Collateral by the Accounts in connection with any Activity, the Agreement or Other Agreement as constituting “plan assets” within the meaning of Title I of ERISA or Section 4975 of the Code; and

(viii) it has and will have full authority to manage the assets in the Accounts and sufficient assets are and shall be available to satisfy the Accounts' obligations under the Agreement and each Other Agreement and in connection with each Activity.

- b) it represents that Section 404(b) of ERISA shall be satisfied with respect to assets held in the Accounts under the Agreement and any Other Agreement and acknowledges and agrees that WFS shall have no responsibility for compliance with Section 404(b) of ERISA.
 - c) it acknowledges that WFS is entering into the Agreement, each Other Agreement and each Activity based on the representations, warranties, covenants and agreements in this Annex.
 - d) it will not take any action during the term of this Annex, the Agreement or any Other Agreement that would render any of the representations, warranties, covenants or agreements in Sections 15 and 16 untrue, incorrect or incomplete, and it will provide prompt written notice to WFS if it is aware that it is in breach of these representations, warranties, covenants or agreements or is aware that, with the passing of time, giving of notice or expiry of any applicable grace period, it will be in breach of these representations, warranties, covenants and agreements and, if applicable and upon WFS' request, it will immediately terminate any and all Activities prior to when any such representation, warranty, covenant or agreement will be untrue;
16. it agrees to indemnify and hold harmless WFS to the extent permitted by Applicable Law, from and against any cost, damage or loss (including, without limitation, any excise taxes, fines, penalties, interest, profits disgorged, restitution and any related attorney's fees and expenses) incurred by it as a result of the representations and warranties in Sections 14 and 15 of this Annex being or becoming untrue or any breach of ERISA, Section 4975 of the Code or Similar Law caused by it which exposes WFS to any cost, damage or loss (including, without limitation, any excise taxes, fines, penalties, interest, profits disgorged, restitution, and any related attorney's fees and expenses); and
17. it will immediately advise WFS in writing if any of the above representations should become untrue.

