

**South Dakota Department of  
Environment and Natural Resources**



*Protecting South Dakota's Tomorrow ... Today*

**BOARD OF WATER  
AND NATURAL RESOURCES**

**June 5, 2020  
11:15 a.m. CT**

**Via Teleconference on June 5, 2020 at 11:15 a.m. CT**

If you wish to participate, dial 1-866-410-8397. After dialing you will be prompted to enter a code. The code for the meeting is 9393099157#.

Live audio of the meeting and the full board packet can be found on the South Dakota Boards and Commissions Portal at <http://boardsandcommissions.sd.gov/Meetings.aspx?BoardID=108>

**AGENDA**

**\*\*Scheduled times are estimates only. Some items may be delayed due to prior scheduled items or may be moved up on the agenda.\*\***

**June 5, 2020**

*11:15 a.m. CT*

1. Call meeting to order
2. Roll Call
3. Approve Agenda
4. Public Comment Period
5. Request for Consent to Perkins Coie's Concurrent Representation of South Dakota Conservancy District and City of Sioux Falls – Mike Perkovich
6. Consulting Contract with Perkins Coie, LLP for Bond Counsel Services for State Revolving Fund Program Series 2020 Bond Issue – Mike Perkovich
7. Series Resolution Authorizing State Revolving Fund Program Bonds, Series 2020 – Mike Perkovich
8. June 25-26<sup>th</sup> Meeting
9. Adjourn

TITLE: Request for Consent to Perkins Coie's Concurrent Representation of South Dakota Conservancy District and City of Sioux Falls

EXPLANATION: Bruce Bonjour of Perkins Coie, LLP, serves as bond counsel for the Clean Water and Drinking Water State Revolving Fund programs. Mr. Bonjour has previously worked and continues to serve as bond counsel for Sioux Falls on certain sales tax bond issues. Sioux Falls has no outstanding State Revolving Fund loans secured by a pledge of sales tax revenue.

Approximately ten years ago, the city of Sioux Falls requested that Perkins Coie serve as bond counsel for the city in connection with its Sales Tax Bonds issued to finance its Convention Center. In 2011, Perkins Coie provided a similar conflict waiver letter to that which is attached. The District signed the letter and the Attorney General approved it as to form thus waiving any potential conflict of interest. Ever since, Perkins Coie has served as bond counsel to the city with respect to specific additional capital improvements it finances with Sales Tax Bonds - none of which are in any way related to the SRF Programs or the District (e.g. the convention center, parking ramps, fire station, public safety buildings, etc.). Importantly, although Sioux Falls is a borrower of funds under the SRF Programs, it does not use Perkins Coie as bond counsel for such transactions. Rather, the City uses other law firms who interface directly with the office of Attorney General on such matters. Neither Perkins Coie nor Bruce Bonjour have ever represented the City in connection with any City projects financed under the SRF Programs.

Presently, the District is proposing to issue one or more series of bonds to finance loans to the city of Sioux Falls from the Clean Water SRF Program. Perkins Coie's role in connection with the bonds will be to represent the District and execute the Work Plan as specified in the legal services agreement. Under no circumstances will Perkins Coie be involved on behalf of the city in connection with any such SRF Program loans. Mr. Bonjour has submitted this conflict waiver letter to seek the informed consent of the District to allow Perkins Coie to concurrently represent the city of Sioux Falls as its bond counsel in connection with its various Sales Tax Bonds and the District in the Series 2020 Bond issue as described in the legal services agreement

Legal counsel recommends that the Board, in its capacity as the District's governing body, consider the request and decide whether to authorize the Chairman to sign the consent for concurrent representation.

Independently, the South Dakota Attorney General needs to consent to the concurrent representation as well.

**RECOMMENDED ACTION:** Authorize Chairman to Execute Consent Letter for Perkins Coie's Concurrent Representation of South Dakota Conservancy District and City of Sioux Falls

**CONTACT:** Mike Perkovich, 773-4216

May 15, 2020

South Dakota Conservancy District  
c/o Mike Perkovich  
Joe Foss Building  
523 E. Capitol  
Pierre, SD 57571

Jason R. Ravensborg, Esq.  
Attorney General  
State of South Dakota  
1302 East Highway 14, #1  
Pierre, SD 57501

**Re: Simultaneous Representation of South Dakota Conservancy District and City of Sioux Falls, South Dakota**

Gentlemen:

Our law firm currently serves as bond counsel to the South Dakota Conservancy District (the “District”) for a stated term which expires on December 31, 2021 pursuant to that certain “State of South Dakota Agreement for Legal Services” between the District and Perkins Coie LLP, designated as Control # 2019-34, which agreement was approved as to form by the office of the Attorney General on December 20, 2018. From time to time, such agreement is supplemented to include work related to a new series of bonds (“Additional Bonds”) issued under the Master Trust Indentures for the Clean Water and Drinking Water State Revolving Fund Program (the “SRF Program”). For purposes of this letter, all such legal services agreements are referred to as the “SRF Legal Services Agreement”. My involvement as the lead partner in this role as the District’s bond counsel for the SRF Program dates back almost 30 years.

Approximately ten years ago, the city of Sioux Falls (the “City”) requested that our law firm serve as bond counsel to the city in connection with its Sales Tax Bonds (“Sales Tax Bonds”) issued to finance its convention Center, and in 2011 we provided a letter similar to this letter which was signed by the District following approval as to form by the office of the Attorney General waiving any potential conflict of interest. Ever since, we have served as

South Dakota Conservancy District  
Jason R. Ravnsborg, Esq., Attorney General  
May 15, 2020  
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bond counsel to the City with respect to specific additional capital improvements it finances with Sales Tax Bonds - none of which are in any way related to the SRF Programs or the District (e.g. the convention center, parking ramps, fire station, public safety buildings, etc.). Importantly, although the City also is a borrower of funds under the SRF Programs, it uses other law firms as bond counsel for such purposes and interfaces directly with the office of Attorney General on such matters; our firm has never represented the City in connection with any City projects financed under the SRF Programs.

Presently, the District is proposing to issue one or more series of Additional Bonds to finance loans to the city of Sioux Falls for the SRF Program. Our role in connection with the Additional Bonds will be to execute the Work Plan on behalf of the District as specified in the Legal Services Agreement; under no circumstances will we be involved on behalf of the City in connection with any such SRF Program loans. We are writing this letter to seek the informed consent of the District to continue our representation of the city of Sioux Falls as its bond counsel in connection with its various Sales Tax Bonds which involve matters unrelated to the SRF Program while continuing to provide legal services to the District for the SRF Program under the Legal Services Agreement.

Under the rules governing professional responsibility and conflicts of interest, our law firm may represent the City and simultaneously represent the District in other matters only under certain conditions. First, we must have the written consent of both clients. Second, we must reasonably believe that our representation of both clients will not be adversely affected and that we will be able to provide competent and diligent representation to each client. To the best of our knowledge, the work we are now being asked to undertake for the City is not related to any legal services our firm has performed or is performing for the District. We are confident in our ability to represent each client's interests without limitation or compromise.

In light of the foregoing, please confirm that the District consents on an informed basis, after full disclosure of the conflict of interest, to our law firm's representation of the City in a matter adverse to the District and simultaneous representation of the District in other matters.

I enclose an extra original of this letter for your files. Please sign and return one original for our files, a pdf of an executed copy would be sufficient for our purposes.

South Dakota Conservancy District  
Jason R. Ravensborg, Esq., Attorney General  
May 15, 2020  
Page 3

Very truly yours,

A handwritten signature in blue ink, appearing to read "Bruce Bonjour".

Bruce Bonjour

cc: David McVey

South Dakota Conservancy District  
Jason R. Ravnsborg, Esq., Attorney General  
May 15, 2020  
Page 4

The undersigned hereby consents to the representation described above.

STATE OF SOUTH DAKOTA

By: \_\_\_\_\_  
Jason R. Ravnsborg, Esq.  
Attorney General  
State of South Dakota

Date: \_\_\_\_\_

SOUTH DAKOTA CONSERVANCY  
DISTRICT

By: \_\_\_\_\_  
Jerry Soholt

Its: \_\_\_\_\_

Date: \_\_\_\_\_

June 5, 2020

Item 6

**TITLE:** Consulting Contract with Perkins Coie, LLP for Bond Counsel Services for State Revolving Fund Program Series 2020 Bond Issue

**EXPLANATION:** Bruce Bonjour has served as bond counsel for the South Dakota Conservancy District since 1994. Mr. Bonjour is with Perkins Coie, LLP in Chicago. Mr. Bonjour proposed fees of up to \$85,000 for bond counsel services for the 2020 bond issue. The services to be provided would be similar to past issues and would consist of the following:

The Attorney will perform services as bond counsel for all initial services in connection with the proposed Series 2020 Bonds described below (“Bonds”) for the Clean Water State Revolving Fund Program. The Bonds will be issued as fixed interest rate bonds to finance Leveraged Loans for the Clean Water Program. Services to be provided by Attorney will include the preparation of an official statement for the Series 2020 Bonds, 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 proposed Series 2020 Bonds.

The 2020 bond issue will be a tax-exempt series to provide leveraged loan funds for existing and new Clean Water State Revolving Fund loans to the city of Sioux Falls.

Working with the legal counsel from the Office of Attorney General, staff prepared the contract for bond counsel services for the 2020 bond series. The contract runs through December 31, 2020.

**RECOMMENDED ACTION:** Approve a resolution authorizing the execution of the bond counsel contract.

**CONTACT:** Mike Perkovich  
605-773-4216



STATE OF SOUTH DAKOTA  
AGREEMENT FOR LEGAL SERVICES  
BETWEEN

**Control #**

Bruce A. Bonjour  
Perkins Coie, LLP  
131 S. Dearborn Street, Suite 1700  
Chicago, IL 60603-5559  
hereafter referred to as Attorney

South Dakota Conservancy District  
523 East Capitol Ave  
Joe Foss Building  
Pierre, South Dakota 57501  
hereafter referred to as State

The State hereby enters into an Agreement for Legal Services with the Attorney.

I. THE ATTORNEY

- A. The Attorney will perform those services described in the Work Plan, attached hereto as Exhibit A and by this reference incorporated herein.
- B. While performing the services hereunder, the Attorney is acting as an independent contractor and not as an officer, agent or employee of the SD Conservancy District or of the State of South Dakota.
- C. The Attorney will not use State equipment, supplies or facilities. The Attorney will provide the State with his firm's Employer Identification Number.
- D. This Agreement shall commence on execution by both parties and end on December 31, 2020.

II. THE STATE

- A. The State will make payment for legal services in connection with the proposed Series 2020 Bonds ("Bonds") for the Clean Water State Revolving Fund Program. The Bonds will be issued as fixed interest rate bonds to finance Leveraged Loans for the Clean Water Program. Services to be provided by Attorney will include the preparation of an official statement for the Series 2020 Bonds, 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 proposed Series 2020 Bonds.
- B. The State will not pay Attorney expenses as a separate item, provided, however, that any expense incurred from third parties in connection with the transmittal or filing of a 15c2-12 report, including electronic filing or transmission charges from National

Municipal Information Repository Services shall not be an expense of the Attorney, and should be billed directly to the State.

C. TOTAL CONTRACT AMOUNT is an amount not to exceed \$85,000. Payment will be made pursuant to itemized invoices. Payment will be made consistent with SDCL ch. 5-26.

### III. OTHER PROVISIONS:

A. This Agreement may not be assigned without the express prior written consent of the State. The provisions in this Agreement may only be altered, modified or changed by written amendment hereto subject to the same approval requirements as in this Agreement.

B. This agreement can be terminated upon thirty (30) days written notice by either party and may be terminated for cause by the State at any time with or without notice.

C. The Attorney, at all times during the term of this Agreement, shall obtain and maintain in force insurance coverage of the types and with the limits as follows:

#### (1) Commercial General Liability Insurance:

The Attorney shall maintain occurrence based commercial liability insurance or equivalent form with a limit of not less than \$2,000,000 for each occurrence. If such insurance contains a general aggregate limit it shall apply separately to this Agreement or be no less than two times the occurrence limit.

#### 2. Professional Liability Insurance:

The Attorney agrees to procure and maintain professional liability insurance with a limit not less than \$20,000,000.

#### 3. Business Automobile Liability Insurance:

The Attorney shall maintain business automobile liability insurance or equivalent form with a limit of not less than \$1,000,000 for each accident. Such insurance shall include coverage for owned, hired and non-owned vehicles.

#### 4. Worker 's Compensation Insurance:

The Attorney shall procure and maintain workers' compensation and employers' liability insurance if required by South Dakota law.

Before beginning work under this Agreement, the Attorney shall furnish the State with properly executed Certificates of Insurance which shall clearly evidence all insurance required in this Agreement. In the event a substantial change in insurance, issuance of a new policy, cancellation or nonrenewal of the policy, the Attorney agrees to provide immediate notice to the State and provide a new certificate of insurance showing continuous coverage in the amounts required. The Attorney shall furnish copies of insurance policies if requested by the State.

D. This Agreement depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. If for any reason the Legislature fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of law or federal funds reductions, this Agreement will be terminated by the State. Termination for any of these reasons is not a default by the State nor does it give rise to a claim against the State.

E. It is expressly understood and agreed by the parties hereto that this Agreement shall be governed by the laws of the State of South Dakota both as to interpretation and performance.

F. The Attorney will comply with all federal, state and local laws, regulations, ordinances, guidelines, permits and requirements applicable to providing services pursuant to this Agreement, and will be solely responsible for obtaining current information on such requirements.

G. Any notice or 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 David Ruhnke on behalf of the State, and by and to Bruce Bonjour, on behalf of the Attorney, or such authorized designees as either party may from time to time designate in writing. Notices or communications to or between the parties 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.

H. 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.

I. 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.

J. The Attorney certifies that neither the Attorney nor the principals of his firm 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. Attorney further agrees that it will immediately notify the State if during the term of this Agreement the Attorney or his firm's principals become subject to debarment, suspension in transactions by the federal government, or by any state or local government department or agency.

K. The Attorney agrees not to participate as Counsel, in person or his law firm, in opposition to the interests of the State of South Dakota or any of its departments, bureaus, boards or commissions consistent with the policy attached hereto and labeled Exhibit B.

In Witness Whereof, the parties signify their agreement effective the date below last written by the signatures affixed below.

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Bruce A. Bonjour, Partner (Date)  
Perkins & Coie, LLP.

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Jerry Soholt (Date)  
Chairman, Board of Water and  
Natural Resources

The foregoing Agreement is hereby approved as to form.

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Jason R. Ravensborg  
Attorney General

EXHIBIT A  
WORK PLAN

The Attorney will perform services as bond counsel for all initial services in connection with the proposed Series 2020 Bonds described below (“Bonds”) for the Clean Water State Revolving Fund Program. The Bonds will be issued as fixed interest rate bonds to finance Leveraged Loans for the Clean Water Program. Services to be provided by Attorney will include the preparation of an official statement for the Series 2020 Bonds, 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 proposed Series 2020 Bonds.

**EXHIBIT B**  
**POLICY CONCERNING CONFLICTS OF INTEREST**

This policy is adopted to address the issue of potential conflicts of interest with regard to the State of South Dakota and attorneys contracting with the State of South Dakota ("State") to perform legal services. This policy will be attached as an addendum to any contract for legal services entered into between the State and any attorney contracting to perform those legal services and shall become a part of that contract.

A. Except as provided in paragraph B of this policy, if an attorney contracting to perform legal services with the State has a pending claim against the State or its employees on behalf of a client; or in the event an attorney with an existing contract for legal services with the State is approached by a client seeking to file a lawsuit against the State or its employees, the contracting attorney shall notify the Attorney General and the manager of the state PEPL Fund in writing of that conflict of interest prior to the time a contract is signed or prior to undertaking representation of the adverse client. The Attorney General shall personally decide within ten working days whether or not the State will waive any conflict of interest created by that claim. The Attorney General will consider the magnitude of the claim against the State, the appearance of impropriety which could adversely affect the interests of the State, the degree, if any, to which the contracting attorney has or will gain access to information which would give him an undue advantage in representing a client whose interests are adverse to the State, whether the department or agency against which the claim is made is also a department or agency that will be represented by the contracting attorney, and any other factor which the Attorney General may deem pertinent in his discretion.

Notification of the Attorney General under this paragraph, prior to the commencement of an action is not required if the contracting attorney is approached by a client to commence an action against the State and the contracting attorney has a good faith belief that absent immediately filing, the action would be barred by a statute of limitations or comparable provision. Under these circumstances, the contracting attorney shall, as soon as practical, contact the Attorney General regarding the conflict and agrees that if the conflict of interest is not waived, to withdraw from representing the client in the pending action.

B. Any conflict of interest which may be created by the following situations will automatically be deemed to be waived by the Attorney General and will not be subject to the notification requirements of this policy statement:

1. Any action where the contracting attorney represents a codefendant with the State in a claim or lawsuit, regardless of any cross-claim or third-party claim which the State and the attorney' s non-State client may have against each other; unless the cross-claim or

third-party claim was readily apparent at the time of contracting with the non-State client and seeks significant monetary consequences; the cross-claim is against a state agency which the contracting attorney represents; or by virtue of representation of the State under contract the attorney had access to information which would give the non-State client an unfair advantage.

2. Any condemnation action in which the contracting attorney represents a condemnee.
3. Any administrative licensing proceeding in which the contracting attorney appears representing a client, regardless of the fact that the client may make a claim which would be adverse to a position taken by a department or agency of state government; unless the claims, if successful, will have significant monetary consequences to the State; or by virtue of representation of the State under contract the contracting attorney had access to information which would give the non-State client an unfair advantage.
4. Any administrative proceeding before the Department of Revenue in which the contracting attorney's client may have a claim which would create a potential liability for the State of South Dakota; unless the claim, if successful, will have significant monetary consequences to the State; or by virtue of representation of the State under contract the contracting attorney had access to information which would give the non-State client an unfair advantage.
5. Any bankruptcy proceeding in which the contracting attorney represents a client other than the State of South Dakota and in which the State of South Dakota has a secured or unsecured claim.
6. Any activity relating to the negotiation of a contract with the State of South Dakota and another client represented by the contracting attorney; unless the contracting attorney is actively representing the department or agency of state government with which the contract is being negotiated; or by virtue of representation of the State under contract the contracting attorney had access to information which would give the non-State client an unfair advantage.
7. The defense of any criminal action; unless the attorney has an existing contract as a special prosecutor in criminal actions for the State of South Dakota; or if, in representation of the State under contract, the contracting attorney had access to information which would give the non-State client an unfair advantage in the criminal action.
8. Any small claims action in which the contracting attorney represents any plaintiff or defendant with interests adverse to those of the State.
9. Any action brought through representation under a long-term contract or appointment of any other governmental entity, whether or not that governmental entity has interests that are adverse to those of the State; unless the claim, if successful, will have significant



monetary consequences against the State of South Dakota.

10. Any action in which the State is a named party but has only a nominal interest, as in mortgage foreclosures and quiet title actions.
11. Any lobbying activity by the contracting attorney.
12. Any worker's compensation case in which the contracting attorney represents a claimant; unless the contracting attorney represents the South Dakota Department of Labor in matters relating to worker's compensation claims or benefits.

C. The Attorney General reserves the right to raise a conflict of interest, notwithstanding the automatic waiver provisions of paragraph B of this policy, where a conflict of interest covered by the South Dakota Rules of Professional Conduct exists and in the discretion of the Attorney General, is it determined to be in the State's best interest to raise the conflict. The Attorney General shall notify the contracting attorney of the existence of the conflict and the delineation of waiver within seven days of the Attorney General's actual notice of the contracting attorney's action against the State.

D. For purposes of this policy: 1) the term "contracting attorney" means the attorney actually signing the agreement and his entire law firm; 2) the term "State" means the State of South Dakota and any branch, constitutional office, department, agency, institution, board, commission, authority, or other entity by state government; and 3) the term "significant monetary consequences" means that the suit, claim, action or other proceeding against the State, if successful, could reasonably result in the State making payments to the contracting attorney, the client or the class the client represents in excess of \$50,000 or in the case of the proceeding against the Department of Revenue, or other state taxing entity payments or lost revenue in excess of \$50,000.

E. This guideline shall not be construed as altering or reducing an attorney's obligations to his client under the South Dakota Rules of Professional Conduct specifically stated herein.

June 5, 2020

Item 7

TITLE: Series Resolution Authorizing State Revolving Fund Program Bonds, Series 2020

EXPLANATION: It is anticipated that the South Dakota Conservancy District will issue approximately \$100,000,000 in Clean Water State Revolving Fund Program Bonds, Series 2020 (the "Series 2020 Bonds") during the week of June 29, 2020 to be deposited to the Clean Water Leveraged Loan Account established with respect to the Series 2020 Bonds. The Series 2020 Bonds are tax exempt bonds being issued to provide funds sufficient, together with other available moneys, (a) to make new and fund existing loans (herein, "Loans") to the city of Sioux Falls, South Dakota; and (b) pay costs of issuance.

Enclosed for your reference is the Series Resolution for the Series 2020 Bonds prepared by SRF bond counsel, Bruce Bonjour of Perkins Coie, LLP. The Series Resolution provides Board approval of the Preliminary Official Statement, the Bond Purchase Agreement, the Bond Order, and the Continuing Disclosure Agreement.

The Series Resolution authorizes the Chairman and/or Secretary to file a Coverage Certificate for each program with the Trustee and to do all acts and to execute or accept all documents as may be necessary to carry out and comply with the provisions of the resolution and the documents approved by the resolution.

The Series Resolution and the other bond documents listed below are available electronically at:

<http://denr.sd.gov/srfrfp.aspx>.

- Preliminary Official Statement (POS)
- Continuing Disclosure Agreement (POS - Appendix F)
- Bond Purchase Agreement by and between the District and Bank of America Merrill Lynch, Inc., for itself and as Representative of Citigroup Global Markets Inc. and J.P. Morgan Securities LLC.

If you would like hard copies of the documents, please contact Mike Perkovich at (605) 773-4216.

RECOMMENDED ACTION: Approve Series Resolution Authorizing State Revolving Fund Program Bonds, Series 2020

CONTACT: Mike Perkovich (773-4216)

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

**SERIES RESOLUTION #2020—\_\_ AUTHORIZING STATE**

**REVOLVING FUND PROGRAM BONDS  
SERIES 2020**

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

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

**WHEREAS**, pursuant to the Act and the Drinking Water Act (as herein defined) the District has established a state revolving fund program (the “*Drinking Water Program*”); and

**WHEREAS**, pursuant to the Act, the District is authorized to issue bonds and notes and to make loans to Borrowers (as defined in the Master Trust Indenture) through the purchase of municipal securities or loans in connection with the Clean Water Program and the Drinking Water Program (each a “*Program*” and collectively, the “*Programs*”); and

**WHEREAS**, to fund the Programs, the United States Environmental Protection Agency currently makes annual capitalization grants to the states on the condition that each state provide an appropriate match for such state’s related revolving fund; and

**WHEREAS**, pursuant to SDCL §46A-1-60.1, the State has heretofore established the state water pollution control revolving fund program and the state drinking water revolving fund program and provided that program subfunds (each, a “*Program Subfund*” and collectively, the “*Program Subfunds*”) be created within the water and environment fund established pursuant to SDCL §46A-1-60; that each Program Subfund be maintained separately; and all federal, state and other funds for use in each such Program be deposited into the related Program Subfund, including all federal grants for capitalization of each such Program, all repayments of assistance awarded from each such Program Subfund, interest on investments made on money in each such Program Subfund, proceeds of discretionary bond issues allowed by SDCL §46A-1-31 and principal and interest on loans made from each fund, that money in the Program Subfunds may be used only for purposes authorized under federal law and that the Program Subfunds may be pledged or assigned by the District to or in trust for the holder or holders of the bonds and notes of the District as permitted by law and may be transferred to and held by a trustee or trustees pursuant to SDCL §46A-1-39; and

**WHEREAS**, SDCL §46A-1-60.2 provides that funds from the Programs therein described shall be disbursed and administered according to rules enacted by the Board of Water and Natural Resources pursuant to SDCL §46A-1-65 and the provisions of SDCL §46A-1-60 to §46A-1-60.3

inclusive and SDCL §46A-1-60.1 provides that money in the Program Subfunds may be used only for purposes authorized under federal law; and

**WHEREAS**, the District and The First National Bank in Sioux Falls (the “*Original Trustee*”) previously entered into that certain (a) Master Trust Indenture dated as of January 1, 1994, as heretofore amended and supplemented (the “*Original Clean Water Indenture*”) and (b) Master Trust Indenture dated as of June 1, 1998, as heretofore amended and supplemented (the “*Original Drinking Water Indenture*”); and

**WHEREAS**, pursuant to that certain Amended and Restated Master Trust Indenture dated as of July 1, 2004 (the “*Amended and Restated Indenture*”), the District and the Original Trustee amended, restated and consolidated the Original Clean Water Indenture and Original Drinking Water Indenture into the Amended and Restated Indenture; and

**WHEREAS**, pursuant to that certain First Amendment dated as of October 1, 2005, that certain Second Amendment dated as of April 1, 2006, that certain Third Amended and Restated Master Trust Indenture dated as of March 1, 2008, that certain Fourth Amended and Restated Master Trust Indenture dated as of August 1, 2009, and that certain Fifth Amended and Restated Master Trust Indenture dated as of September 1, 2010, the District and the Original Trustee amended and supplemented the Amended and Restated Indenture (herein, as amended by that certain First Amendment to Fifth Amended and Restated Master Trust Indenture dated February 17, 2015 and as hereafter further amended, supplemented or restated, the “*Master Trust Indenture*”); and

**WHEREAS**, pursuant to a Tri-Party Agreement dated as of April 14, 2017 among the District, the Original Trustee and U.S. Bank National Association (in such capacity, the “*Successor Trustee*”), the Original Trustee assigned, conveyed, transferred, delivered and confirmed to the Successor Trustee the Trust Estate and all estates, properties, rights, powers and trusts as “Trustee” under the Master Trust Indenture and all Series Resolutions and Bond Orders and the Successor Trustee accepted such assignment, conveyance and transfer to all duties, trusts and responsibilities under the Master Trust Indenture, Series Resolutions and Bond Orders and is now serving for all purposes thereunder and hereunder as the “Trustee”; and

**WHEREAS**, the Board of Water and Natural Resources has determined that it is necessary and expedient that the District issue additional bonds and notes from time to time pursuant to the Master Trust Indenture and various Series Resolutions and to loan the proceeds thereof to Borrowers in furtherance of the Programs; and

**WHEREAS**, the District is authorized and empowered by the provisions of the Act to issue bonds and notes at its discretion in any amount at any time for the purpose of funding all or part of a revolving fund program under the Relevant Federal Acts, to be used to purchase or otherwise finance or provide for the purchase or payment of bonds or other obligations, including the refinancing of obligations previously issued or for projects previously completed and to enter into financing arrangements with such persons or public entities to secure and provide for the payment of such bonds and notes; and

**WHEREAS**, the District is authorized and empowered by the provisions of the Act, and specifically pursuant to §§46A-1-31, 46A-1-39 and 46A-1-60.1, SDCL, to pledge or assign to or in trust for the benefit of the holder or holders of such bonds and notes those moneys appropriated by the Legislature for the purpose of funding state contributions to the Programs and directing that such moneys be held and invested pursuant to a trust agreement for the payment of the principal of, premium, if any, and interest on the bonds and notes; and

**WHEREAS**, the Board of Water and Natural Resources, acting as the South Dakota Conservancy District, has at this time determined that it is necessary and expedient that the District issue one or more series of Bonds (herein, the “*Series 2020 Bonds*”) for the purpose of providing funds sufficient (a) to provide funds for new and existing Loans to the City of Sioux Falls, South Dakota (the “*Series 2020 Borrower*”) under the Clean Water Program, and (b) to pay costs of issuance; and

**WHEREAS**, drafts or final versions of the following documents have been filed with staff of the Board of Water and Natural Resources, acting as the South Dakota Conservancy District, and made available to each member of the Board:

- (i) A draft Preliminary Official Statement with respect to the Series 2020 Bonds (referred to herein as the “*Preliminary Official Statement*”);
- (ii) A draft Continuing Disclosure Agreement (in the form of an appendix to the Preliminary Official Statement and referred to herein as the “*Continuing Disclosure Agreement*”);
- (iii) A draft Bond Purchase Agreement (the “*Bond Purchase Agreement*”) by and between the District and BofA Securities, Inc., for itself and as Representative (the “*Representative*”) of J.P. Morgan Securities LLC and Citigroup Global Markets Inc. (collectively, the “*Underwriters*”); and
- (iv) Supporting schedules prepared by the District’s financial advisor which demonstrate satisfaction of the requirements of Section 2.11(b) of the Master Trust Indenture for the issuance of Additional Bonds.

**BE IT RESOLVED BY THE SOUTH DAKOTA BOARD OF WATER AND NATURAL RESOURCES, ACTING AS THE SOUTH DAKOTA CONSERVANCY DISTRICT, THAT:**

## ARTICLE 1

### District and Definitions

Section 1.01 Series Resolution. This Series Resolution is adopted in accordance with the provisions of the Master Trust Indenture and pursuant to the authority contained in the Act. It is hereby determined pursuant to the Act that the issuance of the Series 2020 Bonds pursuant to the Master Trust Indenture and the making of loans to the Series 2020 Borrower with the proceeds of the Series 2020 Bonds will implement the policies of the Act and provide the Series 2020 Borrower

with loans for essential projects at borrowing costs below the costs available to the borrowers in the private bond market.

Section 1.02 Definitions. Unless defined below in this Section 1.02, all terms defined in the Master Trust Indenture, or in the Act, as applicable, shall have the same meanings, respectively, in this Series Resolution and with respect to the Series 2020 Bonds as such terms are given in the Master Trust Indenture or in the Act, as applicable. In addition, the following terms shall have the following meanings for all purposes in connection with this Series Resolution and the Series 2020 Bonds:

“*Allocable Portion*” with respect to the Series 2020 Bonds and each Program, and with respect to each Leveraged Portion, shall mean the respective percentages of the aggregate principal amount of Bonds which are to be applied (or to the extent subsequent transfers or allocations were made following issuance of such Bonds thereby changing such application, were applied) to finance Clean Water Loans or Drinking Water Loans as Leveraged Loans with respect to each Program.

“*Authorized Officers*” shall mean the Chairman and the Secretary or, in the absence of either, any other Member of the Board of Water and Natural Resources designated in writing by the Chairman to act for purposes of and as authorized by this Resolution.

“*Beneficial Owner*” shall mean any person which has the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, any Series 2020 Bonds, including persons holding Series 2020 Bonds; through nominees or depositories.

“*Bond Order*” shall mean a written order signed by two Authorized Officers consistent with the authority of this resolution setting forth the definitive terms and conditions of the Series 2020 Bonds as shall be agreed to in the Bond Purchase Agreement.

“*Bond Purchase Agreement*” shall mean the Bond Purchase Agreement with respect to the Series 2020 Bonds entered into between the District and the Representative, on behalf of the Underwriters.

“*Clean Water Act*” means the Federal Clean Water Act, more commonly known as the Clean Water Act (PL 92-500), as amended by the Water Quality Act of 1987 (PL 100-4), 33 U.S.C. 1251, ET SEQ., any subsequent amendments thereto and any other applicable statutes governing any Program funded hereunder, and includes the State Revolving Fund Program Implementation Regulations, any amendments thereof issued pursuant thereto and any other applicable regulations.

“*Continuing Disclosure Undertaking*” means a Continuing Disclosure Undertaking with respect to the Series 2020 Bonds.

“*Drinking Water Act*” means Chapter 6A of the Public Health Service Act, 42 U.S.C. §§300f through 300j-26, more commonly known as the Safe Drinking Water Act, any subsequent amendments thereto and any other applicable statutes governing any Program funded hereunder, any amendments thereof and all applicable regulations.

“*Interest Payment Date*” shall have the meaning given thereto in the Bond Order.

“*Leveraged Portion*” shall have the meaning given thereto in the Bond Order.

“*Series 2020 Bonds*” shall mean the District’s Series 2020 Bonds issued (a) to provide for deposits into the Clean Water Leveraged Loan Account and (b) to pay any associated costs of issuance related thereto.

“*Series Resolution*” shall mean this Series Resolution, as amended or supplemented from time to time.

“*Underwriters*” shall have the meaning given thereto in the Bond Purchase Agreement.

Section 1.03 Supplemental Granting Clauses. The South Dakota Conservancy District, in order to secure the payment of the principal of, premium (if any) and interest on all Bonds and Notes outstanding under or issued or to be issued under the Master Trust Indenture according to their tenor and effect and the performance and observance of each and all of the covenants and conditions herein and therein contained, and for and in consideration of the premises and of the purchase and acceptance of the Bonds and Notes by the respective purchaser or purchasers and registered owner or owners thereof, and for other good and valuable considerations, the receipt whereof is hereby acknowledged, but in all events subject to the General Limitation, by these presents does hereby grant, bargain, sell, assign, transfer, convey, warrant, pledge and set over, unto the Trustee and to its successor or successors in the trust hereby created and to its assigns forever:

I.

A lien on and pledge of the interests of the District in all Loan Agreements heretofore financed under the Master Trust Indenture, all Loan Obligations acquired in connection therewith and all payments of principal, premium (if any) and interest thereon, and all proceeds thereof.

II.

A lien on and pledge of the interests of the District in all Loan Agreements (including Supplemental Loan Agreements) hereafter entered into between the District and Borrowers in connection with Loans authorized hereby and all Loan Obligations acquired with the proceeds of such Loans, and all payments of principal, premium (if any) and interest thereon, and all proceeds thereof.

III.

A lien on and pledge of all funds and other amounts received by the District from the Letter of Credit for deposit in the Program Subfunds to the extent applied for the purpose of making Loans or other requirements hereunder, as and when received, and all proceeds thereof, all subject to the terms, conditions and limitations of the Relevant Federal Act, the rules and regulations promulgated thereunder, and the Applicable EPA Agreements.

IV.

Any and all other property of every name and nature from time to time hereafter by delivery or by writing of any kind conveyed, assigned or transferred, or in which a security interest is granted, by the District or by anyone in its behalf or with its written consent, to the Trustee, which hereby is authorized to receive any and all such property at any and all times and to hold and apply the same to the terms hereof.

SUBJECT, HOWEVER, to the right of the District to withdraw or otherwise cause to be released or substituted from the Trust Estate any Loan Obligations and Loan Agreements, other assets, funds, investments or related rights of payments (defined in the Master Trust Indenture as “*Released Obligations*”) pursuant to such Section 5.10 of the Master Trust Indenture.

TO HAVE AND TO HOLD all and singular the said property hereby conveyed and assigned, or agreed or intended so to be, to the Trustee, its successor or successors in trust and its assigns, FOREVER.

IN TRUST, NEVERTHELESS, upon the terms and trust herein set forth and in the Master Trust Indenture, for the equal and proportionate benefit, security and protection of all Holders of the Bonds and Notes issued or to be issued under and secured by the Master Trust Indenture, without preference, priority or distinction as to lien or otherwise or any of the Bonds or Notes over any of the others except as is specifically provided herein or in the Master Trust Indenture;

PROVIDED, HOWEVER, that if the District, its successors or assigns, shall well and truly pay or cause to be paid the principal of the Bonds and Notes and the premium, if any, and interest due or to become due thereon, at the times and in the manner mentioned in the Bonds and Notes, according to the true intent and meaning thereof, or shall provide, as permitted hereby, for the payment thereof by depositing with the Trustee sums sufficient to pay the entire amount due or to become due thereon, and shall well and truly keep, perform and observe all the covenants and conditions pursuant to the terms of the Master Trust Indenture (as supplemented from time to time), to be kept, performed and observed by it and shall pay to the Trustee all sums of money due or to become due to it in accordance with the terms and provisions hereof; then upon such final payment the Master Trust Indenture, and the rights hereby granted shall cease, determine and be void; otherwise, the Master Trust Indenture to be and remain in full force and effect.

ARTICLE 2

Authorization of Series 2020 Bonds

Section 2.01 Authorization of the Series 2020 Bonds. Pursuant to the Master Trust Indenture, one or more series of the State Revolving Fund Program Revenue Bonds, Series 2020 in an aggregate original principal amount not to exceed \$103,000,000 (the “*Series 2020 Bonds*”) are hereby authorized and created and shall be issued in one or more series.

Section 2.02 Purposes. The Series 2020 Bonds are being issued to provide funds sufficient, together with other available moneys, (a) to provide funds in the approximate amount of \$100,000,000 to be deposited to the Clean Water Leveraged Loan Account established with



respect to the Series 2020 Bonds which, together with other available amounts, are to be loaned to the Series 2020 Borrower and (b) to provide funds to pay associated costs of issuance.

Section 2.03 Date, Payment Dates and Maturities. The Series 2020 Bonds shall be initially dated as provided in the Bond Order and, thereafter, Series 2020 Bonds issued on or subsequent to the first interest payment date shall be dated as of the most recent date to which interest has been duly paid or provided.

The Series 2020 Bonds shall bear interest from their dated date payable semiannually on February 1 and August 1 in each year, commencing February 1, 2021.

Section 2.04 Sinking Fund Installments and Redemption Provisions.

The Series 2020 Bonds shall mature on August 1 in each of the years and in the principal amounts as shall be determined by the Authorized Officers in the Bond Order, provided; however, the final maturity shall not be later than as specified in Section 2.07 of this Resolution.

The total scheduled principal and interest due on the Series 2020 Bonds in any year (after taking into account any Sinking Fund Installments) shall not exceed \$12,000,000.

Any Series 2020 Bonds which are issued as term bonds (the “*Series 2020 Term Bonds*”) shall be redeemed prior to their stated maturities by payment of Sinking Fund Installments, upon notice as provided in Article III of the Master Trust Indenture, on August 1 in each of the years and amounts as set forth in the Bond Order, in each case at a redemption price of 100% of the principal amount of such Series 2020 Term Bonds or portions thereof to be so redeemed, together with accrued interest to the redemption date.

The Series 2020 Bonds shall be subject to redemption prior to their stated maturity only as provided in the Bond Order.

Section 2.05 Reserve Fund Requirements. The Series 2020 Bonds shall not be secured by a pledge of or lien on any amounts on deposit in the Reserve Fund.

Section 2.06 Filing of Materials and Satisfaction of Conditions Applicable to Issuance of Additional Bonds. The Chairman shall cause to be filed with the Trustee a Coverage Certificate for each Program based upon the principal amount, maturity and sinking fund schedule and interest rates applicable to the Bonds the District expects to be issued to provide the funds necessary to pay the Series 2020 Bonds on the Maturity Date, all pursuant to the terms and conditions of Section 2.11(b) of the Master Trust Indenture.

Section 2.07 Sale of Series 2020 Bonds; Execution of Bond Purchase Agreement. The form of Bond Purchase Agreement on file is hereby approved and the Authorized Officers are hereby authorized (provided only one signature shall be sufficient) to execute the same in substantially the form on file, but with all such changes and revisions as the officer executing the same shall approve, provided that prior to the execution and delivery of the Bond Purchase Agreement, the Authorized Officers shall make the determinations described below, which determinations shall be memorialized in the Bond Order at or prior to the delivery of the Series 2020 Bonds.

Before executing and delivering the Bond Purchase Agreement, the Authorized Officers shall first determine that:

- a) the weighted average interest cost of the Series 2020 Bonds is less than 4.50%,
- b) the last stated maturity date for the Series 2020 Bonds is not later than August 1, 2042,
- c) the purchase price to be paid by the underwriter is not less than 99% of the Series 2020 Bonds, and
- d) the underwriters' discount shall not exceed 0.6% of the par amount of Series 2020 Bonds.

Section 2.08 Conforming Amendments to Master Trust Indenture. The Authorized Officers are hereby authorized (provided only one signature shall be sufficient) to execute any conforming amendments or supplements to the Master Trust Indenture approved as to form by the Attorney General and Bond Counsel to the extent such Authorized Officers determine the same is necessary or appropriate in connection with the sale and delivery of the Series 2020 Bonds and that such execution and delivery do not result in a downgrade in the current ratings of outstanding Bonds as of the date of issuance of the Series 2020 Bonds consistent with the requirements of Section 11.01(h) of the Master Trust Indenture.

Section 2.09 Official Statement. The form of Preliminary Official Statement, in substantially the form presented at this meeting, is hereby approved and a final Official Statement shall be distributed with such changes, omissions, insertions and revisions as the officer executing the Official Statement shall deem advisable in order to make such Official Statement a complete and accurate disclosure of all material facts to prospective purchasers of the Series 2020 Bonds. The Chairman or Secretary (provided only one signature shall be sufficient) shall sign one or more copies of such final Official Statement on behalf of the District, and at least one such signed copy shall be filed with the permanent records of the District.

Section 2.10 Delegation of Certain Functions. The Secretary of the Department, or any authorized representative thereof, shall be authorized on behalf of the Department and the District to direct the Trustee to transfer funds from any account or fund under the Master Trust Indenture to provide for flexibility for the Programs, including any transfers from time to time as authorized by the Master Trust Indenture. In addition to the foregoing, the Secretary of the Department, or any authorized representative thereof, shall be authorized on behalf of the Department and the District to direct the Trustee to establish and maintain additional accounts or subaccount for the purposes described above or to account for allocation of restricted and unrestricted moneys under the Master Trust Indenture.

Section 2.11 Authorization and Ratification of Subsequent Acts. The officers, agents and employees of the District and the Department are hereby authorized and directed to do all such acts and things and to execute or accept documents as may be necessary to carry out and comply with the provisions of these resolutions and the documents approved hereby, and all of the acts and doings of the officers, agents and employees of the District and the Department which are in conformity with the intent and purposes of these resolutions, whether heretofore or hereafter taken

or done, shall be and are hereby ratified, confirmed and approved. Without limiting the generality of the foregoing, the proper officers of the District are hereby also authorized and directed to execute, acknowledge and deliver such certificates, agreements and documents which, in the opinion of bond counsel, Perkins Coie LLP, are necessary to preserve the tax exempt status of the Series 2020 Bonds, including a form of Tax Regulatory Agreement providing for the periodic payment of certain earnings on funds held by the Trustee to the United States of America.

### ARTICLE 3

#### Use of Proceeds of Series 2020 Bonds; Determination of, Leveraged Portion and Allocable Portions

##### Section 3.01 Establishment of Accounts.

(a) There is hereby established within the Loan Fund with respect to the Series 2020 Bonds the following account which is to be maintained by the Trustee pursuant to the Master Trust Indenture and this Series Resolution:

1. In the Clean Water Loan Fund, a Clean Water Leveraged Loan Account.

(b) There is hereby established within the Revenue Fund with respect to the Series 2020 Bonds the following accounts and subaccounts which are to be maintained by the Trustee pursuant to the Master Trust Indenture and this Series Resolution:

1. In the Clean Water Revenue Fund, (A) a Clean Water Unrestricted Interest Repayments Account, (B) a Clean Water Restricted Principal Repayments Account, (C) a Clean Water Unrestricted Cumulative Excess Interest Repayments Subaccount and (D) a Clean Water Restricted Cumulative Excess Principal Repayments Subaccount.

(c) There is hereby established within the Administration Fund with respect to the Series 2020 Bonds the following accounts which are to be maintained by the Trustee pursuant to the Master Trust Indenture and this Series Resolution:

1. In the Clean Water Administration Fund, (A) a Clean Water State Administration Account, (B) a Clean Water State Administration Discretionary Account, (C) a Clean Water SRF Administration Account, and (D) a Clean Water State Administration Cost of Issuance Account.

(d) There is hereby established within the Bond Fund with respect to the Series 2020 Bonds the following accounts and subaccounts which are to be maintained by the Trustee pursuant to the Master Trust Indenture and this Series Resolution:

1. In the Clean Water Bond Fund, a Clean Water Leveraged Bond Account and such other accounts and subaccounts as the Authorized Officers determine to be necessary or appropriate to provide for payment of the Series 2020 Bonds in accordance with the Master Trust Indenture.

Section 3.02 Determination of Allocable Portions. The Allocable Portion of Series 2020 Bonds shall be determined by the Authorized Officers in the Bond Order in accordance with the Indenture, and the Leveraged Portion shall be 100%.

Section 3.03 Application of Proceeds of the Series 2020 Bond Proceeds.

(a) The proceeds of the Series 2020 Bonds shall be applied for the purposes described in Section 2.02 of this Series Resolution, all as shall be further specified in the Bond Order.

(b) To the extent not financed out of the proceeds of the Series 2020 Bonds as provided in subparagraph (a) above, the Authorized Officers shall provide in the Bond Order that costs of issuance of the Series 2020 Bonds may be paid for out of Revenues or other available funds of the District.

Section 3.04 Allocation of Interest Earnings and Other Amounts; Investment Agreements.

(a) Earnings on any amounts on deposit in the Leveraged Loan Account for each Program shall be allocated periodically no less frequently than as of the end of each January and July to the Unrestricted Interest Repayments Accounts for such Program.

(b) Re-designation of Various Funds, Accounts and Subaccounts. At the direction of any Authorized Officer, the Trustee may re-designate or clarify the various names of the Funds, Account and Subaccounts created hereunder, under the Master Trust Indenture or any other prior indenture or resolution so as to properly account for the various funds, accounts and subaccounts established hereunder or under the Master Trust Indenture for purposes of compliance with any requirements of the Code, any requirements of the Environmental Protection Agency, to create or close loan accounts for State Match of either Program and reallocate amounts between Leveraged and State Match Loan Accounts as necessary to maximize funding of loans, or compliance with various investment agreements or any accounting requirements. In addition, and not by way of limitation, the Authorized Officers shall be authorized to include instructions to the Trustee in the Bond Order regarding the consolidation and/or closing of accounts and subaccounts with respect to any of the Series of Bonds. The actions authorized hereby shall expressly include the creation or re-designation or correction of the names of various funds, accounts or subaccounts which are consistent with any provisions of the Master Trust Indenture or with any subsequent requests or requirements of the Environmental Protection Agency, the requirements of the Code or any investment provider.

## ARTICLE 4

### Form, Execution and Other Details of Series 2020 Bonds

Section 4.01 Form of Series 2020 Bonds. The Series 2020 Bonds, the Registrar's Authentication Certificate, and the form of assignment on the reverse side thereof shall be in substantially the form contemplated by the Master Trust Indenture, with all such insertions as may be consistent with this Series Resolution and the Bond Order. The approving legal opinion of

Perkins Coie LLP, as Bond Counsel, may be printed on the reverse side of or be attached to the Bonds and certified by the Chairman.

Section 4.02 Execution and Delivery. The Series 2020 Bonds shall be executed and delivered as provided in the Master Trust Indenture.

Section 4.03 Uses of Securities Depository; Book-Entry Only System. The provisions of the Series Resolution and the Bond Order shall take precedence over the provisions of the Master Trust Indenture to the extent they are inconsistent therewith as to matters relating to the appointment of The Depository Trust Company (“DTC”) to act as securities depository for the Series 2020 Bonds, and to provide a Book-Entry Only System for registering the ownership interests of the financial institutions for which it holds the Series 2020 Bonds (the “DTC participants”), and for distributing to such DTC Participants such amount of the principal and interest payments on the Series 2020 Bonds as they are entitled to receive, for redistribution to the beneficial owners of the Series 2020 Bonds as reflected in their records (the “Beneficial Owners”).

## ARTICLE 5

### Special Covenants

The Board of Water and Natural Resources and the District covenant and agree with the persons who at any time are Holders and Owners of the Series 2020 Bonds that so long as any Series 2020 Bonds remain outstanding and unpaid:

Section 5.01 Observe Master Trust Indenture, Series Resolution and Loan Agreement. The District will faithfully keep and observe all the terms, provisions and covenants contained in the Master Trust Indenture, this Series Resolution and the Loan Agreement.

Section 5.02 Maintenance of Tax-Exempt Status. The District shall not take, or permit the Political Subdivision to take, any action that would cause the Series 2020 Bonds to be “private activity bonds” within the meaning of Section 141 of the Internal Revenue Code of 1986, as amended. The District shall comply with all the rebate requirements imposed under Section 148(f) of the Internal Revenue Code of 1986, as amended, and regulations thereunder, which are necessary to preserve the tax exempt status of the Series 2020 Bonds, including (if applicable) the requirement to make periodic calculations of the amount subject to rebate thereunder and the requirement to make all required rebates to the United States. The District agrees to use any moneys on deposit in any Fund or Account maintained under the Master Trust Indenture to pay any such rebate (or penalty in lieu thereof) when due to the extent permitted by the Master Trust Indenture. In addition, the District shall make no investment of funds or take or permit the Political Subdivision to take any action that would cause the Series 2020 Bonds to be “arbitrage bonds” within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended, and regulations thereunder. The Chairman is hereby authorized to make on behalf of the District any elections under the provisions of Section 148 of the Internal Revenue Code of 1986 and regulations thereunder as he may deem appropriate. All terms used in this Section 5.02 shall have the meanings provided in the Internal Revenue Code of 1986, as amended, and regulations thereunder. The Chairman shall execute any certificates as may be necessary or appropriate to establish the tax exempt status of the Bonds. The District covenants that it will take such actions as may be

necessary in order to ensure that the interest on any Series 2020 Bonds remains excluded from the gross income of the holders thereof for federal income tax purposes under Section 103 of the Code.

ARTICLE 6

Miscellaneous

Section 6.01 Adjustments by Authorized Officers.

The Authorized Officers are hereby authorized and directed to adjust the deposit and application of the proceeds of the Series 2020 Bonds as described herein if and to the extent such Authorized Officers determine that the payment of any underwriter's discount, bond insurance premium or other amounts can be made from any other funds or accounts in a manner favorable to the District.

Section 6.02 Amendments. This Series Resolution may be amended as provided in the Master Trust Indenture.

Section 6.03 Effective Date. This Series Resolution is effective immediately.

Adopted: June 5, 2020

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Its Chairman

Attest:

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Its Secretary