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December 6, 2022

Town of Buffalo Gap  
PO Box 295  
Buffalo Gap, SD 57722-0295

Re: Town of Buffalo Gap  
\$1,147,000 Drinking Water Project Revenue Borrower Bond, Series 2023

Dear Board of Trustees:

The purpose of this letter is to set forth the role we propose to serve and responsibilities we propose to assume as bond counsel to the Issuer in connection with the issuance of the \$1,147,000 Drinking Water Project Revenue Borrower Bond, Series 2023 (the "Bond") by the Town of Buffalo Gap (the "Issuer").

The Issuer is our client and an attorney-client relationship will exist between us upon execution of this engagement letter. Unless we have been separately engaged for further work listed above or otherwise, our representation of the Issuer and the attorney-client relationship will be concluded upon issuance of the Bond.

Bond counsel is engaged as a recognized independent expert whose primary responsibility is to render an objective legal opinion with respect to the authorization and issuance of Bond.

As bond counsel, we will: examine applicable law; prepare the resolution, loan agreement or ordinance authorizing and securing the Bond (the "Resolution") and other authorizing documents; consult with the parties to the transaction prior to the issuance of the Bond; review certified proceedings; and undertake such additional duties as we deem necessary to render the opinion.

Subject to the completion of proceedings to our satisfaction, we will render our opinion that:

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*with attorneys licensed in South Dakota, North Dakota, Nebraska, Minnesota, and Iowa*

(1) the Issuer is duly created and validly existing as a body corporate and public instrumentality of the State of South Dakota with authority to adopt the Resolution, perform the agreements on its part contained therein and issue the Bond;

(2) the Bond is a valid and binding special obligation of the Issuer;

(3) the Bond has been duly authorized, executed and delivered by the Issuer and is a valid and binding special obligation of the Issuer, payable solely from the sources provided therefore in the Resolution;

The opinion will be executed and delivered by us in written form on the date the Bond is exchanged for its purchase price (the "Closing") and will be based on facts and law existing as of its date. Upon delivery of the opinion, our responsibilities as bond counsel will be concluded with respect to this financing; specifically, but without implied limitation, we do not undertake (unless separately engaged) to provide continuing advice to the Issuer or any other party concerning any actions necessary to assure that interest paid on the Bond will continue to be excluded from gross income for federal income tax purposes.

In rendering the opinion, we will rely upon the certified proceedings and other certifications of public officials and other persons furnished to us without undertaking to verify the same by independent investigation. We do not review the financial condition of the Issuer, feasibility of the Revenue to be financed with the Bond proceeds, or the adequacy of the security provided to Certificate owners, and we will express no opinion relating thereto.

In performing our services as bond counsel, our client will be the Issuer and we will represent its interests. We assume that other parties to the transaction will retain such counsel as they deem necessary and appropriate to represent their interests in this transaction. Our representation of the Issuer does not alter our responsibility to render an objective opinion as bond counsel.

As bond counsel, we will not assume or undertake responsibility for the preparation of an Official Statement or any other disclosure document with respect to the Bond, nor are we responsible for performing an independent investigation to determine the accuracy, completeness or sufficiency of any such document. However, if a disclosure document will be adopted or approved by the Issuer, our responsibility will include the preparation or review of any description therein of: (i) State of South Dakota and federal law pertinent to the validity of the Bond and the tax treatment of interest paid thereon, (ii) the terms of the Bond, and (iii) our opinion.

Based upon: (i) our current understanding of the terms, structure, size and schedule of the financing, (ii) the duties we will undertake pursuant to this letter, (iii) the time we anticipate devoting to the financing, and (iv) the responsibilities we assume, we estimate that our fee as bond counsel would not exceed one percent of the bond proceeds to be paid out of the proceeds of the bond issue. Such fee may vary: (i) if the principal amount of Bond actually issued differs significantly from the amount stated above, (ii) if material changes in the structure of the financing occur, or (iii) if unusual or unforeseen circumstances arise which require a significant increase in our time or responsibility. If, at any time, we believe that circumstances require an adjustment of our original fee estimate, we will consult with you.

If the foregoing terms of this engagement are acceptable to you, please so indicate by returning the enclosed copy of this letter signed by an appropriate officer, retaining the original for your files. We look forward to working with you.

**MEIERHENRY SARGENT LLP**

By \_\_\_\_\_



Accepted and Approved:

**TOWN OF BUFFALO GAP, SOUTH DAKOTA**

By \_\_\_\_\_

Its President







*Town of Buffalo Gap  
\$1,147,000 Drinking Water Project Revenue Borrower Bond  
dated June 23, 2023*

**TOWN OF BUFFALO GAP CLOSING CERTIFICATE**

Daniel Frieden and Heather Besco-Clyde, being the duly qualified and acting President and Finance Officer of the Town of Buffalo Gap, do hereby certify as follows:

1. ***Authorizing Resolutions.*** Attached hereto as an *Exhibit 1* are certified copies of all resolutions and ordinances which were adopted and approved by the Board of Trustees of the Town of Buffalo Gap with the authorization and issuance of Town of Buffalo Gap Drinking Water Project Revenue Borrower Bond and Loan Agreement, dated as of June 23, 2023, in the aggregate principal amount of \$1,147,000 (the "Drinking Water Project Revenue Borrower Bond"); the execution and delivery of the Drinking Water Project Revenue Borrower Bond and Loan Agreement dated as of June 23, 2023 between the Town of Buffalo Gap and U.S. Bank Trust Company, National Association (the "Trustee"), as Trustee thereunder and the South Dakota Board of Water and Natural Resources. The Resolutions, as set out in *Exhibit 1*, were duly passed by the Board of Trustees of the Town of Buffalo Gap on the dates as set forth above and in said transcript, and the copies of the Resolutions set out in the transcript are full, true and complete copies of the Resolutions as the same appear in the minute books of the Town.

2. ***Rate Ordinance.*** Attached hereto as *Exhibit 2* is a certified copy of the Town of Buffalo Gap clean water rate ordinance which constitutes the current rates and structure which is pledged for the pay principal of and interest on the Drinking Water Project Revenue Borrower Bond when due.

3. ***Certification of Copies.*** We have carefully compared the proceedings of the Board of Trustees of the Town, which are set out in the transcript annexed hereto as an Exhibit 1, Exhibit 2, and said transcript has been duly recorded in the journal of the proceedings of the Board of

*Town of Buffalo Gap*  
*\$1,147,000 Drinking Water Project Revenue Borrower Bond*  
*dated June 23, 2023*

Trustees of the Town of Buffalo Gap and with the records and files of the Town of Buffalo Gap which are in their official custody, and said transcript is a full, true and complete copy of said journal, records and files which are set out therein. We have made a diligent search and examination of said journal, records and files which are in their official custody and find and certify that the same contain no proceedings of the Board of Trustees of the Town of Buffalo Gap precedent to or referring to the issue of the Drinking Water Project Revenue Borrower Bond therein referred to other than the proceedings set out in said transcript, and that said transcript contains all of the proceedings had or done by the Board of Trustees of the Town of Buffalo Gap in connection with the issuance of said Drinking Water Project Revenue Borrower Bond and relative thereto.

4.     ***Incorporation.***     The Town of Buffalo Gap has filed with the South Dakota Secretary of State evidence of its incorporation copy of said evidence attached as *Exhibit 3*.

5.     ***Officers.***     That we are the duly appointed, qualified, sworn and acting President and acting Finance Officer, of the Town of Buffalo Gap under Chapter 9 of the South Dakota Codified Laws.

6.     ***Litigation.***     That there is no reason within our knowledge why the Town of Buffalo Gap may not issue the Drinking Water Project Revenue Borrower Bond, and there is no controversy, proceeding or litigation pending or threatened within our knowledge, relating to or in connection with (a) the issuance, validity and sale of the Drinking Water Project Revenue Borrower Bond; (b) the corporate existence or the present boundaries of the Town of Buffalo Gap or the right of any officer of the Town of Buffalo Gap or any member of its Board of Trustees to hold their respective positions; or (c) questioning or hindering in any manner the right of the Town of Buffalo Gap to issue and deliver the Drinking Water Project Revenue Borrower Bond.

*Town of Buffalo Gap*  
*\$1,147,000 Drinking Water Project Revenue Borrower Bond*  
*dated June 23, 2023*

7. ***Debt Limit.*** That the amount of indebtedness of the Town of Buffalo Gap, including the Drinking Water Project Revenue Borrower Bond, does not exceed any applicable debt limitation of the State of South Dakota as evidenced by *Exhibit 4*.

8. ***Interest Rate or Term Limit.*** The interest rate on the Drinking Water Project Revenue Borrower Bond does not exceed any applicable interest rate limitation of the State of South Dakota. The term of the Bond does not exceed 50 years which is the limit under SDCL § 6-8B-9.

9. ***Conflict of Interest.*** That, to the best of our knowledge, no officer, board member, employee or any other agent of the Town is interested (except in the performance of his official rights, privileges, powers and duties), directly or indirectly, in the profits of any contract, job for work or services to be performed pertaining to the issuance of the Bond or to the effecting of the purposes for which said Bond has been issued.

10. ***Elected and Appointed Officials.*** At the times the proceedings relating to the passage of the Resolutions were had, all officers or members of the Board of Trustees were the duly elected (or appointed, as the case may be), qualified and acting officers and member of the Board of Trustees of the Town of Buffalo Gap as indicated on *Exhibit 5*.

11. ***Execution and Seal.*** The Drinking Water Project Revenue Borrower Bond has been executed on behalf of the Town of Buffalo Gap with the official signature of the undersigned President Daniel Frieden and attested with the official signature of the undersigned Finance Officer Heather Besco-Clyde. The Town of Buffalo Gap's corporate seal is not required to be affixed to the Drinking Water Project Revenue Borrower Bond pursuant to SDCL § 6-8B-17.

*Town of Buffalo Gap*  
*\$1,147,000 Drinking Water Project Revenue Borrower Bond*  
*dated June 23, 2023*

12. ***Authorized Representatives.*** We further certify that we are now and were on the date of signing of the Drinking Water Project Revenue Borrower Bond, we were the duly qualified and acting officers indicated thereon and duly authorized to execute the same, and we hereby ratify, confirm and adopt the facsimile or manual signatures on said registered securities as the true and proper signatures for the execution thereof.

13. ***Execution and Delivery of Drinking Water Project Revenue Borrower Bond.*** We further certify that the Drinking Water Project Revenue Borrower Bond has been in all respects duly executed for delivery pursuant to authority conferred upon us as such officers; that no obligations other than as above described have been issued pursuant to such authority and that none of the proceedings or records which have been certified to the purchasers of said Drinking Water Project Revenue Borrower Bond or to the attorneys approving the Drinking Water Project Revenue Borrower Bond has been in any manner repealed, amended or changed except as shown by the proofs furnished, and that there has been no material change in the financial condition of the Town of Buffalo Gap or the facts affecting the Drinking Water Project Revenue Borrower Bond except as shown by the proofs so furnished.

14. ***Referendum.*** We further certify that no referendum petition has been filed with reference to any Ordinance or Resolution or other action of the Town relating to said securities, and that there is no litigation threatened or pending questioning the organization or boundaries of said Town, or the right and power to execute and deliver said securities or otherwise questioning the validity of said securities.

*Town of Buffalo Gap*  
*\$1,147,000 Drinking Water Project Revenue Borrower Bond*  
*dated June 23, 2023*

IN WITNESS WHEREOF, the undersigned have executed this Certificate in the name and  
on behalf of the Town under its official seal as of June 23, 2023.

**TOWN OF BUFFALO GAP,  
SOUTH DAKOTA**



Daniel Frieden  
President

ATTEST:



Heather Besco-Clyde  
Finance Officer

(SEAL)

*Town of Buffalo Gap*  
*\$1,147,000 Drinking Water Project Revenue Borrower Bond*  
*dated June 23, 2023*

*Exhibit 1 to the Buffalo Gap Closing*

**Resolution(s) Authorizing Issuance of the**  
**\$1,147,000 Buffalo Gap Drinking Water Project Revenue Borrower Bond**  
**dated June 23, 2023**

RESOLUTION NO. 2022-02

**RESOLUTION GIVING APPROVAL TO CERTAIN DRINKING WATER FACILITIES IMPROVEMENTS; GIVING APPROVAL TO THE ISSUANCE AND SALE OF A REVENUE BOND TO FINANCE, DIRECTLY OR INDIRECTLY, THE IMPROVEMENTS TO THE FACILITIES; APPROVING THE FORM OF THE LOAN AGREEMENT AND THE REVENUE BOND AND PLEDGING PROJECT REVENUES AND COLLATERAL TO SECURE THE PAYMENT OF THE REVENUE BOND; AND CREATING SPECIAL FUNDS AND ACCOUNTS FOR THE ADMINISTRATION OF FUNDS FOR OPERATION OF THE SYSTEM AND RETIREMENT OF THE REVENUE BOND AND PROVIDING FOR A SEGREGATED SPECIAL CHARGE OR SURCHARGE FOR THE PAYMENT OF THE BONDS.**

**WHEREAS**, one of the purposes of SDCL Chapter 9-40 (the "Act") as found and determined by the Legislature is to provide for financing the acquisition, maintenance, operation, extension or improvement of any system or part of any system of waterworks for the purpose of providing water and water supply for domestic, municipal, together with extensions, additions, and necessary appurtenances; and,

**WHEREAS**, a municipality is authorized by Section 6 of the Act to issue revenue bonds to defray the cost of extensions, additions and improvements to any utility previously owned without pledging its credit and is authorized to pledge the net income or revenues from the Project in accordance with Section 15 of the Act; and,

**WHEREAS**, the Town of Buffalo Gap (the "Town") currently operates a water distribution system to supply municipal, industrial and domestic water to its inhabitants and has determined that improvements to the drinking water facilities are necessary for the conduct of its governmental programs and qualifies as an improvement, extension or addition to its drinking water system; and,

**WHEREAS**, the Town has determined to issue its revenue bonds to finance the improvements to its system of waterworks for the purpose of providing water and water supply for domestic, municipal, and industrial purposes (the "System") and has applied to the South Dakota Conservancy District (the "District") for a Drinking Water State Revolving Fund Loan to finance the improvements;

**WHEREAS**, the Town shall adopt special rates or surcharges for the improvements to be pledged, segregated and used for the payment of the Bonds.

**NOW THEREFORE BE IT RESOLVED** by the Town as follows:

**SECTION 1. Definitions.** The terms when used in this Resolution shall have the following meanings set forth in this section unless the context clearly requires otherwise. All terms used in this Resolution which are not defined herein shall have the meanings assigned to them in the Loan Agreement unless the context clearly otherwise requires.



“Act” means South Dakota Codified Laws Chapter 9-40.

“Loan” means the Loan made by the South Dakota Conservancy District to the Town pursuant to the terms of the Loan Agreement and as evidenced by the Revenue Bond.

“Project” means the Town of Buffalo Gap Cast Iron and 4-inch PVC replacement Project.

“Revenue Bond” means the revenue bond or bonds issued the date of the Loan Agreement by the Town to the South Dakota Conservancy District to evidence the Town’s obligation to repay the principal of and pay interest and Administrative Expense Surcharge on the Loan.

“System” means the Town’s system of waterworks used for the purpose of providing water and water supply for domestic, municipal, and industrial purposes.

## **SECTION 2. Declaration of Necessity and Findings.**

**2.1. Declaration of Necessity.** The Town hereby declares and determines it is necessary to construct and finance improvements to its drinking water facilities within its System described as the Project.

**2.2. Findings.** The Town does hereby find as follows:

**2.2.1.** The Town hereby expressly finds that if the Project is not undertaken, the System will pose a health hazard to the Town and its inhabitants, and will make the Town unable to comply with state and federal law.

**2.2.2.** Because of the functional interdependence of the various portions of the System, the fact that the System may not lawfully operate unless it complies with State and federal laws, including SDCL Chapter 34A-3A, and the federal Safe Drinking Water Act, and the nature of the improvements financed, the Town hereby finds and determines that the Project will substantially benefit the entire System and all of its users within the meaning of Sections 15 and 17 of the Act.

**2.2.3.** The Town hereby determines and finds that for the purposes of the Act, including, in particular, Sections 15 and 17 of the Act, that only the net income from the Project financed by the Revenue Bond be pledged for its payment.

### **SECTION 3. Authorization of Loan, Pledge of Revenue and Security.**

**3.1. Authorization of Loan.** The Town hereby determines and declares it necessary to finance up to \$1,147,000 of the costs of the Project through the issuance of bonds payable from the revenue of the Project and other funds secured by the Town. The Town hereby determines that because the Revenue Bond is issued in connection with a financing agreement described in SDCL 46A-1-49, pursuant to Section 15 of the Act no election is required to issue the Revenue Bond.

**3.2. Approval of Loan Agreement.** The execution and delivery of the Revenue Obligation Loan Agreement (the "Loan Agreement"), the form of which is on file with the Town Finance Officer (the "Finance Officer") and open to public inspection, between the Town as Borrower and the District, is hereby in all respects authorized, approved and confirmed, and the President and Finance Officer are hereby authorized and directed to execute and deliver the Loan Agreement in the form and content attached hereto, with such changes as the Attorney for the Town deems appropriate and approves, for and on behalf of the Town. The President and Finance Officer are hereby further authorized and directed to implement and perform the covenants and obligations of the Town set forth in or required by the Loan Agreement. The Loan Agreement herein referred to and made a part of this Resolution is on file in the office of the Finance Officer and is available for inspection by any interested party.

**3.3. Approval of Revenue Bond.** The issuance of a revenue bond in a principal amount not to exceed \$1,147,000 as determined according to the Loan Agreement in the form and content set forth in Appendix B attached to the form of Loan Agreement (the "Revenue Bond") shall be and the same is, in all respects, hereby authorized, approved, and confirmed and the President, Finance Officer, and other appropriate officials shall be and are hereby authorized and directed to execute and seal the Revenue Bond and deliver the Revenue Bond to the District, for and on behalf of the Town, upon receipt of the purchase price, and to use the proceeds thereof in the manner set forth in the Loan Agreement. The President and Finance Officer are hereby authorized to approve the final terms of the Revenue Bond and their execution and delivery thereof shall evidence that approval. The Revenue Bond shall be issued under the authority of SDCL Chapter 9-40 and SDCL Chapter 6-8B, and the provisions of the Act are hereby expressly incorporated herein as provided in Section 19 of the Act.

**3.4. Pledge of Revenues.** The Revenue Bond together with the interest thereon, shall not constitute a charge against the Town's general credit or taxing power, but shall be a limited obligation of the Town payable solely out of the Project Debt Service Account, which payments, revenues and receipts are hereby and in the Loan Agreement pledged and assigned for the equal and ratable payments of the Revenue Bond and shall

be used for no other purpose than to pay the principal, interest and Administrative Surcharge on the Revenue Bond, except as may be otherwise expressly authorized in the Loan Agreement (including the purpose of securing Additional Bonds issued as permitted by the terms thereof). The Town covenants and agrees to charge rates for all services from the Project or establish special charges or surcharges which will be sufficient to provide for the payments upon the Revenue Bond issued hereunder as and when the same become due, and as may be necessary to provide for the operation and maintenance and repairs of the Project, and depreciation, and the Rate Resolution shall be revised from time to time so as to produce these amounts. The Town hereby reserves the right to determine on a periodic basis the appropriate allocation of operation and maintenance expenses, depreciation, repair and reserves associated with the facilities financed with the Revenue Bond, provided that such determination of allocable operation and maintenance expenses shall in no event abrogate, abridge or otherwise contravene the covenant of the Town set forth in this Section 3 or any other covenant or agreement in the Loan Agreement.

**SECTION 4. Special Charge or Surcharge for Revenue Bond.** The Town does hereby create the Revenue Bond Special-Surcharge District (the "Surcharge District") which shall include all users which benefit from the Project. There shall be charged a special charge or surcharge pursuant to Section 15 of the Act for the services provided by Project financed by the Revenue Bond. The special charge or surcharge shall be segregated from other revenues of the System and shall be used for the payment of the Revenue Bond. The special charge or surcharge shall create net income, remaining from time to time after first paying all reasonable and current expenses of maintenance, repairs, replacements and operation, sufficient to fund interest, reserve and debt service fund annual requirements and shall be 110% of the debt service requirements on the Revenue Bond.

**4.1. Rates and collection.** The rate herein specific will be collected as a special charge or surcharge for the Project. This special charge or surcharge shall remain in effect until such time as the Revenue Bond is defeased or paid in full.

**4.2. Initial Surcharge.** The initial special charge or surcharge shall be set by resolution and collected at the same time as other charges of the utility. All users within the Surcharge District which benefit from the Project, current and future, shall be charged the special charge or surcharge. The special charge or surcharge is found to be equitable for the services provided by the Project. The special charge or surcharge shall begin at such time as will produce sufficient revenue to pay principal, interest and Administrative Surcharge on the Revenue Bond when due.

**4.3. Segregation.** The Finance Officer shall set up bookkeeping accounts in accordance with South Dakota Legislative Audit guidelines for the segregation of the revenue, special charges and surcharges.

4.4. Periodic review. The amount of the surcharge shall be reviewed from time to time, not less than yearly, and shall be modified in order to produce such funds as are necessary and required to comply with the Loan Agreement's rate covenant and to pay principal of, interest and Administrative Surcharge on the Revenue Bond when due. The surcharge may be set by resolution in accordance with this Section. The rate resolution shall be necessary for the support of government and shall be effective upon passage.

**SECTION 5. Additional Bonds.** As permitted by Sections 8 and 9 of the Act, Additional Bonds payable from revenues and income of the System or Project may be issued, as permitted in the Loan Agreement, and no provision of this Resolution shall have the effect of restricting the issuance of, or impairing the lien of, such additional parity bonds with respect to the net revenues or income from the extensions, additions or improvements. The Town shall have the right to issue additional bonds secured by a lien subordinate to the lien from the Revenue Bond pursuant to the Loan Agreement.

**SECTION 6. Project Fund Accounts.** For the purpose of application and proper allocation of the income of the Project and to secure the payment of principal, Administrative Surcharge and interest on the Revenue Bond, the following mandatory asset segregations shall be included in the water system account of the Town and shall be used solely for the following respective purposes until payment in full of the principal, interest and Administrative Surcharge on the Revenue Bond:

6.1. Project Revenue Account. There shall be deposited periodically into the Project Revenue Account the net revenues as defined in Section 17 of the Act derived from the operation of the Project collected pursuant to the resolutions and ordinances of the Town of Buffalo Gap, South Dakota (collectively the "Rate Resolution"). Moneys from the Project Revenue Account shall be transferred periodically into separate funds and accounts as provided below.

6.2. Project Debt Service Account. Out of the revenues in the Project Revenue Account, there shall be set aside no later than the 25<sup>th</sup> day of each month into the account designated Project Debt Service Account, a sum sufficient to provide for the payment as the same become due of the next maturing principal of, interest and Administrative Surcharge on the Revenue Bonds and any reserve determined by the Town's governing body to be necessary. The amount set aside monthly shall be not less than one-third of the total principal, interest, and Administrative Surcharge payable on the following February 15, May 15, August 15 or November 15 and if there shall be any deficiency in the amount previously set aside, then the amount of such deficiency shall be added to the current requirement.

6.3. Depreciation Account. There shall be established a General Depreciation Account. Out of the revenues of the Project Revenue Account there shall be set aside each month into the General Depreciation Account an amount determined by the

Common Council to be a proper and adequate amount for repair and depreciation of the Project.

**6.4. Project Surplus Account.** There shall be established the Project Surplus Account. Revenues remaining in the Project Revenue Account at the end of any fiscal year after all periodic transfers have been made therefrom as above required, shall be deemed to be surplus and shall be transferred to the Project Surplus Account. If at any time there shall exist any default in making any periodic transfer to the Project Debt Service Account, the Common Council shall authorize the Town Finance Officer to rectify such default so far as possible by the transfer of money from the Project Surplus Account. If any such default shall exist as to more than one account or fund at any time, then such transfer shall be made in the order such funds and accounts are listed above.

When not required to restore a current deficiency in the Project Debt Service Account, moneys in the Project Surplus Account from time to time may be used for any of the following purposes and not otherwise:

- (a) To redeem and prepay the Revenue Bond when and as such Revenue Bond becomes prepayable according to its terms;
- (b) To pay for repairs of or for the construction and installation of improvements or additions to the System; and, if the balances in the Project Debt Service Account and the Project Depreciation Account are sufficient to meet all payments required or reasonably anticipated to be made there from prior to the end of the then current fiscal year, then:
- (c) To be held as a reserve for redemption and prepayment of any bonds of the System which are not then but will later be prepayable according to their terms; or
- (d) To be used for any other authorized municipal purpose designated by the Common Council.
- (e) No moneys shall at any time be transferred from the Project Surplus Account or any other account of the Fund to any other fund of the Town, nor shall such moneys at any time be loaned to other municipal funds or invested in warrants, special improvements bonds or other obligations payable from other funds, except as provided in this Section.

**SECTION 7. Approval of Paying Agent/Registrar.** The Revenue Bond shall be payable at the office of U.S. Bank National Association, St. Paul, Minnesota, hereby designated as paying agent and registrar.

**SECTION 8. Approval of Bond Counsel.** Meierhenry Sargent LLP is hereby retained as Bond Counsel with respect to the Revenue Bond.

**SECTION 9. Tax Matters.** The Interest on the Revenue Bond shall be excludable from gross income for federal income tax purposes under the Internal Revenue Code of 1986, as amended ("the Code") and applicable Treasury Regulations (the "Regulations").

**SECTION 10. Covenants.** The Town hereby covenants and agrees with the District and other owners of the Revenue Bond as follows:

**10.1.** The Town will punctually perform all duties with reference to the Project, the System and the Revenue Bond required by the constitution and laws of the State of South Dakota and by this Resolution.

**10.2.** The Town agrees and covenants that it will promptly construct the improvements included in the Project.

**10.3.** The Town covenants and agrees that pursuant to Sections 25 through 27 of the Act, the lawful holders of the Revenue Bond shall have a statutory mortgage lien upon the Project and the extensions, additions and improvements thereto acquired pursuant to the Act, until the payment in full of the principal, interest and Administrative Surcharge on the Revenue Bond, and the Town agrees not to sell or otherwise dispose of the System, the Project, or any substantial part thereof, except as provided in the Loan Agreement and shall not establish, authorize or grant a franchise for the operation of any other utility supplying like products or services in competition therewith, or permit any person, firm or corporation to compete with it in the distribution of water for municipal, industrial, and domestic purposes within the Town.

**10.4.** The Town covenants and agrees with the District and other owners of the Revenue Bond that it will maintain the System in good condition and operate the same in an efficient manner and at a reasonable cost, so long as any portion of the Revenue Bond remains outstanding; that it will maintain insurance on the System for the benefit of the holders of the Revenue Bond in an amount which usually would be carried by private companies in a similar type of business; that it will prepare, keep and file records, statements and accounts as provided for in this Resolution and the Loan Agreement. The Revenue Bond shall refer expressly to this Resolution and the Act and shall state that it is subject to all provisions and limitations thereof pursuant to Section 19 of the Act.

**SECTION 11. Depositories.** The Finance Officer shall cause all moneys pertaining to the Funds and Accounts to be deposited as received with one or more banks which are duly qualified public depositories under the provisions of SDCL Ch. 4-6A, in a deposit account or accounts,

which shall be maintained separate and apart from all other accounts of the Town, so long as any of the Bonds and the interest thereon shall remain unpaid. Any of such moneys not necessary for immediate use may be deposited with such depository banks in savings or time deposits. No money shall at any time be withdrawn from such deposit accounts except for the purposes of the Funds and Accounts as authorized in this Resolution; except that moneys from time to time on hand in the Funds and Accounts may at any time, in the discretion of the Town's governing body, be invested in securities permitted by the provisions of SDCL 4-5-6; provided, however, that the Depreciation Fund may be invested in such securities maturing not later than ten years from the date of the investment. Income received from the deposit or investment of moneys shall be credited to the Fund or Account from whose moneys the deposit was made or the investment was purchased, and handled and accounted for in the same manner as other moneys therein.

**SECTION 12. Consent to Appointment.** In the event of mismanagement of the Project, a default in the payment of the principal or interest of the Revenue Bond, or in any other condition thereof materially affecting the lawful holder of the Revenue Bond, or if the revenues of the Project are dissipated, wasted or diverted from their proper application as set forth in the Loan Agreement, Revenue Bond, or herein, the Town hereby consents to the appointment of a receiver pursuant to Section 33 of the Act, and agrees that the receiver will have the powers set forth therein, and in Sections 34 and 35 of the Act to operate and administer the Project, and charge and collect rates as described therein.

**SECTION 13. Severability.** If any section, paragraph, clause or provision of this Resolution, the Loan Agreement, the Revenue Bond, or any other Loan Document shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the other provisions of this Resolution or said Loan Agreement, Revenue Bond, or any other Loan Document.

**SECTION 14. Repeal of Resolution.** At such time as the Project Revenue Bond is defeased or paid in full, this Resolution and the special charge or surcharge shall automatically be repealed without any further action of the Town.

**SECTION 15. Authorization of Town Officials.** The President, Finance Officer, Town Attorney and Town officials shall be and they are hereby authorized to execute and deliver for and on behalf of the Town any and all other certificates, documents or other papers and to perform such other acts as they may deem necessary or appropriate in order to implement and carry out the actions authorized herein.

**SECTION 16. Effective Date.** This Resolution shall take effect on the 20<sup>th</sup> day following its publication, unless suspended by a referendum.

Adopted at Buffalo Gap, South Dakota, this 6<sup>th</sup> day of December 2022.

APPROVED:

Daniel P. Gada

President

(SEAL)

Attest:

Reatha B. Hyde  
Town Finance Officer

Adopted:

December 2022

Published:

Dec. 2022

Effective:

Jan 2023



*Town of Buffalo Gap*  
*\$1,147,000 Drinking Water Project Revenue Borrower Bond*  
*dated June 23, 2023*

*Exhibit 2*

**Rate Ordinance**

RESOLUTION NO \_2022-03

A RESOLUTION PROVIDING FOR A SURCHARGE FOR IMPROVEMENTS TO THE CITY'S WATER SYSTEM, FOR PAYMENT OF REVENUE BOND AND YEARLY REVIEW OF RATE

1. Surcharge for Bond Issue. There shall be charged a monthly surcharge for the services provided by the improvement financed by the Borrower Bond Series 2022 designated as DW-01. The surcharge shall be segregated from other revenues of the utility and shall be used for the payment of the revenue bonds. Provided that such surcharge shall create net income, remaining from time to time after first paying all reasonable and current expenses of maintenance, repairs, replacements and operation, sufficient to fund interest, reserve and debt service fund annual requirements.
2. Rates and collection. The City does hereby establish the special charge or surcharge payable by each customer of its System who receives or benefits from the services of the Project. Such charge or surcharge shall be set at a level which, assuming a 10% delinquency rate, will produce income at the times and in amounts sufficient to pay when due the principal of and interest on the Borrower Bond Series 2022 and the administrative expense surcharges and all other payments as may be required under the loan agreement and Borrower Bond Series 2022.

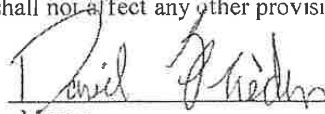
3. Borrower Bond Series 2022 Surcharge. The following water debt service surcharge shall be applicable to all customers served whether in or out of the city or whether retail or sales or resale:

Borrower Bond (Drinking Water) Series 2022 Surcharge: \$12.00 per user per month to start six months prior to the Loan Amortization Date which will be set forth in the Loan Agreement for DW-01.

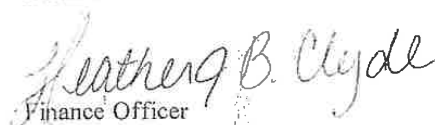
This surcharge shall remain in effect until such time as the revenue bonds are discharged. The initial surcharge shall be collected at the same time as other charges of the water system. The surcharge is found to be equitable for the services provided by the improvement.

4. Segregation. The debt service surcharge shall be segregated from other income of the water system in a separate account and is pledged to the South Dakota Conservancy District for the payment of the loan payments on the Borrower Bond Series 2022.
5. Yearly review. The amount of the surcharge shall be reviewed from year to year and may be modified in order to provide such funds as are set forth herein. The charges shall be reviewed yearly by city personal and administratively adjusted, upwards or downwards, pursuant to SDCL § 9-40-15 to such amounts as may be necessary to pay principal, interest, administrative surcharge and other charges as may become due and owing under the Borrower Bond Series 2022.
6. Billing and Accounting. The surcharge shall be included in the monthly user water bill. Nothing contained herein requires the surcharge be indicated on the billing, however, the surcharge segregation shall be indicated on the books of the City.

7. Surcharge not to create constitutional indebtedness. The charges provided herein are for the purpose of paying the Borrower Bond, Series 2022 of the City which do not constitute indebtedness within the meaning of South Dakota Constitutional Chapter XIII Section 4.
8. If any one or more of the provisions of the shall be held invalid, illegal, or unenforceable in any respect, by final decree of any court of lawful jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other provision hereof.

  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
Finance Officer

First Reading: <sup>Dec</sup>~~Nov~~ 2022

Passed: ✓ <sup>Jan</sup>~~Dec~~ 2022

Published ✓ <sup>Jan</sup>~~Dec~~

Effective: Jan 2023

*Town of Buffalo Gap*  
*\$1,147,000 Drinking Water Project Revenue Borrower Bond*  
*dated June 23, 2023*

*Exhibit 3*

**Secretary of State Evidence of Incorporation**



## South Dakota Secretary of State

**Monae L. Johnson**  
Secretary of State

**Thomas J. Deadrick**  
Deputy Secretary of State

### Filing Information

Name: **BUFFALO GAP, SD**

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#### General Information

<b>SOS Business ID</b>	<b>CI000025</b>
Filing Type:	Domestic Miscellaneous - Domestic
	06/21/1886
Status:	Good Standing
Duration Term:	Perpetual
Business Type:	Self Government

The following document(s) was/were filed in this office on the date(s) indicated below:

<b>Date Filed</b>	<b>Filing Description</b>	<b>Image #</b>
06/21/1886	Initial Filing	

*Town of Buffalo Gap*  
*\$1,147,000 Drinking Water Project Revenue Borrower Bond*  
*dated June 23, 2023*

***Exhibit 4***

**Constitutional Debt Calculation**

The Drinking Water Project Revenue Borrower Bond is payable solely from project revenue and does not count as indebtedness for purposes of Article 13 Section 4 of the South Dakota Constitution

*Town of Buffalo Gap*  
*\$1,147,000 Drinking Water Project Revenue Borrower Bond*  
*dated June 23, 2023*

*Exhibit 5*

**Officers and Elected Officials**

## CERTIFICATE

The undersigned Heather Besco-Clyde, being duly appointed, qualified, and acting Finance Officer of the Town of Buffalo Gap and having in that capacity personal knowledge of the matters referred to herein, certifies that the following persons were elected or appointed to the offices set forth opposite their respective names below, and as such officers at the date hereof, and that no successor to any of said officers has been selected at any subsequent time, and each of said persons is duly qualified and acting in the office to which he/she was originally elected.

<u>President</u>	<u>Daniel Frieden</u>
<u>Finance Officer</u>	<u>Heather Besco-Clyde</u>
<u>Town Attorney</u>	<u>Lance Russell</u>
<u>Trustee</u>	<u>Raymond Hussey</u>
<u>Trustee</u>	<u>Terry Kizer</u>

WITNESS my hand this 23<sup>rd</sup> day of June 2023.

  
Heather Besco-Clyde, Finance Officer



Certificate  
Regarding  
Completeness of  
Transcript

*Town of Buffalo Gap  
\$1,147,000 Drinking Water Project Revenue Borrower Bond  
dated June 23, 2023*

**CERTIFICATE RE COMPLETENESS OF TRANSCRIPT**

The undersigned, being the duly appointed, qualified and acting official, acting as such and having charge of the official records of the hereinafter designated Issuer, at all times hereinafter referred to, certifies as follows:

NAME OF PUBLIC BODY: Town of Buffalo Gap  
ADDRESS: Buffalo Gap, South Dakota  
TYPE OF GOVERNING BODY: Trustee  
DESIGNATION OF SECURITIES: \$1,147,000 Drinking Water Project Revenue  
Borrower Bond, Series 2023

1. That with reference to every meeting of the governing body of said Issuer held, with reference to any matter relating to the securities herein referred to, that all members thereof were present and voting affirmatively, unless specifically stated in the minutes to the contrary, and that upon all resolutions and motions taken in connection therewith, that yea and nay votes were taken, and in every action, the vote was unanimous and without any nay votes being taken unless specifically stated in the minutes aforesaid; and that all members were present and voted in all actions, unless otherwise stated therein.

2. That the attached and foregoing is a true, correct and complete copy of the Minutes of the governing body of said Issuer relating to the issuance of the above designated securities.

3. That each and all of the copies of Minutes attached hereto constitute a full and complete transcript of all of the minutes of the meetings referred to therein and that the foregoing constitutes a full and complete transcript of all of the proceedings had by said governing body in connection with the issuance of the above designated securities of Issuer, and that all of the proceedings were duly signed by the proper officials of said governing body, the seal of said governing body affixed thereto, and that all of the proceedings requiring publication were duly published, as required by law in the official newspaper of said Issuer.

Dated: June 23, 2023



Print Name : Heather Beson-Clyde

Official title: Finance Officer

Address: Buffalo Gap, South Dakota

State Revolving  
Fund Loan  
Application

**Drinking Water Facilities Funding Application**

Drinking Water State Revolving Fund Program (DWSRF)  
Consolidated Water Facilities Construction Program (CWFCP)

Applicant: Town of Buffalo Gap	Proposed Funding Package
Address: P.O. Box 295 Buffalo Gap, SD 57722	Requested Funding <u>\$1,147,000</u>
	Local Cash <u>                    </u>
Subapplicant:	Other: <u>                                    </u>
	Other: <u>                                    </u>
DUNS Number:	Other: <u>                                    </u>
	TOTAL <u>\$1,147,000</u>

Project Title: Cast Iron and 4-inch PVC replacment

## Description:

The Town of Buffalo Gap is proposing to replace the Cast Iron pipe and 4-inch drinking water mains throughout the town. This alternative will address all known system deficiencies related to the CIP and 4" mains. This project will further boost the water system flows and assist in the future integrity of the system. By making these improvements the Town will have the opportunity to buy bulk water from Fall River Water Users District; however, without these improvements the FRWUD is not willing to provide the town water supply due to the severe water loss caused by deficiencies in the lines.

The town's current drinking water rates are \$45.00 per 5000 gallons.

The Applicant Certifies That:

I declare and affirm under the penalties of perjury that this application has been examined by me and, to the best of my knowledge and belief, is in all things true and correct.

Daniel Frieden  
Name & Title of Authorized Signatory  
(Typed)

  
Signature

6/20/2022  
Date

## **Professional Consultants**

### **Application Prepared By:** BHCLG

Contact Person: Jennifer Sietsema

Mailing Address: 730 East Watertown St.

City, State, and Zip: Rapid City, SD 57702

Telephone Number: 605-394-2681

Fax: \_\_\_\_\_

Email address: jsietsema@wrbsc.com

### **Consulting Engineering Firm:** Helms and Associates

Contact Person: Brandon Smid

Mailing Address: 416 Production St.

City, State, and Zip: Aberdeen, SD 57401

Telephone Number: 605-225-1212

Fax: \_\_\_\_\_

Email address: brandons@helmsengineering.com

### **Legal Counsel's Firm:** Lance Russel

Contact Person: Lance Russel

Mailing Address: 141 S. Chicago Street

City, State, and Zip: Hot Springs, SD 57747

Telephone Number: 605-754-3288

Fax: \_\_\_\_\_

Email address: lance\_russel@yahoo.com

### **Bond Counsel's Firm:** Meierhenry Sargent, LLP

Contact Person: Meierhenry Sargent, LLP

Mailing Address: 315 South Phillips Ave

City, State, and Zip: Sioux Falls, SD 57104

Telephone Number: (605) 336-3075

Fax: (605) 336-2693

Email address: todd@meierhenrylaw.com

### Budget Sheet

Cost Classification	A DWSRF/ CWFCP	B	C	D	E	Total Funds
1. Administrative Expenses						
A. Personal Services						
B. Travel						
C. Legal & Bond Counsel	\$10,000					\$10,000
D. Other						
2. Land, Structure, Right-of-Way						
3. Engineering						
A. Bidding and Design Fees	\$200,900					\$200,900
B. Project Inspection Fees						
C. Other Doc	\$10,000					\$10,000
4. Construction & Improvements	\$804,400					\$804,400
5. Equipment						
6. Contractual Services						
7. Other						
8. Other						
9. Subtotal (Lines 1-8)	\$1,025,300					\$1,025,300
10. Contingencies	\$121,700					\$121,700
11. Total (Lines 9 and 10)	\$1,147,000					\$1,147,000
12. Total %	100.00%	0.00%	0.00%	0.00%	0.00%	100.00%

**Proposed Method of Financing**

	Secured Funds	Unsecured Funds	Date Unsecured Funds Anticipated
Local Cash(Identify Source)			
Other (Explain) DANR	\$1,147,000		September 23, 2022
Other (Explain)			
Other (Explain)			
Total	\$1,147,000		\$1,147,000

**Other Funds to be Borrowed**

	Amount	Rate	Term	Annual Debt Service	Security or Collateral Pledged
Other					
Other					
Other					

Please attach copies of commitment letters that contain specific terms and conditions for each source of financing.

## General Information

The month and day your fiscal year begins: Jan. 1st

Population Served      Current: 131      2010 126      2000 164

Top three employers within 30 miles	Number of Employees	Type of Business
<u>Monument Health</u>	<u>5100</u>	<u>Health Care</u>
<u>Ellsworth Air Force Base</u>	<u>4250</u>	<u>Military</u>
<u>Federal Government</u>	<u>2900</u>	<u>Government</u>

## Repayment Information

Interest rate you are applying for: 0%      Term: 30

What security is being pledged toward the repayment of this loan?  
(Political Subdivisions Only)

- ☐ 1. General Obligation Bond (Requires Bond Election)
- ☐ 2. Revenue Bond
- ☒ 3. Project Surcharge Revenue Bond
- ☐ 4. Sales Tax Revenue Bond

## Documents That Must Be Submitted With The Application

### Financial Documents

1. Most recent audited or unaudited financial statements to include specific accounting for the drinking water fund.
2. Current year's budget for the drinking water fund.
3. Amortization schedules for all existing debt secured by proposed revenue pledged.

### Planning and Legal Documents

1. Current governing user charge ordinance or resolution and its effective date.
2. Resolution of authorized signatory for submission of the Drinking Water Facilities Funding application and signing of payment requests. This resolution must also include the maximum amount requested and description of proposed project.
3. Documentation that the applicant has an active registration on the Federal System for Award Management (SAM) database.  
(<https://www.sam.gov>)
4. Facilities Plan.
5. Cultural Resources Effects Assessment Summary for SRF Projects.
6. Capacity Assessment Worksheets.



Items 7-9 apply to Non-profit Entities only

7. By-laws.

8. Articles of Incorporation.

9. Certificate of Good Standing from Secretary of State.

### Drinking Water Fund Debt Information

Year	1996					
Purpose	Well					
Security Pledged	Water Revenue					
Amount	\$100,000					
Maturity Date (mmm/yyyy)	05/2037					
Debt Holder	USDA					
Debt Coverage Requirement	5,796%					
Avg. Annual Required Payment	\$5,796					
Outstanding Balance	\$29,421					

Comments:

## Drinking Water Fund Cash Flow Information

Negative cash should be in (Decrease) format	Prior Year	Prior Year	Current Year	Future Year	Future Year	Future Year
Fiscal Year	2020	2021	2022	2023	2024	2025
<b>Operating Revenue</b>						
Base Fees	\$30,755	\$34,480	\$48,500	\$48,985	\$48,985	\$48,985
Surcharge Fees						
Other (Explain)						
<b>Operating Expenses</b>						
Personal Services	(\$863)	(\$12,009)	(\$2,825)	(\$3,500)	(\$3,500)	(\$3,500)
Chemical, Material & Supplies	(\$21,957)	(\$9,024)	(\$16,000)	(\$16,000)	(\$16,000)	(\$16,000)
Electric & Other Utilities			(\$4,000)	(\$4,120)	(\$4,244)	(\$4,371)
Other (Explain)	(\$2,141)	(\$6,502)	(\$5,500)	(\$6,000)	(\$6,000)	(\$6,000)
<b>Operating Net Cash</b>	\$5,794	\$6,945	\$20,175	\$19,365	\$19,241	\$19,114
<b>Nonoperating Cash Flow</b>						
Interest Revenue	\$2	\$2				
Transfers In (Explain)	\$19,873					
Fixed Asset Purchases						
Transfers Out (Explain)		(\$6,945)				
Principal Debt Payments	(\$3,294)		(\$5,796)	(\$5,796)	(\$5,796)	(\$5,796)
Interest Debt Payments	(\$2,502)					
Other (Explain)						
<b>Nonoperating Net Cash</b>	\$14,079	(\$6,943)	(\$5,796)	(\$5,796)	(\$5,796)	(\$5,796)
Increase (Decrease) Cash	\$19,873	\$2	\$14,379	\$13,569	\$13,445	\$13,318
Beginning Cash Balance	\$23,093	\$42,966	\$42,968	\$57,347	\$70,916	\$84,361
Ending Cash Balance	\$42,966	\$42,968	\$57,347	\$70,916	\$84,361	\$97,679
Restricted Balance						
Unrestricted Balance						

### Explanations

Operating Expense - Other - 2022 - Services and Fees, Travel, Machinery and Equipment, Legal Fees,

Restricted Funds Breakdown:

<u>Amount</u>	<u>Anticipated Expense</u>	<u>Method Used to Encumber</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Drinking Water Fees:

\*\* Attach current and proposed rate ordinances or resolutions and rate schedules.

Municipal or Sanitary District - monthly rates at 5,000 gallons (670 cubic feet)

Other Community System - monthly rates at 7,000 gallons (935 cubic feet)

Check one: ☒ Incorporated Municipality or Sanitary District  
or  
☐ Other Community System

Monthly	Current Rate	Proposed Rate	# of Accounts	Average use Gallons/Cubic Feet
Domestic	\$45.00	\$50.00	87	3000
Business	\$45.00	\$55.00	5	3000
Other: _____	_____	_____	_____	_____
Other: _____	_____	_____	_____	_____

Are fees based on usage or flat rate? Usage

When is proposed fee scheduled to take effect? \_\_\_\_\_

When did the current fee take effect? 2018

What was the fee prior to the current rate? \$40/per 5,000 gal.

Four Largest Customers	Type of Business	% of System Revenue
<u>Boda/Windcross</u>	<u>Non-profit/resident</u>	<u>3.2%</u>
<u>Rosaeen/Waterhole</u>	<u>Bar/Resale/Resident</u>	<u>4.3%</u>
<u>Besco/Twisted Sage</u>	<u>Retail/Resident</u>	<u>3.2%</u>
<u>Hunninghake/Last Chance</u>	<u>Bar/Resident</u>	<u>3.2%</u>

## Property Tax Information

*(Complete section only if General Obligation bond is pledged to repay your loan.)*

Three year valuation trend:

Year			
Assessed Valuation			

Three year levies and collection trend:

Year			
Amount Levied			
Collected			

Five Largest Taxpayers

Description

Assessed Valuation


Comments:

General Fund Debt Information

Year

Purpose

Security Pledged

Amount

Maturity Date  
(mmm/yyyy)

Debt Holder

Debt Coverage  
Requirement

Avg. Annual  
Required  
Payment

Outstanding  
Balance

Comments:

--

**Sales Tax Information**

*(Complete section only if sales tax is pledged to repay your loan.)*

Sales tax revenue history for the most current fifteen months:

Month/Year	Amount Collected

Comments:

--

**Sales Tax Debt Information**

Year	_____
Purpose	_____
Security Pledged	_____
Amount	_____
Maturity Date (mmm/yyyy)	_____
Debt Holder	_____
Debt Coverage Requirement	_____
Avg. Annual Required Payment	_____
Outstanding Balance	_____

**Comments:**

## Facilities Plan Checklist

Before submitting the application, please take a few moments to complete the following checklist. Addressing these items prior to submitting the application will expedite the review process.

Drinking Water Facilities Plan document can be found at <http://denr.sd.gov/dfta/wwf/dwsrf/dwfunding.aspx>

### Checklist of SRF Facilities Plan Requirements

Have the following items been addressed?

- ◆ Submission of a Facilities Plan to the department that addresses those items found in the Water Facilities Plan document. ☒
- ◆ A public hearing held discussing the project and the use of an SRF loan to finance the project. ☒
- ◆ Minutes of the public hearing prepared and submitted to the department's engineer for inclusion into the final Facilities Plan. ☒
- ◆ The affidavit of publication of the public hearing received and submitted to the department's engineer for inclusion into the final Facilities Plan. ☒
- ◆ The four review agencies contacted and responses received for inclusion into the final Facilities Plan. ☒
- ◆ The Cultural Resources Effects Assessment Summary and supporting documentation, such as an archaeological survey or Historic Register database search. ☒



## Certification of Drinking Water Needs Categories

Identify the loan amount associated with the needs category or categories described below. If the loan addresses needs in more than one category, please break down the total amount into estimated amounts for each category.

Definition	Loan Amount
<u>Transmission/Distribution</u>	\$1,147,000
<u>Treatment</u>	
<u>Storage</u>	
<u>Source</u>	
<u>System Purchase</u>	
<u>Restructuring</u>	
<u>1452(k) Loan Activities</u>	
1. To acquire land or a conservation easement for source water protection.	
2. To implement voluntary, incentive-based source water quality protection measures.	
Total	\$1,147,000

Daniel Frieden

Name & Title of Authorized Representative



Signature of Authorized Representative

06/20/2022

Date

## **Certification Regarding Debarment, Suspension, and Other Responsibility Matters**

The prospective participant certifies to the best of its knowledge and belief that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
- (b) Have not within a three year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forger, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and
- (d) Have not within a three year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

I understand that a false statement on this certification may be grounds for rejection of this proposal or termination of the award. In addition, under 18 U.S.C. § 1001, a false statement may result in a fine of up to \$10,000 or imprisonment for up to 5 years, or both.

Daniel Frieden

\_\_\_\_\_  
Name & Title of Authorized Representative



\_\_\_\_\_  
Signature of Authorized Representative

06/20/2022

\_\_\_\_\_  
Date

☐ I am unable to certify to the above statements. Attached is my explanation

## Water Supply Assessment Certification Form

This is to certify compliance with Section 2108, Subsection (b) of the Water Infrastructure Improvements for the Nation Act of 2017. Drinking water systems serving 500 or fewer persons and not served by a publicly owned source must certify that consideration has been given to alternative publicly owned drinking water supply sources to include (1) individual wells; (2) shared wells; and (3) community wells.

Please select only one option from below:

- ☒ The existing system is already served by a publicly-owned water source or privately-owned water source for a public water system (e.g. a rural water system).
- ☐ The existing system is currently served by a privately-owned water source and alternatives have been considered to provide a publicly-owned water source or privately-owned water source for a public water system.
- ☐ Not applicable, the system serves greater than 500 persons.


Applicant Name: Town of Buffalo Gap


Project Name: Drinking Water Facilities Funding Application

We certify that the proposed project is in compliance as described above. **(Project engineer signature required only if the second box above is selected)**

Applicant's Authorized Signatory

Project Engineer

Signature: 

Signature: 

Printed Name: Daniel Frieden

Printed Name: Brandon Smith

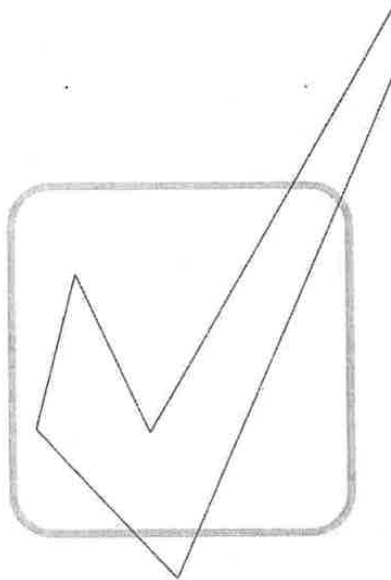
Title: Town Board President

Title: PE

Date: 6/20/2022

Date: 06/20/2022

# **Capacity Assessment Worksheets for Public Water Systems**



**Department of  
Environment and Natural Resources**

Revised January 2015

## Introduction

Because you are in the process of applying for a Drinking Water State Revolving Fund (DWSRF) loan, it is necessary for you to complete the following worksheets. The Safe Drinking Water Act requires that a system applying for a DWSRF loan must demonstrate that it has financial, managerial, and technical capacity. What exactly does that mean?

- **Technical capacity** - the physical infrastructure of the water system, including but not limited to the source water adequacy, infrastructure adequacy, and technical knowledge. In other words, does your treatment system work the way it is supposed to? Are you providing the safest and cleanest water possible and required by law to your customers right now, and will you be able to in the future?
- **Managerial capacity** - the management structure of the water system, including but not limited to ownership accountability, staffing and organization, and effective linkages. In simpler terms, do you have a capable and trained staff? Do you have an effective management structure?
- **Financial capacity** - the financial resources of the water system, including but not limited to the revenue sufficiency, credit worthiness, and fiscal controls. Basically, does your system have a budget and enough revenue coming in to cover costs, repairs, and replacements?

If it is determined that your system does NOT have the required capacity, you may still qualify for a DWSRF loan if it is going to be used to ensure that your system will have the necessary capacity. If you have questions while completing the following worksheets, please call our office at (605) 773-3754, and we will be happy to help.

After DENR receives these worksheets, we will study them and other information located in our files to make a determination whether or not your public water system has the technical, financial, and managerial capacity to be eligible to apply for a DWSRF loan. A final report will be available upon completion of the analysis.

**Applicant:** Town of Buffalo Gap

**Prepared by:** Black Hills Council of Local Governments

**Phone #:** (605) 394-2681

**Date:** 6/20/2022

## Glossary of Terms

**Contaminant:** Any physical, chemical, biological, or radiological substance or matter in water;

**Disinfectant:** Any oxidant, including chlorine, chlorine dioxide, chloramine, and ozone, that is added to water in any part of the treatment or distribution process and that is intended to kill or inactivate pathogenic microorganisms;

**Disinfectant contact time:** The time in minutes that it takes for water to move from the point of disinfectant application or the previous point of disinfectant residual measurement to a point before or at the point where residual disinfectant concentration is measured;

**Filtration:** A process for removing particulate matter from the water by passing the water through porous media;

**Ground Water:** The supply of fresh water found beneath the surface of the ground, usually in aquifers, which is often used for supplying wells and springs;

**Ground Water Under the Direct Influence of Surface Water:** Any water beneath the surface of the ground with a significant occurrence of insects, macroorganisms, algae, or large-diameter pathogens such as *Giardia lamblia*; or any water with significant and relatively rapid shifts in water quality characteristics such as turbidity, temperature, conductivity, or pH which closely correlate to climatological or surface water conditions;

**Maximum Contaminant Level (MCLs):** The maximum permissible level of a contaminant in water delivered to any user of a public water system. MCLs are enforceable standards;

**mg/L:** milligrams per liter - equivalent to parts per million;

**µg/L:** micrograms per liter - equivalent to parts per billion;

**NTU:** nephelometric turbidity unit;

**psi:** pounds per square inch

**Surface Water:** All water that is open to the atmosphere and subject to surface runoff;

**Turbidity:** A cloudy condition in water due to suspended silt or organic matter; and

**Waiver:** A process used by the Department of Environment and Natural Resources that allows a public water system to reduce or eliminate monitoring for a particular chemical.

## The Technical Portion of your System

### **Your Water Supply**

Please check the appropriate box: Yes, No, or Unknown for each section. Please try to determine the answer to every question. **If a section or question does not apply to your system, please check NA for not applicable.**

<b>Water Supply and Existing Demands</b>	Yes	No	Unknown	NA
Do you know how much water you pump on an average day? <b>Amount:</b> _____	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Do you know how much water you pump on a peak day? <b>Amount:</b> _____	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Do you know the maximum amount of water you can pump from your source? <b>Amount:</b> 42 SPM	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Is your source capacity higher than your peak day demand? <b>Percentage higher or lower:</b> _____	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Can you meet peak demand without pumping at peak capacity for extended periods? <b>Longest time pumping at peak demand:</b> _____	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Have you been able to provide adequate volumes of water during drought cycles?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Have you had to restrict usage at any time for any reason? <b>Please specify:</b> _____	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Does your system have an emergency or supplemental water supply? <b>Please specify:</b> From another water district	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Do you have an Emergency Response Plan that will allow you to meet system demand during a drought or shortage, such as the loss of the largest source? <b>If yes, please attach.</b>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Water Demand</b>	Yes	No	Unknown	NA
Do you know whether your system demands will be growing, declining, or remain stable over the next ten years? <b>Please check:</b> <input checked="" type="checkbox"/> growing, <input type="checkbox"/> declining, or <input type="checkbox"/> stable.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Does your source have additional water available for appropriation?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Do you have a water right? <b>Water right permit number(s):</b> 794-2	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
If you have large commercial, industrial, or irrigation users, do you know their long-term plans and understand their needs?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Purchased Water</b>	Yes	No	Unknown	NA
If you purchase water from another system or a wholesaler, do you know their long-term plans?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Do you have a contract to purchase water? <b>If yes, with whom?</b> _____	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Are you currently staying within your contract?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Are you knowledgeable about other demands being placed on the same water source that you are using?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Alternative Sources	Yes	No	Unknown	NA
Are alternative water sources possibly available to you?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Are you knowledgeable of the characteristics and costs of using alternative sources?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Water Source	Yes	No	Unknown	NA
Do you know the depth of your well?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Depth</b> 2300' from original app				
Do you know the geologic name of the aquifer system from which your water is drawn?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>If yes, geologic name:</b> Inyan Care				
Are all abandoned water sources properly managed and disconnected to prevent accidental contamination or problems with current water system facilities?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

### Treatment - Microbiological Contamination

Is your system using surface water or ground water under the influence of surface water? ☐ Yes ☒ No  
*(If you checked "No", skip to the next section - Ground Water Systems - unless your water system requires treatment other than just disinfection.)*

### Surface Water Systems

Filtration Plant Condition	Yes	No	Unknown	NA
Is your filter plant in good physical condition (free from spalling concrete, peeling paint)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
If constructed more than 20 years ago, have treatment processes been upgraded to meet current standards?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Are repair parts available?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Do you have redundancy (back-ups/automatic switch-overs) for all major mechanical units?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>If no, list units you do NOT have redundancy for:</b>				
Can your plant achieve a filtered water turbidity of 0.3 NTU?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Do you have on-line continuous turbidimeters on each filter?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Have you adopted a turbidity goal lower than the standard?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>If yes, list goal:</b> Weekly				
Do you have the capability to add coagulant before the filter?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

### Ground Water Systems

Ground Water Under the Influence of Surface Water	Yes	No	Unknown	NA
Is your water free from variations in turbidity and temperature after storm events?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Well Construction and Protection				



Do you know when your well was constructed?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<b>List year:</b> _____				
Is your well(s) constructed according to current South Dakota regulations?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Do you have a source water protection plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Is your wellhead finished with a pitless adapter that will prevent contamination from surface water?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

### Disinfection

Do you disinfect? ☐ Yes ☐ No (If "No", skip to the Infrastructure - Pumping section)

Disinfection	Yes	No	Unknown	NA
Do you regularly inspect and maintain your disinfection / chlorination equipment?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Type of Equipment:</b> Chlorine Rotary Pump				
<b>How often?</b> Weekly				
<b>Disinfectant used:</b> Chlorine				
Do you have back-up equipment?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Type:</b> _____				
Do you have adequate contact time following disinfection and before the first user in the distribution system (30 minutes for ground water systems)?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<b>Contact time:</b> _____				
Can you detect a chlorine residual at taps at the ends of the distribution system?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Free Chlorine Residual:</b> _____				
<b>Total Chlorine Residual:</b> _____ (if using chloramines)				

### Disinfection By-Products

Treatment for the Control of Disinfection By-Products	Yes	No	Unknown	NA
If you treat surface water, are you already practicing or could you adopt "enhanced coagulation" in your current plant?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
If you treat surface water, could you still meet current contact-time requirements if disinfection were not allowed before sedimentation?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

### Treatment - Security

Treatment Security	Yes	No	Unknown	NA
Has the system implemented procedures to improve security of its facilities? (i.e. limiting access to sensitive sites, protecting computer and control equipment etc.)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Are chemicals used for treatment properly stored and secure?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Does the water system track chemical usage? (i.e. a sudden	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

increase in usage may signal potential contamination or tampering.

### Infrastructure - Pumping

Condition of Pumping Equipment	Yes	No	Unknown	NA
Do you routinely inspect for signs of pump or pump motor problems? <i>How often:</i> <u>monthly</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Once diagnosed, are problems corrected in a timely enough manner to avoid crisis financing, costly repairs, and unscheduled downtime?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Do you hire a qualified pump contractor to perform an inspection of all pumping equipment, identify potential problems, and perform maintenance, on an annual basis?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Standby/Emergency Power Equipment	Yes	No	Unknown	NA
Is there sufficient standby/emergency power capacity to supply 100% of the average daily demand of the system (excluding fire demand)?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Are any existing standby/emergency power equipment, controls and switches tested or exercised routinely under load conditions, for at least 30 minutes at a time?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Has the local electric utility been made aware of the standby/emergency power provisions made by the water system, so that they can reinforce and safeguard the electrical facilities serving the water operations?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

### Infrastructure - Storage

Storage Capacity	Yes	No	Unknown	NA
Does the system have sufficient gravity-flow (non-pumped) or emergency generator-supported pumping capability to ensure adequate distribution storage to provide safe and adequate service for up to 24 hours without power? <i>If no, how long:</i> _____	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Is there reserve capacity in the tank for fire protection support? <i>Amount:</i> _____	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Security Measures	Yes	No	Unknown	NA
Are any openings, such as vent pipes, screened to protect against the entrance of small animals, birds, and small insects?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Are access hatches locked?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Is the tank and the immediate surrounding area fenced?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Control Systems	Yes	No	Unknown	NA
Is there a high and low water level signal system to control the pumps?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Is there a drain valve or hydrant to allow for draining of the tank?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Tank Maintenance</b>	<b>Yes</b>	<b>No</b>	<b>Unknown</b>	<b>NA</b>
Is the tank inspected at least every three years by a qualified tank contractor for evidence of corrosion or pitting, leakage, and structural weakness?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Is the tank contractor capable of analyzing the coating of paint on the interior and exterior surfaces of the tank to determine if it contains lead or other hazardous materials?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

### Infrastructure - Distribution

<b>System Maintenance</b>	<b>Yes</b>	<b>No</b>	<b>Unknown</b>	<b>NA</b>
Do you have an accurate map of your distribution system that indicates main sizes and valve locations?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Does the operator routinely flush, test, and maintain the hydrants in the system?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>How often:</b> Plan to Quarterly				
Are the locations of valves in the mains and curb stops on the service lines precisely known?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Does the system keep a log of distribution system breaks to identify weak areas in the system?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Are histories, locations, size, and type of mains and service lines detailed on records in a secure area?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Are all valves exercised and lubricated periodically?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Is the system free of severe "water hammer" problems?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Are meter pits, pressure regulating valves, altitude valves, blow-offs, and other appurtenances maintained on a regular basis?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Unaccounted-for Water</b>	<b>Yes</b>	<b>No</b>	<b>Unknown</b>	<b>NA</b>
Is unaccounted-for water in the water system monitored and analyzed each month?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Is the unaccounted-for water less than 15 percent of the total water delivered to the mains?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<b>List percentage of unaccounted for water:</b> _____ %				
	<b>Yes</b>	<b>No</b>	<b>Unknown</b>	<b>NA</b>
Are the normal operating pressures in the distribution system between 25 psi and 125 psi?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Normal operating pressure:</b> 42 _____ psi				
Do you have a routine leak detection and repair program?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Are all sources of supply and customers metered?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Are the meters calibrated and tested routinely to ensure their accuracy and reliability?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Water Quality in Distribution System</b>	<b>Yes</b>	<b>No</b>	<b>Unknown</b>	<b>NA</b>
Does your system have an active cross-connection control program?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Are any inspections for cross-connections performed?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Is there a program for installing and testing backflow prevention devices where potential contamination is present?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Is there a program to eliminate "dead-ends" in the mains, where feasible?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<b>Construction Standards</b>	<b>Yes</b>	<b>No</b>	<b>Unknown</b>	<b>NA</b>
Are the majority of your mains 6 inches in diameter or larger?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>List percentage:</b> <u>51%</u>				
Is there a program to gradually replace sub-standard sized mains?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Are there suitable rights-of-way and easements provided to the water system for expansion, maintenance, and replacement of mains and services?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Is there sufficient earth cover (six feet) to protect the mains from frost damage or heavy loads, if driven over?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Are materials of mains designed and selected to resist corrosion, electrolysis, and deterioration?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<b>Distribution System Problems</b>	<b>Yes</b>	<b>No</b>	<b>Unknown</b>	<b>NA</b>
Do you receive any complaints regarding water quality (taste, odor, color, etc.)?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>List number of complaints/year:</b> <u>between 1 and 2</u>				
<b>Most common complaint:</b> _____				
Can you maintain adequate pressure in the distribution system under all conditions of flow?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

## The Management Portion of your System

Please mark the appropriate box: Yes, No, or Unknown for each section. Please try to determine the answer to every question. **If a section does not apply to your system, please write NA for not applicable.**

### Operation & Maintenance

Operations Staff	Yes	No	Unknown	NA
Does the person operating your system have current water treatment plant and water distribution operator certification credentials from DENR?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>If yes, list classification(s):</b> _____				
Does your operator receive additional training on an ongoing basis to keep current on new developments in the field?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Future Operational Demands	Yes	No	Unknown	NA
Does your water system obtain any regular or occasional technical assistance from outside sources, such as DENR, your engineer, other utilities or organizations specifically dedicated to providing technical assistance?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>If yes, who</b> <u>SD Rural Water assoc. Engineers, Fall River Water Dist.</u>				

### Management & Administration

Who's in Charge?	Yes	No	Unknown	NA
Is there a clear plan of organization and control among the people responsible for management and operation of the system?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Does your system have written personnel policies and job descriptions signed by the employees?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Are the limits of the operator's authority clearly known?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Does everyone involved in operations know who is responsible for each area?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Is someone responsible for scheduling work?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Security	Yes	No	Unknown	NA
Does the system have procedures for handling new and terminated employees (i.e. collecting keys, changing locks and computer passwords)?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Rules and Standards	Yes	No	Unknown	NA
Do you have explicit rules and standards for system modifications?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Do you have rules governing new hook-ups?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Do you have a water main extension policy?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Do you have standard construction specifications to be followed?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

	Yes	No	Unknown	NA
Do you have measures to assure cross-connection control and backflow prevention?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Do you have policies or rules describing customer rights and responsibilities?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<b>Regulatory Compliance Program</b>	<b>Yes</b>	<b>No</b>	<b>Unknown</b>	<b>NA</b>
Do you fully understand monitoring requirements and have a scheduling mechanism to assure compliance?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Do you know how to obtain clarification or explanation of requirements?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Do you have a mechanism to obtain the most recent information on regulatory requirements?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Do you maintain adequate records to document compliance?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>If yes, for how long?</i> _____				
Did your system have any violations of the primary drinking water standards in the last year?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Did your system have any monitoring or reporting violations in the last year?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Do you know what to do in the event of a violation?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Emergencies</b>	<b>Yes</b>	<b>No</b>	<b>Unknown</b>	<b>NA</b>
Do you have an Emergency Response Plan?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Is there a contingency for making emergency interconnections to neighboring systems, and do you know they will work if needed?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Does everyone involved in operations know what they are to do in the event of contamination from a toxic hazardous waste spill in your source water or a main break or a tank failure?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Do you have a clear chain-of-command protocol for emergency action?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Is someone responsible for emergency operations, for communications with state regulators, for customer relations, for media relations?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<i>If yes, who (title):</i> _____				
<b>Safety</b>	<b>Yes</b>	<b>No</b>	<b>Unknown</b>	<b>NA</b>
Do you have a safety program defining measures to be taken if someone is injured?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Has the entire staff been properly trained in the location and use of safety equipment?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Does everyone understand the risks and safety measures involved in handling water treatment chemicals?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Do you have written operating procedures for both routine and emergency system operations?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Are you fully aware of Occupational Safety and Health Administration (OSHA) confined space (such as trenches/manholes) regulations?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Does the system work with customers to promote their awareness of security?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Does the system have a communication plan to alert customers of a natural or intentional threat to public health?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Maintenance	Yes	No	Unknown	NA
Do you have a planned maintenance management system -- a system for scheduling routine preventive maintenance (line flushing, pumps, meters, storage tanks, etc.)?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Do you have a system for assuring adequate inventory of essential spare parts and back-up equipment?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Do you have relationships with contractors and equipment vendors to assure prompt priority service?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Do you have records and data management systems for system operating and maintenance data, for regulatory compliance data, and for system management and administration?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Management Capability	Yes	No	Unknown	NA
Are you getting the outside services and technical assistance you need? Do you have adequate legal counsel, insurance, engineering advice, technical/operations assistance, rate case preparation, and financial advice?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

## The Financial Portion of your System

Please mark the appropriate box: Yes, No, or Unknown for each section. Please try to determine the answer to every question. **If a section does not apply to your system, please write NA for not applicable.**

Financial Planning Mechanisms	Yes	No	Unknown	NA
Does your system develop and follow an annual budget that is approved by the governing body?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Does the governing body review a monthly summary of revenues and expenses of the utility system?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Do you have within the annual budget separate reserve accounts for equipment replacement, capital improvement, depreciation or security upgrades?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<b>If so, list accounts:</b>				
Does the system have reserve funds available in the event of an emergency?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Do you have a capital budget or capital improvement plan that projects future capital investment needs some distance (at least five years) into the future?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Do you have a process for scheduling and committing to capital projects?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Does your planning process take account of all the potential capital needs suggested by your answers to the technical questions in these worksheets?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Does your long-term planning incorporate analysis of alternative strategies that might offer cost saving to customers, such as consolidation with other nearby systems or sharing of operations and management expenses with other nearby systems?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Rates/Billing - Are they Adequate?</b>	<b>Yes</b>	<b>No</b>	<b>Unknown</b>	<b>NA</b>
Do you regularly review your rates?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>How often?</b>				
Do you have a plan in place for periodic increases in rates?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Is the rate structure based on metered watered use?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>List rates per 1000 gallons:</b> 39\$ minimum + 3\$/1000 gal (i.e. \$22 minimum plus \$2.50/1000 gallons)				
Does the rate per 1000 gallons change as consumption increases? <b>If so, please describe:</b>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Does the rate structure assure proportionality among users?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Do you have procedures for billing and collection?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Is your billing collection rate greater than 95%?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Do you have collection procedures specifically for delinquent accounts?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>



Financial Planning Mechanisms - Are they Adequate?	Yes	No	Unknown	NA
Does your system have audited financial statements prepared by a certified public accountant (CPA)?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Does your water system income exceed operating expenses (including debt service)?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Does your water utility support other enterprise funds or the general fund?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Does your system require revenues from other enterprise funds or the general fund for normal operations?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Do you employ standardized accounting and tracking systems?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Do you track budget performance?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Do you keep records to substantiate depreciation of fixed assets and accounting for reserve funds?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Are financial management recordkeeping systems organized?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Are controls exercised over expenditures?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Are controls exercised to keep from exceeding your budget?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Are there purchasing procedures?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Did your system's governing body review this assessment before returning it to the South Dakota Department of Environment and Natural Resources?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

## Financial Spreadsheet

Complete the financial spreadsheet on the following page using the guidance presented on the reverse side of the form.

### GUIDELINES:

This cash flow projection form provides a systematic method of estimating cash receipts, disbursements and balances. The entries listed on the form will not necessarily apply to every PWS, and some entries may not be included which would be pertinent to each PWS. It is suggested, therefore, that the form be adapted to each particular PWS, with appropriate changes in the entries as may be required.

**Procedure:** Most of the entries on the form are self-explanatory; however, the following suggestions are offered to simplify the procedure:

- (1) First gather the audited financial statements, internally prepared statements or budgets and other information for the current year and the two prior years. Include the most recent audited financial statement with your self-assessment report.
- (2) Complete the columns for the prior two years using actual data from your audited financial statements, if available, or your internally prepared financial statements. Keep in mind, for purposes of this analysis, it is important to use **cash** receipts and disbursements. **Suggestion: Round amounts to the nearest dollar.**
- (3) Complete the current year's column using the most recent budget information. Include all expenditures incurred by the utility.
- (4) Complete the form using the suggestions in the partial form below for each entry. Be sure to include any expenditures resulting from planned plant improvement and estimate the impact of inflation on all expenditures.
- (5) Item #1 (Beginning Cash on Hand) plus Item #3 (Total Cash Receipts) minus Item #6 (Total Cash Paid Out) should equal Item #7 (Ending Cash Position).
- (6) Item #13 (Total Added to Reserves) plus Item #14 (Operating Cash) should equal Item #7 (Ending Cash Position).
- (7) Item #1 (Beginning Cash on Hand) should equal Item #14 (Ending Cash Position) from the prior financial period.
- (8) Items #8 & 9 are used together to determine the impact of the rate structure on the equivalent residential user. If industrial or business customers contribute a significant portion of the revenues, these amounts should be looked at separately. Consideration should be given to design a rate structure so that each

category of user pays its proportional share of the costs of operating and maintaining the PWS.

- (9) Item #10 is used to determine to what extent a PWS's net operating income is able to cover its debt service requirements.
- (10) Item #11 is used to determine to what extent a PWS's rate structure produces revenues sufficient to cover operating expenses.
- (11) Item #14 is the operating cash balance at year end. The operating cash balance at the end of any financial period should be adequate to meet the cash requirements for a minimum of one month. If there is too little cash, additional cash may have to be injected or expenditures may have to be reduced. If there is excessive cash on hand, the money should be invested or otherwise deposited into interest bearing accounts (e.g., set up reserves for replacement or capital improvements, etc.)



1



Sort by

Expiration Date Ascending ▼

**BUFFALO GAP, TOWN OF, THE**

• Active Registration



Unique Entity ID:

**FEHWQFPKR415**

CAGE/NCAGE:

**5VHN3**

Purpose of Registration:

**Federal Assistance Awards**

Physical Address:

**202 MAIN ST  
BUFFALO GAP, SD 57722-0000 USA**

Expiration  
Date

**Nov 3, 2022**

### Financial Spreadsheet

Applicant: Town of Buffalo Gap  
 Completed by: BHCLG  
 Date: 6/20/2022

4 Year Projections	Last Year Actual	Current Year Budget Year 1 Projected	Year 2 Projected	Year 3 Projected	Year 4 Projected
Enter Year:	2021	2022	2023	2024	2025
1. Beginning Cash on Hand	\$42,966	\$42,968	\$57,347	\$70,916	\$84,361
2. Cash Receipts:					
a. Unmetered Water Revenue					
b. Metered Water Revenue	\$34,480	\$48,500	\$48,985	\$48,985	\$48,985
c. Other Water Revenue					
d. Total Water Revenues (2a through 2c)	\$34,480	\$48,500	\$48,985	\$48,985	\$48,985
e. Connection Fees					
f. Interest and Dividend Income					
g. Other Income					
h. Total Cash Revenues (2d through 2g)	\$34,480	\$48,500	\$48,985	\$48,985	\$48,985
i. Transfers in/Additional Rev Needed	\$2				
j. Loans, Grants or other Cash Plcasc specify					
SRF loan					
3. Total Cash Receipts (2h through 2j)	\$34,482	\$48,500	\$48,985	\$48,985	\$48,985
4. Total Cash Available (1+3)	\$77,448	\$91,468	\$106,332	\$119,901	\$133,346
5. Operating Expenses					
a. Salaries and wages	\$12,009	\$2,000	\$2,478	\$2,478	\$2,478
b. Employee Pensions and Benefits		\$825	\$1,022	\$1,002	\$1,002
c. Purchased Water					
d. Purchased Power		\$4,000	\$4,120	\$4,244	\$4,371
e. Fuel for Power Production					
f. Chemicals					
g. Materials and Supplies	\$9,024	\$2,500	\$2,500	\$2,500	\$2,500
h. Engineering Services					
i. Contractual Services - Other		\$1,000	\$1,000	\$1,000	\$1,000
j. Equip. Rent/Real Property					
k. Transportation Expenses		\$1,500	\$1,500	\$1,500	\$1,500
l. Laboratory					
m. Insurance					
n. Regulatory Commission Expenses					
o. Advertising					
p. Miscellaneous	\$6,502	\$16,500	\$17,000	\$17,020	\$17,020
q. Total Cash O&M Expenses (5a through 5p)	\$27,535	\$28,325	\$29,620	\$29,744	\$29,871
r. Replacement Expenditures					
s. Total OM&R Expenditures (5q+5r)	\$27,535	\$28,325	\$29,620	\$29,744	\$29,871
t. Loan Principal/Capital Lease Payments		\$5,796	\$5,796	\$5,796	\$5,796
u. Loan Interest Payments					
v. Transfers Out	\$6,945				
w. Capital Purchases (specify):					
x. Other					
6. Total Cash Paid Out (5s through 5x)	\$34,480	\$34,121	\$35,416	\$35,540	\$35,667
7. Ending Cash Position (4 - 6)	\$42,968	\$57,347	\$70,916	\$84,361	\$97,679

### Financial Spreadsheet

**Applicant:** Town of Buffalo Gap  
**Completed by:** BHCLG  
**Date:** 6/20/2022

4 Year Projections	Last Year Actual	Current Year Budget Year 1 Projected	Year 2 Projected	Year 3 Projected	Year 4 Projected
8. Number of Customer Accounts	92	92	92	92	92
9. Avg Annual User Charge Account (2d/8)	\$374.78	\$527.17	\$532.45	\$532.45	\$532.45
10. Coverage Ratio (2h-5s)/(5t+5u)	0.00	3.48	3.34	3.32	3.30
11. Operating Ratio (2d/5s)	1.25	1.71	1.65	1.65	1.64
12. Total Restricted Cash Balances					
a. Debt Service Reserve					
b. Bond Retirement Reserve					
c. Capital Improvement Reserve					
d. Replacement Reserve					
e. Other					
13. Restricted Cash Balance (12a through 12e)					
14. Unrestricted Cash Balance (7 - 13)	\$42,968	\$57,347	\$70,916	\$84,361	\$97,679

# **Resolution Authorizing Signatory**

RESOLUTION NO. \_\_\_\_\_

RESOLUTION AUTHORIZING AN APPLICATION FOR FINANCIAL ASSISTANCE, AUTHORIZING THE EXECUTION AND SUBMITTAL OF THE APPLICATION, AND DESIGNATING AN AUTHORIZED REPRESENTATIVE TO CERTIFY AND SIGN PAYMENT REQUESTS.

WHEREAS, the Town of Buffalo Gap has determined it is necessary to proceed with improvements to the Town's Drinking Water System including replacement of all 4-inch PVC and cast iron pipe (CIP) throughout town; and

WHEREAS, the Town has determined that financial assistance will be necessary to undertake the Project and an application for financial assistance to the South Dakota Board of Water and Natural Resources (the "Board") will be prepared; and

WHEREAS, it is necessary to designate an authorized representative to execute and submit the Application on behalf of the Town and to certify and sign payment requests in the event financial assistance is awarded for the Project,

NOW THEREFORE BE IT RESOLVED by the Town as follows:

1. The Town hereby approves the submission of an Application for financial assistance in an amount not to exceed \$1,147,000 to the South Dakota Board of Water and Natural Resources for the Project.
2. The Town Board President is hereby authorized to execute the Application and submit it to the South Dakota Board of Water and Natural Resources, and to execute and deliver such other documents and perform all acts necessary to effectuate the Application for financial assistance.
3. The Town Board President is hereby designated as the authorized representative of the Town to do all things on its behalf to certify and sign payment requests in the event financial assistance is awarded for the Project.

Adopted this 20<sup>th</sup> day of June 2022.

APPROVED:

  
Mayor Daniel Frieden

(Seal)

Attest: \_\_\_\_\_  
City Finance Officer



**Public Hearing,  
Meeting Minutes,  
Affidavit of  
Publication**

TO

**WN BOARD MEETING PROCEEDINGS**  
**Buffalo Gap, South Dakota**  
**June 20th, 2022**

The board of the Town of Buffalo Gap met in special session at 6:00 p.m. on June 20th, 2022 at the town hall/bank building. Members present were: Trustees Kizer, Hussey, and Frieden, and Finance Officer Clyde. Agenda items: Public Hearing to submit application to state water board plan. Frieden calls meeting to order. Others present: Jennifer from Black Hills Council of Local Governments, Brandon from Helms Engineer, and citizen. A public hearing was held for the drinking water improvements project which includes replacing 4-inch CIP and PVC lines. BHCLG and Helms and Associates attended the hearing and discussed the need for the project, project alternatives, proposed financing, revenue source pledged, interest rate and term, project costs and amount to be borrowed, and the effect the proposed DANR financing could have on user rates. One person from the public showed up to comment on the project. A resolution was passed authorizing signatory for the funding application. Motion to pass resolution 2022-01 authorizing submission of application was made by Hussey and seconded by Kizer. All in favor. With no further business, motion by Frieden to adjourn. Next regular meeting will be July 11th at 6 pm in town hall.

/s/ Heather Besco-Clyde

**Affidavit of Publication**  
State of South Dakota

County of Custer

Jerry Lee Lenander of said county, being duly sworn, on oath says that he is publisher of the Custer County Chronicle, a weekly newspaper printed and published in Custer City, said County of Custer and has full and personal knowledge of all the facts herein stated; that said newspaper is a legal newspaper and has a bona-fide circulation of at least two hundred copies weekly, and has been published within said County for fifty-two successive weeks next prior to the publication of the notice herein, mentioned, and was and is printed wholly or in part in an office maintained at said place of publication: that the

Town of Buffalo Gap  
Notice of Public Hearing

a printed copy of which, taken from the paper in which the same was published, is attached to this sheet, and is made a part of this Affidavit, was published in said newspaper at least once each week for one successive week(s), on which said newspaper was regularly published, to wit:

June 8, 2022; \_\_\_\_\_;  
\_\_\_\_\_; \_\_\_\_\_;  
\_\_\_\_\_; \_\_\_\_\_;  
\_\_\_\_\_; \_\_\_\_\_;

the full amount of the fees for the publication of the annexed notice is \$ 17.44

Subscribed and sworn to me before this 8th  
of June, 2022;

Jeanne Fuerstenberg  
NOTARY PUBLIC

MY COMMISSION EXPIRES: 11-30-2027



**NOTICE OF PUBLIC HEARING**  
FOR THE  
TOWN OF BUFFALO GAP  
DRINKING WATER  
IMPROVEMENTS PROJECT

The Town of Buffalo Gap is proposing to submit an application to secure funding from the Board of Water and Natural Resources (BWNR) for drinking water improvements. The application will request funding assistance for an amount up to \$3,175,500 and the proposed project will include work to address the Town's drinking water needs including but not limited to: replacing all Cast Iron Pipe (CIP) and 4-inch distribution lines throughout town. The funds requested for this project could be in the form of grant or loan, or a combination of both. The Drinking Water SRF loan terms are 0.00% for 30 years, and the Board of Water and Natural Resources may forgive all or a portion of loan principal. The amount, source of funds, and terms will be determined by the Board of Water and Natural Resources when the application is presented at a scheduled board meeting. The purpose of the public hearing is to discuss the proposed project, project alternatives, the proposed financing, and the source of repayment for the loan. The public is invited to attend and comment on the project. The public hearing will be held at the Town Hall, 200 Main Street, Buffalo Gap, South Dakota 57722 on June 20, 2022 at 6:15 pm.

/s/ Signed by Finance Officer  
Heather Besco  
Published once at an approximate cost of \$17.44 and may be viewed free of charge at [www.sdpublicnotices.com](http://www.sdpublicnotices.com).

# Rate Ordinance

**ORDINANCE #2018- 02**

**TOWN OF BUFFALO GAP UTILITY ORDINANCE**

**BE IT ORDAINED BY THE TOWN OF BUFFALO GAP, COUNTY OF CUSTER,  
STATE OF SOUTH DAKOTA**

**CHAPTER 1 – WATER PROVISIONS**

**WATER DEPARTMENT SUPERVISION AND JOB DESCRIPTION**

The Water Department shall be under the supervision of the Town Council of Buffalo Gap.

The Water Department shall consist of Maintenance Worker(s) and operator(s). The water operator(s) shall maintain a current state certification and have passed State Water Board Exam. They shall be responsible for the management and operation of the water and wells of the Town of Buffalo Gap. He (she) shall read or supervise the reading of meters, over-see all state required testing, connecting and disconnecting water service, and shall perform such other duties as may be assigned to him by the Town Council. Meters shall be read by the 5<sup>th</sup> of each month.

**EMERGENCY WATER LIMITATIONS**

The use of city water for street, lawn or garden sprinkling is subordinate to domestic use or fire protection and may be restricted by the Town at any time by resolution of the Town Council; no sprinkling shall be done during a fire. The Town Council may limit or prohibit temporarily the use of the city water for any purpose, except domestic purposes within the consumer's dwelling, during an emergency. This emergency water limitations section does not apply to the use of privately owned water wells.

**APPLICATION FOR WATER SERVICE**

- a) Written application for utility service shall be made to the City Finance Office by the owner or tenant of the property with a one hundred dollar (\$100.00) security deposit and a twenty-five dollar (\$25.00) connection fee, as established by resolution. The deposit is to be made by the person responsible for the utility bill. Said security deposit must be paid in full to the Finance Officer prior to any utility service being connected and/or turned on. Such deposit shall be recorded by the Finance Officer and a receipt issued to the applicant.
- b) Upon discontinuance of the service, the applicant shall be entitled to a refund of such deposit once the utility account is paid in full.

- c) After twelve (12) consecutive monthly payments without a delinquency notice, deposit will be refunded. A new security deposit will be charged to the customer's account if customer has received a minimum of three (3) late fees within one (1) year after having the previous deposit returned.
- d) All city utility customers that do not currently hold a security deposit, shall continue to receive utility services, but in all other respects will comply fully with the requirements of this ordinance. A security deposit of one hundred dollars (\$100.00) will be charged to the customer's account if customer receives a minimum of three (3) late fees within one (1) year.
- e) The Town of Buffalo Gap does not accept credit letters from previous utilities.
- f) If a current utility customer moves to a new location within Town of Buffalo Gap water utilities, a new deposit will not be charged if the customer has maintained at least a year of credit history. A new connection fee of twenty-five dollars (\$25) will be charged.

#### **UNAVAILABILITY OF SERVICE**

The city may decline utility service to any person if:

- a) The applicant fails to provide all application information;
- b) The applicant fails to pay the required deposit and connection fee;
- c) The applicant is indebted to the Town for any reason;
- d) The utility service to the proposed premises does not fully meet all Town and other lawful standards; or
- e) The premises have an unpaid prior bill from the same or former occupant.

#### **TAP AND CONNECTION**

Where there is no existing tap to the city water mains, or an additional or different tap is to be made, application shall be made in writing to the Town Financial Officer by the owner or agent of the property to be served.

The application shall designate the legal description of the property, the nature of the water use and if residential use, specify the number of families or residences to be served thereby, and shall be accompanied by a fee of one-thousand three hundred dollars (\$1,300.00).

No person shall be permitted connection to the water system until all past water accounts are fully paid.

#### **WATER METERS ARE REQUIRED**

All meter pit equipment is property of Town of Buffalo Gap.

All dwellings or places supplied with water from the Town system shall be metered by the Town.

A suitable place for meter pit, preferably on city right of way and accessible for examination shall be chosen by the Town of Buffalo Gap at the expense of the owner or occupant. In any case where the neglect, refusal to repair, or refusal to pay expenses thereof the water supply may be turned off and not turned on until such costs and a fee are paid. If pit or post is harmed they shall be repaired at the owner's expense.

No person shall tamper with a meter or turn on the supply of water to a service pipe from which the supply has been turned off by the Town on account of the nonpayment of a water bill or for any other reason. Anyone violating this provision shall be guilty of a violation and upon conviction thereof by a court of competent jurisdiction shall pay a minimum fine in the amount of two hundred dollars (\$200.00) which does not include reimbursement or restitution. (SDCL § 9-19-3)

The property owner shall be responsible for payment of all water bills incurred on his property whether incurred by property owner, tenant, or any other person with or without the permission of the property owner.

#### **NOTICE OF DISCONTINUANCE REQUIRED**

- a) Owners or consumers desiring to discontinue the use of the Town Utility Services shall be required to give notice thereof to the Town Financial Officer, and regular rates shall be charged and billed until such notice is given.
- b) Owners and/or tenants of rental properties must give notice of change of tenants if the utilities are being billed to the tenant.
- c) A disconnection and reconnection is required between tenants and/or owners in order to secure a customer deposit with the Town Financial Officer and to ensure all accounts are paid in full.
- d) A disconnection fee of twenty-five dollars (\$25.00) and/or reconnection fee of twenty-five dollars (\$25.00) will be charged each time the Town is required to turn off or on utility services, including transfer of service.
- e) If the Town becomes aware of the change in occupancy before the proper notification is given to the Financial Officer; the Town reserves the right to immediately disconnect Town Utility Services provided to the place of business and/or residency being serviced.

### **TERMINATION OF SERVICES**

The Town shall have the right to terminate utility service to any customer or refuse reconnection to any customer for any of the following reasons:

- a) Discovery by the Town of material misinformation in the customer's original application for services that may prejudice the Town in continuing service to the customer;
- b) Nonpayment of any utility bill for more than three (3) billing periods or for more than one hundred fifty dollars (\$150.00);
- c) Deterioration of the service system to the customer's premises to such an extent that water would be wasted or leaking if service continues;
- d) Harm the meter pit or remote reader without contacting town, or failure to reimburse town for repairs of any meter and/or meter equipment, including pit and remote reader;
- e) Tampering with the water meter or any part of the system;
- f) Reselling or diverting any utility service without proper approval therefore; or
- g) Vacancy of the premises.

### **LANDLORDS RESPONSIBILITIES FOR TOWN UTILITIES**

An owner of rental property, whether commercial or residential, is hereby held responsible for payment of any delinquent water charges, which are not promptly paid by the owner's tenant or tenants.

This applies to all rental property, whether commercial; single family residential, apartment complexes, mobile home courts, or other rental property. The owner shall be furnished with a copy of the notice of delinquency that is served upon the tenant.

### **MORE THAN ONE CUSTOMER FROM ONE SERVICE**

Owners who lease or subdivide shall be responsible for water used in said premises. If more than one meter is placed on a service pipe, the meters shall be set so that no one of them shall measure water which has passed through another meter.

In those situations where both residential and commercial activities are taking place on the same water hookup that then, and in that event the owner or user of said property shall be required to pay two (2) water minimums. (One for the residential use and one for the commercial use) And further, where more than one commercial enterprise is operating off of



the same water meter, but have separate facilities, the owner or user of said property shall be required to pay two (2) water minimums.

#### **WATER RATES**

- a) For the purposes of this section, "users of water" shall mean the owner or occupant of each individual residential or commercial premise, including, but not limited to, the owner or occupant of each apartment in a multiple family dwelling, each mobile home in a mobile home park and hotel and motel facilities.
- b) All users of water within the Town of Buffalo Gap shall pay to the Town of Buffalo Gap for water used by them as follows:
  - 1) A monthly maintenance fee of twenty-five dollars (\$25.00) per water pit.
  - 2) A minimum of nine dollars (\$9.00) which entitles the user to 3,000 gallons of water per month.
  - 3) All water used over 3,000 gallons per month shall be paid for at a rate of three dollars (\$3.00) per additional 1,000 gallons of water used or fraction thereof.
- c) All non-water users with meters servicing within the Town of Buffalo Gap shall pay to the Town of Buffalo Gap the following:
  - 1) A monthly maintenance fee of twenty-five dollars (\$25.00) per water pit; and
  - 2) The minimum of nine-dollar (\$9.00) fee set forth in (b)(2) above; however, the nine dollar (9.00) fee may be suspended by a signed contract between the user and the Buffalo Gap Financial Officer setting forth an agreement that the user may not use any city water for a minimum period of three (3) months.
- d) All users/non-users shall pay a late fee of ten dollars (\$10.00) if payment is received after the fifth (5<sup>th</sup>) day of the next month.
  - 1) Any payment after that time is considered delinquent. The Financial officer will send a water bill stating: a) the total amount due plus the late fee; b) the date by which to pay the utility bill or the utility service will be disconnected; and c) notification that a written financial hardship request may be made to the Financial Officer any time prior to the disconnection date.
  - 2) Any person unable to fully pay any utility bill, on account of financial or economic hardship may make a timely, written request to the Financial Officer to have any bill or bills or part thereof set up on a written and signed payment arrangement plan of so much per week or month as the Financial Officer shall allow. So long as the applicant abides by the written payment plan, The Town shall not consider termination of service. Any violation of the

written payment plan shall subject the users/non-users to immediate disconnection.

- 3) The Financial Officer's denial of a request for a financial or economic hardship may be appealed in writing to the Town Board within five (5) business days or any hearing before the Town Board will be deemed irrevocably waived. The Town Board shall hear the appeal at the next regular or special meeting of the Town Board. The hearing shall be informal; however, allowing each side sufficient time to present evidence. A decision may be made by Motion or Resolution.
- 4) If water service is terminated (disconnected), the Town will restore the water service only after the account and fees are paid in full to the Financial Officer.
- e) If after six (6) months non-payment of water fees has occurred, a lien shall be taken out against the property in Custer County.
- f) All users/non-users shall pay a fee of forty dollars (\$40.00) for any returned checks.

In cases where meters fail to register the amount of water used, charges shall be based upon the average used during two or more preceding periods of similar length and during a similar time of year.

Water rates shall be reviewed annually and changed by resolution from time to time as needed by the Town Council.

#### **SLEEP/VACATION WATER RATES**

- a) Requirements include a minimum of three (3) months absence from the household.
- b) A disconnection/reconnection fee of twenty-five dollars (\$25.00) each must be paid.
- c) A monthly maintenance fee of twenty-five dollars (\$25.00) shall be paid.
- d) The water department will continue to read the meter monthly and any water consumed over the 3,000 gallon minimum will be charged to the customer's account.
- e) During this time, the Town is not liable for any frozen water lines or water breaks from the meter pit to the residence.
- f) The customer is held responsible to notify the Financial Officer of their return in order to have regular water fees resumed.

#### **CHAPTER 2 – SANITATION**

##### **SANITATION**

All property owners shall be given a container for trash. Additional trash containers may be available, depending on supply, for an additional monthly fee that will be set by resolution of the Town Board.

Any and all persons to whom water service is furnished by the City will be charged for garbage

collection.

All property owners shall pay a monthly fee, set by resolution of the Town Board; however, the monthly fee may not be less than twenty dollars (\$20.00). The monthly fee shall be charged regardless of users use of service.

Sanitation charges shall be billed and be due and payable simultaneously with monthly water bills.

Monthly fees are determined by the Town Council of Buffalo Gap and rate changes shall be done by resolution from time to time as needed.

### **CHAPTER 3 – GENERAL PROVISIONS**

#### **IMPLIED CONTRACT BETWEEN TOWN, USER, AND PROPERTY OWNER**

The rules, regulations and water and sanitation rates in this ordinance provided or as elsewhere set out in this code or future ordinances and resolutions of the governing body shall be considered a part of the contract of every person applying for water and sanitation service from the Town of Buffalo Gap, and every owner of property for which such application is made, and every such person by taking water, or by virtue of their ownership of the land for which application is made, shall be considered to express his assent to be bound. This ordinance shall supersede all other utility ordinances from the past.

#### **CUMULATIVE EFFECT OF ORDINANCE**

The provisions of this ordinance shall be cumulative to other ordinances not in conflict with it and shall not operate to repeal any such other ordinances.

**REPEAL OF CONFLICTING ORDINANCES**

All ordinances and parts of ordinances in conflict with this ordinance are repealed.

**SEVERABILITY OF INVALID PROVISIONS**

If any provision of this ordinance shall be held invalid, its invalidity shall not affect any other provision of this ordinance that can be given effect without the invalid provision, and for this purpose the provisions of this ordinance are declared to be severable.

Dated at Buffalo Gap, Custer County, South Dakota this      day of      , 2018.

**APPROVED:**

\_\_\_\_\_  
Trustee

\_\_\_\_\_  
Trustee

\_\_\_\_\_  
Trustee

**ATTEST:**

\_\_\_\_\_  
Heather J. Besco  
Financial Officer  
Town of Buffalo Gap

(SEAL)

RESOLUTION NO. 2019 – 01  
RESOLUTION OF THE TOWN OF BUFFALO GAP TO ADJUST WATER RATES

WHEREAS, the Town of Buffalo Gap purchased new water meters;

WHEREAS, the Town of Buffalo Gap anticipates additional future water system costs;

WHEREAS, the Town of Buffalo Gap Utility Ordinance requires the Board of Trustees to review Water Rates annually;

WHEREAS, the Town of Buffalo Gap Utility Ordinance provides that the Board of Trustees may adjust water rates as needed; and


WHEREAS, the Board of Trustees of the Town of Buffalo Gap find that the costs of the new water meters and future water system maintenance and repair costs necessitate higher water rates.

NOW THEREFORE, BE IT RESOLVED by the Board of Trustees of the Town of Buffalo Gap, Custer County, South Dakota, that in addition to the current Water Rates adopted by the Town of Buffalo Gap Utility Ordinance, the Board of Trustees adopts by this Resolution an additional \$5.00 monthly surcharge water rate for each water meter in the Town, whether deemed a user of water or a non-user of water pursuant to the Town of Buffalo Gap Utility Ordinance, as necessary for the preservation of an efficient and effective water system for the Town. The necessity of the surcharge shall be reviewed annually.

BE IT FURTHER RESOLVED that the revenue generated by the surcharge shall be deposited into the Water Improvement Fund that may be utilized for the benefit of the water system by Motion of the Buffalo Gap Board of Trustees.

Dated at Buffalo Gap, Custer County, South Dakota this 1 day of July, 2019.

APPROVED:

  
Trustee

  
Trustee

  
Trustee

ATTEST:

  
Heather J. Besco

Financial Officer Town of Buffalo Gap

(SEAL)

# **2022 Budget**

**Ordinance #2021-02**  
**2022 Appropriation Ordinance**

Be it ordained by the Town of Buffalo Gap, Custer County, that the following sums are appropriated to meet the obligations of the municipality.

EXPENSE	GENERAL FUND	WATER FUND	ROAD & STREET
SALARIES	\$8300.00	\$2000.00	\$5000.00
EMPLOYMENT TAXES	\$922.00	\$325.00	\$800.00
INSURANCE	\$3800.00	\$500.00	
SERVICES AND FEES	\$3500.00	\$3000.00	\$500.00
PUBLISHING	\$1400.00		
REPAIRS & MAINTENANCE	\$1200.00	\$3500.00	\$3000.00
SUPPLIES & MATERIALS	\$4000.00	\$2500.00	\$9000.00
TRAVEL	\$1750.00	\$1500.00	
UTILITIES	\$5300.00	\$4000.00	\$3000.00
MACHINERY & EQUIPMENT	\$500.00	10000	10000
LEGAL FEES	\$2500.00	1000	
BUILDINGS REPAIR	\$1200.00		
FIRE DEPT	\$2000.00		
DEBT SERVICE		\$5796.00	
SANITATION SERVICES		\$14500.00	
TOTALS BY FUND:	\$36372.00	\$48621.00	\$31300.00
		TOTAL EXPENDITURES	\$116293.00

The following designates the fund or funds that money derived from the following sources is applied to.

General

SOURCE	GENERAL FUND	WATER FUND	ROAD & STREET
TAXES-CURRENT	\$15775.00		
TAXES-DELINQUENT	\$2180.00		
PENALTY/FEES	\$110.00		
LICENSE & PERMITS	\$1400.00		
BANK FRANCHISE	\$190.00		

TAX			
LIQUOR TAX	\$860.00		
REVERSION			
MOTOR VEHICLE	\$3250.00		
LICENSES			
INVESTMENT	\$500.00		
EARNINGS			
HIGHWAY AND			\$9536.00
BRIDGE			
COUNTY WHEEL			\$16492.00
TAX			
CHARGES FOR		\$48500.00	
GOODS/SERVICES			
SANITATION		\$17000.00	
TOTAL REVENUE	\$24265.00	\$65500.00	\$26028.00
BY FUND:			
		<b>GRAND TOTAL</b>	<b>\$116793.00</b>
		<b>REVENUES</b>	

The finance officer is directed to certify the following dollar amount of tax levies made in this ordinance to the County Auditor.

\_\_\_\_\_  
/s/ President of Board of Trustees

Published once at the total approximate cost of \$ \_\_\_\_\_



# Financial Information

Select the Municipal Name:

BUFFALO GAP

Select the year end date:

December 31, 2019

MUNICIPALITY OF BUFFALO GAP  
STATEMENT OF FUND CASH BALANCES  
ALL FUNDS  
December 31, 2019

Cash Assets:	General		Other		Enterprise Funds				Total
	Fund	Rd & St Fund	Governmental Funds	Water Fund	Sewer Fund	Fund	Fund	Fund	
Cash in Checking Accounts	112,661.14								112,661.14
Change and Petty Cash									0.00
Passbook Savings		58,167.08	7,739.27	23,092.95					88,999.30
Savings Certificates	5,000.00								5,000.00
									0.00
									0.00
									0.00
101 FUND CASH BALANCES	117,661.14	58,167.08	7,739.27	23,092.95	0.00	0.00	0.00	0.00	206,660.44

Municipal funds are deposited or invested with the following depositories:

FIRST INVESTMENT BANK  
PO BOX 1110  
HOT SPRINGS SD 57747

112,661.14  
58,167.08  
7,739.27  
23,092.95  
5,000.00  
206,660.44

## Exhibit 2

[illegible]

## Exhibit 2

**Receipts (Source):**

**ENTERPRISE FUNDS**  
330 Operating Grants  
371 Surcharge as Security of Debt  
372-389 Enterprise Operating Revenue (380)  
390 Lottery Revenues  
Total Receipts

## ENTERPRISE FUNDS

[illegible]

## Disbursements (Function):

411-415 General Government	17,807.00	3,834.22																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																														
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MUNICIPALITY OF BUFFALO GAP  
STATEMENT OF CHANGES IN LONG-TERM DEBT  
For the Year Ended December 31, 2019

	General Long-Term Debt				Enterprise	
	General Obligation Bonds	Special Assessment Bonds	Other	Revenue Bonds	Total	
Debt Payable, January 1, 2019	54,678.14				54,678.14	
Add New Issues:						0.00
						0.00
						0.00
Less Debt Retired	3,133.42				3,133.42	
DEBT PAYABLE, December 31, 2019	51,544.72	0.00	0.00	0.00	51,544.72	
	(23101)	(23103)	(23700)	(23102)		

Note: Amounts reported do not include interest.

Select the Municipal Name:

BUFFALO GAP

Select the year end date:

December 31, 2020

MUNICIPALITY OF BUFFALO GAP  
STATEMENT OF FUND CASH BALANCES  
ALL FUNDS  
December 31, 2020

	Enterprise Funds						Total
	General Fund	Rd & St Fund	PARK Fund	Other Governmental Funds	Water Fund	Sewer Fund	
Cash Assets:							
Cash in Checking Accounts	114,309.52						114,309.52
Change and Petty Cash							0.00
Passbook Savings		60,214.71	7,739.27		42,965.56		113,975.64
Savings Certificates	5,000.00						5,000.00
							0.00
							0.00
101 FUND CASH BALANCES	119,309.52	60,214.71	7,739.27	0.00	42,965.56	0.00	233,285.16
							0.00
							0.00
							0.00

Municipal funds are deposited or invested with the following depositories:

FIRST INTERSTATE BANK  
PO BOX 1110  
HOT SPRINGS SD 57747

115,439.35  
58,752.91  
7,739.27  
39,179.95  
3,056.10  
224,167.58





## Exhibit 2

[illegible]

MUNICIPALITY OF BUFFALO GAP  
STATEMENT OF CHANGES IN LONG-TERM DEBT  
For the Year Ended December 31, 2020

	General Long-Term Debt			Enterprise	
	General Obligation Bonds	Special Assessment Bonds	Other	Revenue Bonds	Total
Debt Payable, January 1, 2020	51,544.72				51,544.72
Add New Issues:					0.00
					0.00
					0.00
Less Debt Retired	3,293.75				3,293.75
DEBT PAYABLE, December 31, 2020	48,250.97	0.00	0.00	0.00	48,250.97
	(23101)	(23103)	(23700)	(23102)	

Note: Amounts reported do not include interest.

Select the Municipal Name: **BUFFALO GAP**

Select the year end date: **December 31, 2021**



Exhibit 1

MUNICIPALITY OF BUFFALO GAP  
STATEMENT OF FUND CASH BALANCES  
ALL FUNDS  
December 31, 2021

	General Fund	RD & ST Fund	PARK Fund	Other Governmental Funds	Water Fund	Sewer Fund	Enterprise Funds SANITATION Fund	Fund	Fund	Total
Cash Assets:										
Cash in Checking Accounts	122,578.98	60,220.45	7,739.69		29,990.16		3,056.10			223,385.38
Change and Petty Cash										0.00
Passbook Savings										0.00
Savings Certificates	5,000.00									5,000.00
										0.00
										0.00
										0.00
										0.00
101 FUND CASH BALANCES	127,578.98	60,220.45	7,739.69	0.00	29,990.16	0.00	3,056.10	0.00	0.00	228,385.38

Municipal funds are deposited or invested with the following depositories:

FIRST INTERSTATE BANK  
PO BOX 1110  
HOT SPRINGS SD 57747

127,578.98  
60,220.45  
7,739.69  
29,990.16  
3,056.10  
228,385.38

	General Fund	RD & ST Fund	PARK Fund	Other Governmental Funds	Water Fund	Sewer Fund	Other Enterprise Funds	SANITATION Fund	Fund	Fund	Total
Receipts (Source):											
311 Property Taxes	32,012.19										32,012.19
313 Sales Tax											0.00
311-319 Other Taxes	2,498.56										2,498.56
320 Licenses and Permits	1,800.00										1,800.00
331 Federal Grants											0.00
335.1 Bank Franchise Tax											0.00
335.2 Prorate License Fee											0.00
335.3 Liquor Tax Reversion	932.84										932.84
335.4 Motor Vehicle Licenses (5%)		2,956.42									2,956.42
335.6 Fire Insurance Premium Reversion											0.00
335.B Local Government Highway and Bridge Fund		12,666.44									12,666.44
338.1 County Road Tax (25%)											0.00
338.2 County Highway and Bridge Reserve Tax (25%)											0.00
338.3 County Wheel Tax											0.00
331-339 Other Intergovernmental Revenue	12,875.51										12,875.51
341-349 Charges for Goods and Services											0.00
351-359 Fines and Forfeits											0.00
361 Investment Earnings	12.83	14.91	0.43		2.13						30.09
362 Rentals											0.00
363-369 Other Revenues											0.00
ENTERPRISE FUNDS											
370 Operating Grants											0.00
371 Surcharge as Security of Debt											0.00
372-389 Enterprise Operating Revenue (380)					34,480.22						34,480.22
380.05 Lottery Revenues											0.00
Total Receipts	50,131.74	15,637.77	0.42	0.00	34,482.35	0.00	0.00	0.00	0.00	0.00	100,252.28
Disbursements (Function):											
411-419 General Government	19,058.22	3,863.05									22,921.27
421 Police											0.00
422 Fire											0.00
423-429 Other Public Safety		23,957.22									23,957.22
433 Highways and Streets											0.00
432 Sanitation											0.00
437 Cemeteries											0.00
433-439 Other Public Works											0.00
441-448 Health and Welfare	4,707.96										4,707.96
451-459 Culture-Recreation	1,285.63										1,285.63
461-469 Conservation and Development											0.00
470 Debt Service	5,796.00										5,796.00
480 Intergovernmental Expenditures	410.00										410.00
490-493 Miscellaneous	4,209.26	1,354.23									5,563.49
ENTERPRISE FUNDS											
410 Personal Services					12,009.29						12,009.29
420 Other Expenses					6,501.42						6,501.42
426 Supplies and Materials					9,024.02						9,024.02
Total Disbursements	35,465.07	29,174.50	0.00	0.00	27,535.67	0.00	0.00	0.00	0.00	0.00	92,175.24
391.01 Transfers In	6,945.26	13,542.47									20,487.73
511 Transfers Out	19,542.47				6,945.26						20,487.73
391.01 Sale of Municipal Property											0.00
391.04 Compensation for Loss or Damage to Capital Assets											0.00
391.2 Money Received From Borrowing											0.00
391.07 Capital Contributions (Grants)											0.00
430 Capital Assets											0.00
441 Debt Service-Principal											0.00
442 Debt Service-Interest											0.00
Subtotal of Receipts, Disbursements and Transfers	8,069.46	5.74	0.42	0.00	1.42	0.00	0.00	0.00	0.00	0.00	8,077.04
Fund Cash Balance,											
January 1, 2021	114,309.52	60,214.71	7,739.27		29,988.74		3,056.10				215,308.34
Adjustments:											
CD	3,000.00										5,000.00
											0.00
											0.00
Restated Fund Cash Balance,											
January 1, 2021	118,309.52	60,214.71	7,739.27	0.00	29,988.74	0.00	3,056.10	0.00	0.00	0.00	220,308.34
FUND CASH BALANCE,											
December 31, 2021	127,378.98	60,220.45	7,739.69	0.00	29,990.16	0.00	3,056.10	0.00	0.00	0.00	228,338.38
Do amounts equal Exhibit 1 Fund Cash Balance?											
	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

**MUNICIPALITY OF BUFFALO GAP**  
**STATEMENT OF CHANGES IN LONG-TERM DEBT**  
For the Year Ended December 31, 2021

	General Long-Term Debt			Enterprise	
	General Obligation Bonds	Special Assessment Bonds	Other	Revenue Bonds	Total
Debt Payable, January 1, 2021	48,250.97				48,250.97
Add New Issues:					0.00
					0.00
					0.00
Less Debt Retired	3,462.25				3,462.25
DEBT PAYABLE, December 31, 2021	44,788.72	0.00	0.00	0.00	44,788.72
	(23101)	(23103)	(23700)	(23102)	

Note: Amounts reported do not include interest.

AWMI18  
ADPS  
OPR ID V47704

SUMMARY  
INQUIRY CODE OH  
ONLINE BORROWER HISTORY INQUIRY

08/18/22  
08:52:13  
PAGE 001  
\*\*MORE\*\*

CASE NUMBER 47 017 NAME BUFFALO GAP TOWN OF  
LOAN NUMBER: 03 FUND CODE 91 NOTE RATE 05.0000 LOAN AMOUNT 100,000.00  
DATE LOAN OBLGN 03/12/96 ASSISTANCE TYPE 067  
DESC TC S INT RT EFV DT CONTROL AMT INT PAID PRIN PAID PRC DT

PMT NOTE	2A	R	05.000	080822		483.00	181.26	301.74	080822	
PMT NOTE	2A	G	05.000	080822		13,000.00	.....	13,000.00	080822	Extra Pmt
PMT NOTE	2A	R	05.000	070822		483.00	176.66	306.34	070822	
PMT NOTE	2A	R	05.000	060822		483.00	183.83	299.17	060822	
PMT NOTE	2A	R	05.000	050822		483.00	179.15	303.85	050922	
PMT NOTE	2A	R	05.000	040822		483.00	186.37	296.63	040822	
PMT NOTE	2A	R	05.000	030822		483.00	169.54	313.46	030822	
PMT NOTE	2A	R	05.000	020822		483.00	188.96	294.04	020822	
PMT NOTE	2A	R	05.000	010822		483.00	190.20	292.80	011022	Pmts start for 2022
PMT NOTE	2A	R	05.000	120821		483.00	185.28	297.72	120821	
PMT NOTE	2A	R	05.000	110821		483.00	192.70	290.30	110821	
PMT NOTE	2A	R	05.000	100821		483.00	187.69	295.31	100821	
PMT NOTE	2A	R	05.000	090821		483.00	195.18	287.82	090821	
PMT NOTE	2A	R	05.000	080821		483.00	196.39	286.61	080921	

CHECK DETAIL HISTORY SCREEN FOR TRANSACTIONS



TERM NBR 704		OPR ID 704		ACCOUNT INFORMATION			
CNUM 47-017-		NAME BUFFALO GAP TOWN OF		STDT 081822		ACDT 081822	
FCOD 9120 LNUM 03		KCOD 00 DUED 00 FMCD 0		FLAG		CSDT ZSPC 0	
DEFL DEXD		DRCI		DFIA		DFCA SPCL 0	
DSED DSXD		DSCD		LSAA		DSLO FPCD	
DOLN 050897 AMED 000000		APDT 031296 DCCA		FYNL 37		ICRC INR1 5.0000	
ZDLP 080822 ZDLR 080822		RGT2 1 LRDT 020411		RGT1 02 CCCD 0		PAYC 5 INR2 5.0000	
XAON 100,000.00		XAOA		RCCT .00		EPMT 26,383.00	
PTC1 70,619.31		PTC3		OPCR 70,619.31		CICR	
ICRT 102,112.69		INCR		QICR 102,112.69		QNIC	
SSTS 1,449.00A		SSC3		QSST 1,449.00A		MICE ICCD 0	
UNPN 29,380.69		UNPA		QUPR 29,380.69		YICE NUMO	
UNIN 40.24		UNIA		QUIN 40.24		YNIC QDEL 000	
DACN 4.0248		DACA		QDIN 4.0248		MOIN 483.00	
UPAM		UPUN		FC10 4,994.71		QMTI	
UIAM		UIUN		FCIN		QMTI 483.00	
STAM		ZADI		ZAAI		ZEDI RHDM	
XAIC		PTC2		CYIC		AVIR	
XANI 5,796.00		ZDNI 050823		JTOI 2		STIN	
STAN .00		STAA		QSTA		PNSR	
TPOF 29,420.93		ZSST		QMDU 4,347.00		ICDF	
						ICGR	

CASE NUMBER: 47 017      STATUS TYPE: ai      LOAN: 03      ACDT: 081822      As of date

# Engineering & Cost Estimate

The Preliminary Engineering Report for the Town of Buffalo Gap has been submitted to the Department of Agriculture and Natural Resources and a copy has been provided to the Town. If additional copies are needed, please contact BHCLG or Helms & Associates.



**CIVIL ENGINEERS & LAND SURVEYORS**

221 Brown County Hwy 19  
P.O. Box 111  
Aberdeen, SD 57402

Phone: (605) 225-1212 Fax: (605) 225-3189  
Email: [operations@helmsandassociates.com](mailto:operations@helmsandassociates.com)

May 13, 2022

Re: Buffalo Gap Water Facility Plan  
Buffalo Gap, SD

**Phase I**

This Alternative would replace a majority of the 4" cast iron pipe. This would leave a section of town on the south end with some 4" CIP that would need to be replaced in Phase II. Please see the attached map and tables for this phase of the project.

**Opinion of Probable Cost for Phase I**

Item	Description	Quantity	Unit Price	Total Cost
1	Mobilization	1 LS	\$73,200.00	\$73,200.00
2	Remove, Stockpile and Relay Street Surfacing	7,300 SqYd	\$12.00	\$87,600.00
3	6" PVC Watermain	3,800 Ft	\$70.00	\$266,000.00
4	6" Gate Valve	16 Each	\$2,000.00	\$32,000.00
5	DI Fitting	12 Each	\$1,500.00	\$18,000.00
6	Connect to Existing Watermain	11 Each	\$2,000.00	\$22,000.00
7	Fire Hydrant w/ Steamer	6 Each	\$5,000.00	\$30,000.00
8	1" PE Water Service Pipe	1,160 Ft	\$50.00	\$58,000.00
9	Saddle w/ 1" Corporation Stop	29 Each	\$700.00	\$20,300.00
10	1" Curbstop w/ Box	29 Each	\$700.00	\$20,300.00
11	Connect to Existing Water Service	29 Each	\$600.00	\$17,400.00
12	Bedding Material	900 Tons	\$18.00	\$16,200.00
13	Gravel Base Course (10")	4,100 Tons	\$24.00	\$98,400.00
14	Traffic Control	1 LS	\$20,000.00	\$20,000.00
15	Storm Water Pollution Prevention Plan	1 LS	\$8,000.00	\$8,000.00
16	Exploratory Excavation/Potholing	20 Hours	\$500.00	\$10,000.00
17	Topsoil, Seed, Fertilize & Mulch	1.0 Acres	\$7,000.00	\$7,000.00
Construction Subtotal				\$804,400.00
Contingencies (15%)				\$121,000.00
Construction Total				\$925,400.00
Design Engineering				\$91,700.00
Bidding and Contract Documents				\$10,000.00
Construction Engineering				\$109,200.00
Administration & Legal				\$10,000.00
<b>Total Project Cost</b>				<b>\$1,146,300.00</b>

May 2022

**Equivalent Uniform Annual Cost of Phase I**

**A. Construction Cost**

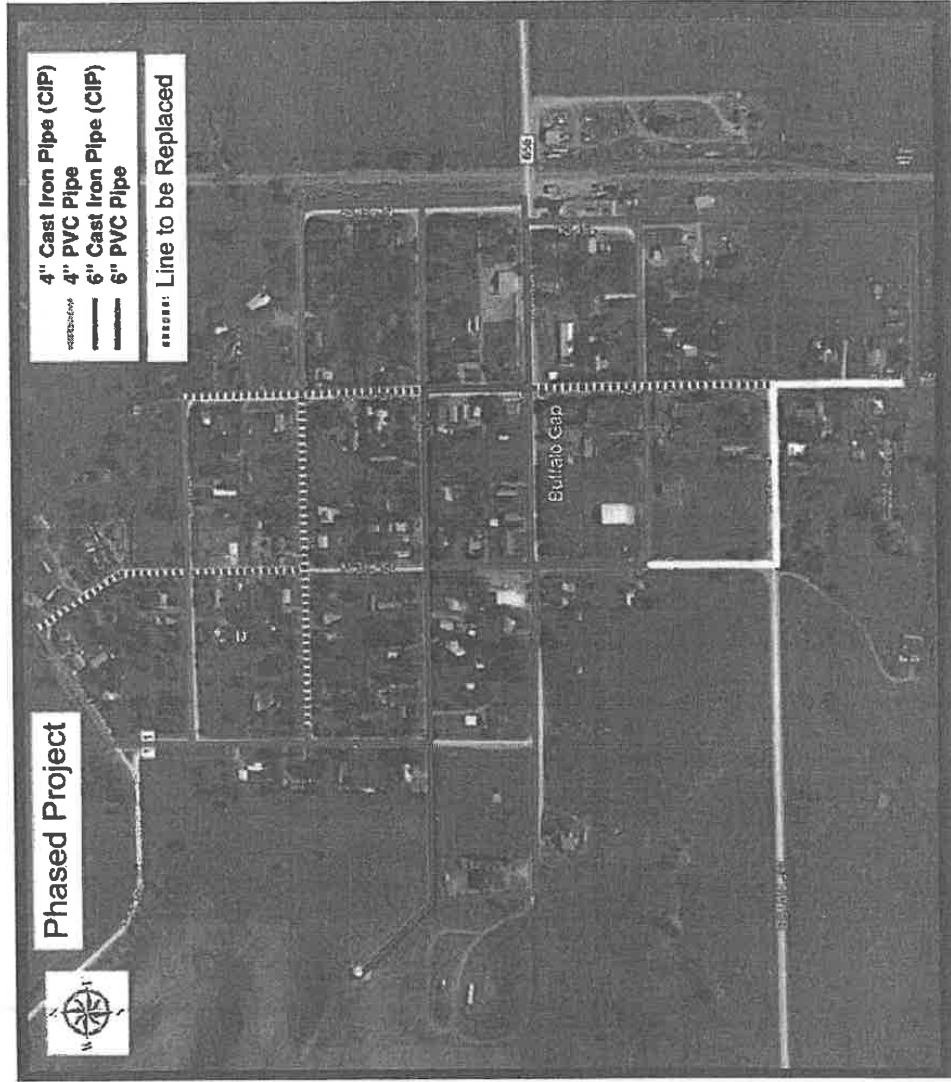
<b>Item</b>	<b>Cost</b>	<b>SV</b>	<b>PW SV</b>	<b>NPW</b>
Mobilization	\$73,200.00	\$0.00	\$0.00	\$73,200.00
Remove, Stockpile and Relay Street Surfacing	\$87,600.00	\$0.00	\$0.00	\$87,600.00
6" PVC Watermain	\$266,000.00	\$159,600.00	\$61,140.79	\$204,859.21
6" Gate Valve	\$32,000.00	\$19,200.00	\$7,355.28	\$24,644.72
DI Fitting	\$18,000.00	\$10,800.00	\$4,137.35	\$13,862.65
Connect to Existing Watermain	\$22,000.00	\$0.00	\$0.00	\$22,000.00
Fire Hydrant w/ Steamer	\$30,000.00	\$18,000.00	\$6,895.58	\$23,104.42
1" PE Water Service Pipe	\$58,000.00	\$34,800.00	\$13,331.45	\$44,668.55
Saddle w/ 1" Corporation Stop	\$20,300.00	\$12,180.00	\$4,666.01	\$15,633.99
1" Curbstop w/ Box	\$20,300.00	\$12,180.00	\$4,666.01	\$15,633.99
Connect to Existing Water Service	\$17,400.00	\$0.00	\$0.00	\$17,400.00
Bedding Material	\$16,200.00	\$9,720.00	\$3,723.61	\$12,476.39
Gravel Base Course (10")	\$98,400.00	\$59,040.00	\$22,617.50	\$75,782.50
Traffic Control	\$20,000.00	\$0.00	\$0.00	\$20,000.00
Storm Water Pollution Prevention Plan	\$8,000.00	\$0.00	\$0.00	\$8,000.00
Exploratory Excavation/Potholing	\$10,000.00	\$0.00	\$0.00	\$10,000.00
Topsoil, Seed, Fertilize & Mulch	\$7,000.00	\$0.00	\$0.00	\$7,000.00
Capital Costs	\$341,900.00	\$205,140.00	\$78,586.61	\$263,313.39
Total Construction Cost	\$1,146,300.00	\$540,660.00	\$207,120.19	\$939,179.81

**B. Operation and Maintenance Costs for Proposed Construction**

<b>Item</b>	<b>Annual Cost</b>	<b>NPW</b>
Labor	\$10,000.00	\$189,819.17
Materials	\$5,000.00	\$94,909.59
Miscellaneous	\$1,500.00	\$28,472.88
Subtotal	\$16,500.00	\$313,201.64

**C. Equivalent Uniform Annual Cost**

NPW Construction Cost	\$939,179.81
NPW of O & M Costs	\$313,201.64
<b>Total Net Present Worth</b>	<b>\$1,252,381.45</b>
<b>Equivalent Uniform Annual Cost</b>	<b>\$65,977.61</b>



May 2022

# **Environmental Review & Cultural Resources**

## CULTURAL RESOURCES EFFECTS ASSESSMENT SUMMARY

Applicant Town of Buffalo Gap Project Contact Daniel Frieden, Mayor  
Address P.O. Box 82 Buffalo Gap, SD 57720 Telephone Number (605) 375-3130

Legal Location of Project Various locations within the Town of Buffalo Gap, all located in Section 29 and 32, T6, R7  
City Buffalo Gap County Custer Project No. Not Assigned

### Project Description

The Town of Buffalo Gap is seeking funding for from DANR's Drinking Water State Revolving Fund Program and the Community Development Block Grant program for their Cast Iron and 4-inch PVC Pipe Replacement Project. The Town of Buffalo Gap is proposing to replace the cast iron pipe and 4-inch PVC drinking water mains throughout town. This project will address all known system deficiencies related to the cast iron pipe and 4-inch mains and will further boost the water system flows assisting in the future integrity of the system. These improvements will allow the Town the opportunity to buy bulk water from the Fall River Water Users District.

For projects that involve new construction on vacant land please include information as to what previously occupied the site and whether that site has any known historic or archaeological significance.

The proposed project is on previously disturbed land and will be replacing existing pipes. The project will take place in the R-O-W.

Please describe below or attach information supporting the determination of effect.

A search of the National Park Service's National Register of Historic Places and South Dakota State Historic Preservation Office's CRGRID identified historic or culturally significant properties within the project area (see attached maps).

**A map showing the project location is required.** Drawings or photographs may also be helpful.

Please indicate the effect the project will have on cultural resources based on the review performed:

- ☒ No Historic Properties Affected: There are no historic properties present or the undertaking will not affect any properties eligible for or listed in the National Register of Historic Preservation.
- ☐ No Adverse Effect: This property is listed in or eligible for the National Register of Historic Places. This project will have no adverse effect upon the historic significance of the property because the proposed undertaking meets the Secretary of the Interior's Standards for the Treatment of Historic Properties.
- ☐ Adverse Effect: This property is listed in or eligible for the National Register of Historic Places. This project will have an adverse effect upon the historic significance of the property. (Attach proposed mitigation measures that may minimize the adverse effect.)

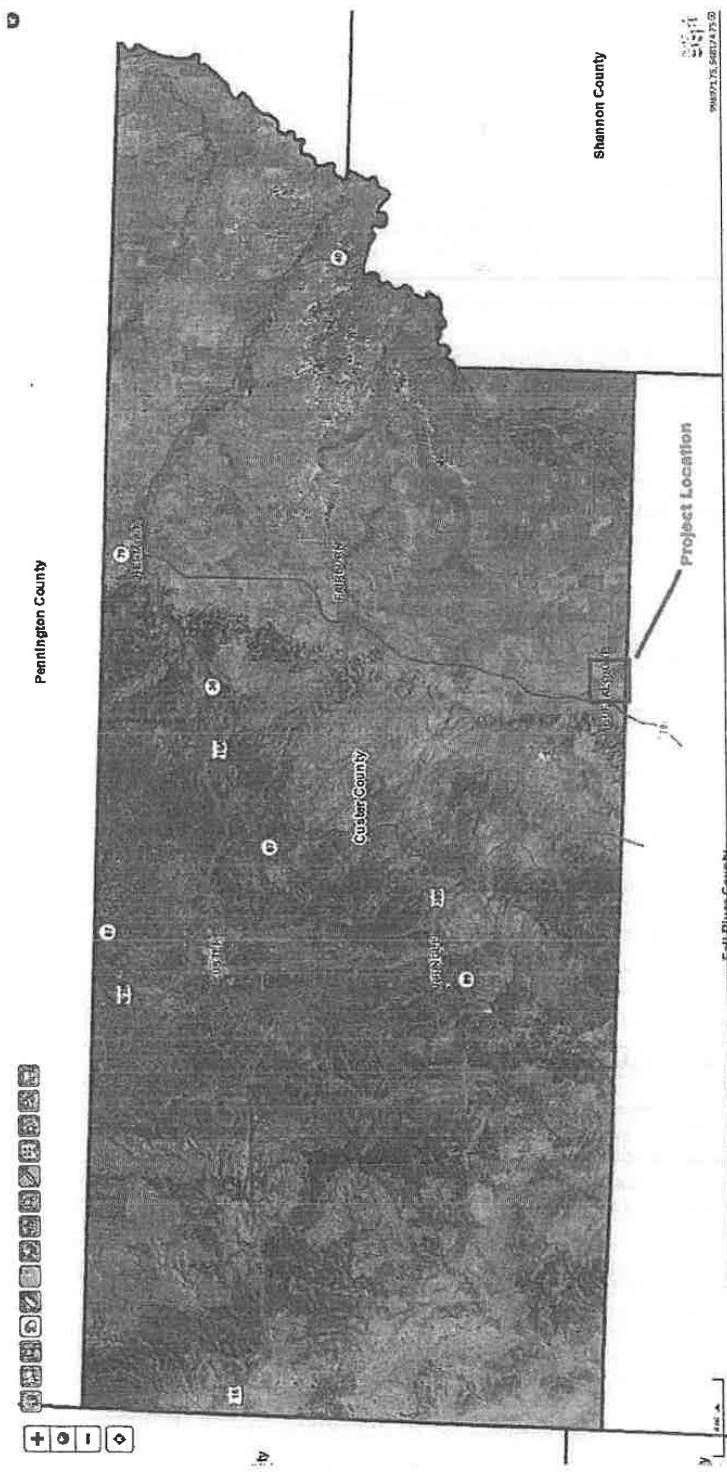
Prepared by: Kailey Snyder, Black Hills Council of Local Governments Date 06/14/2022

### DETERMINATION OF EFFECTS

I have reviewed the project description and the information provided concerning historical and cultural effects of this project. Based on that review, the Department of Environment and Natural Resources concurs with the applicant's determination of the effects that the construction of this project will have on historical or cultural resources. Additionally, if historical or cultural resources are discovered during project construction, the contractor is required to cease construction and notify the State Historical Preservation Officer.

Approved by: \_\_\_\_\_ Date \_\_\_\_\_  
SD Department of Environment and Natural Resources

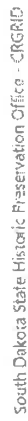




Town of Buffalo Gap's location in Custer County, SD



Town of Buffalo Gap, SD.



## National Register of Historic Places

These findings have important implications for the development of the field of organizational behavior.

United Park Service  
U.S. Department of the Interior

U.S. Department of the Interior

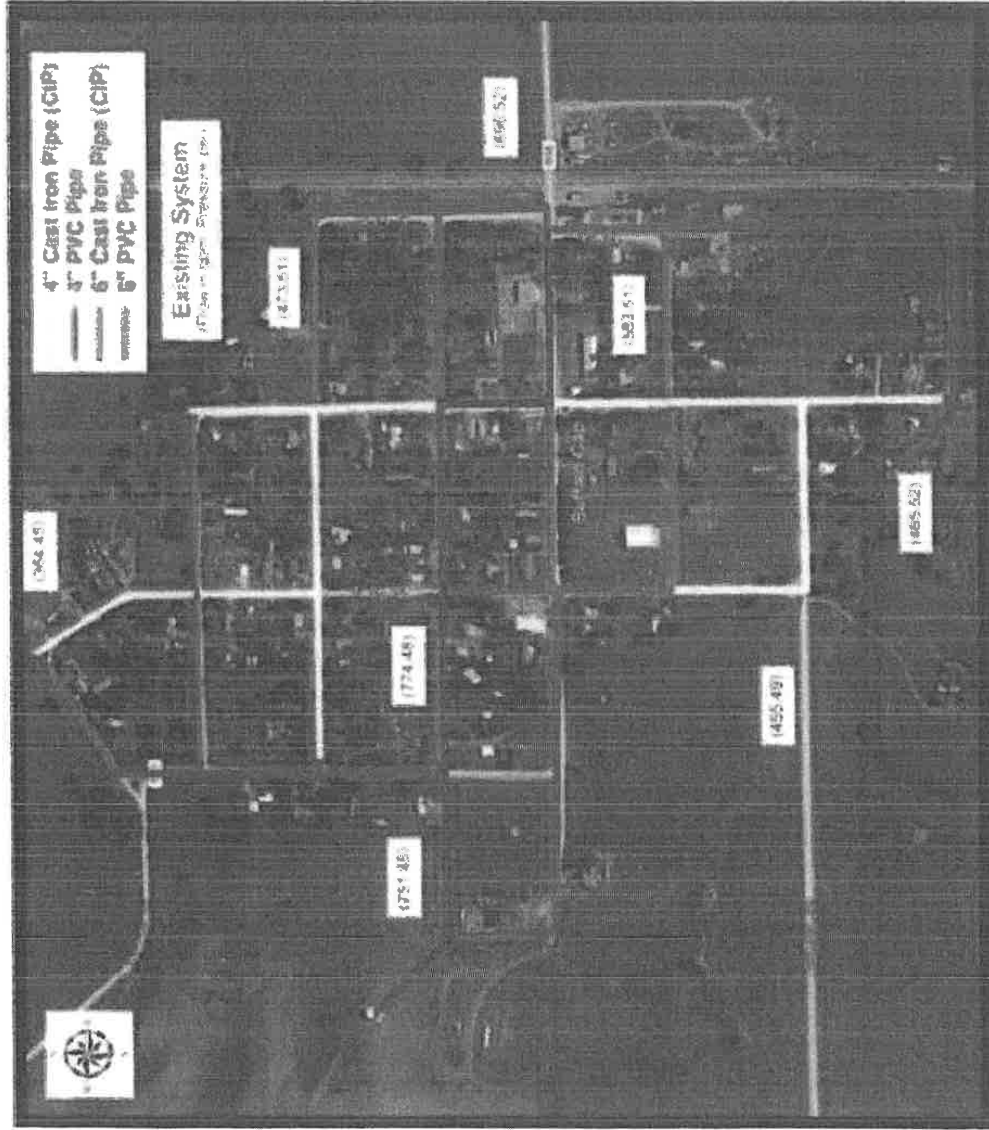
**► How This Works**

Buffalo Gap, South Dakota

[illegible]

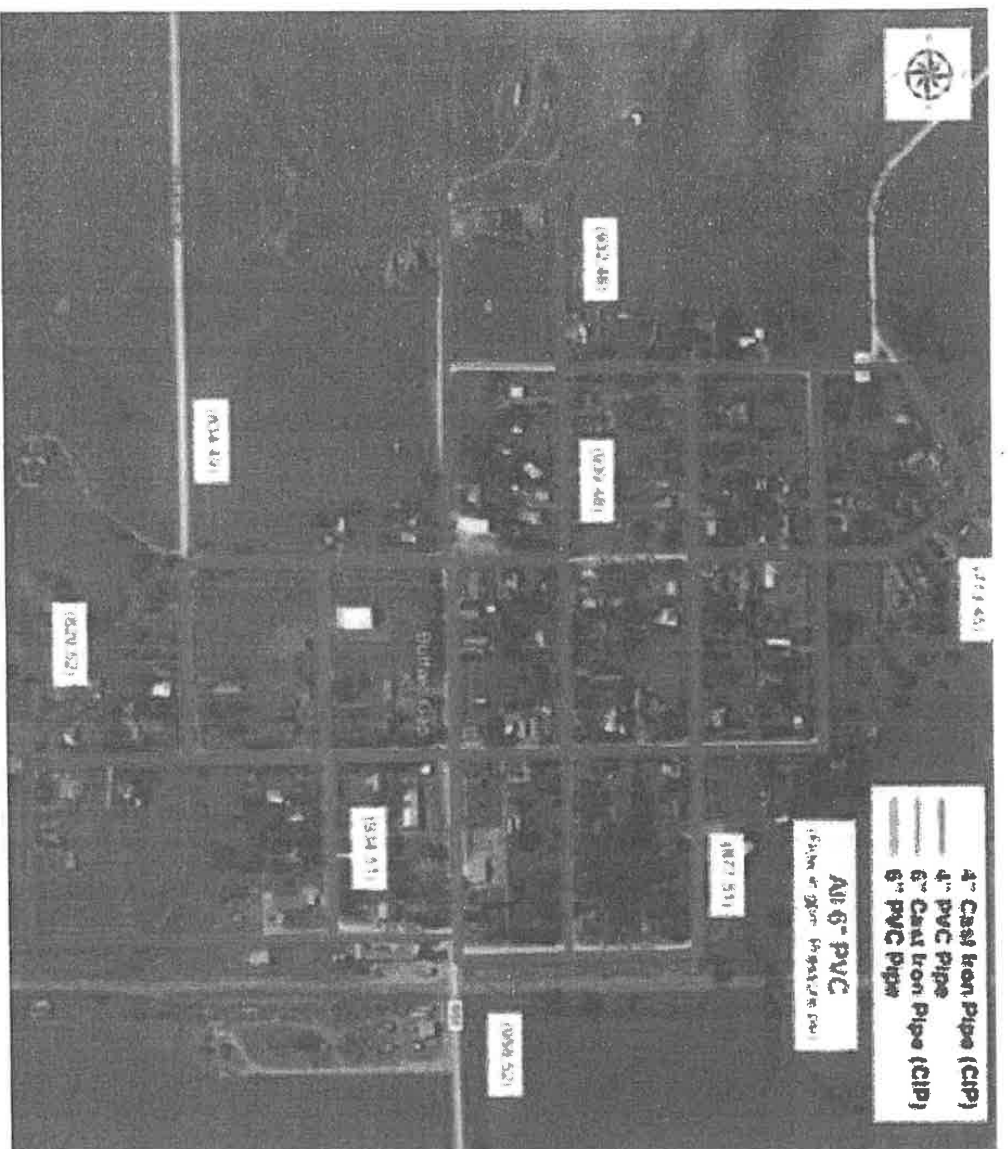
...

NRHP Map – Buffalo Gap



**Figure 3.6.4-1: Existing System Model**

Existing system.



**Figure 5.5.3-1: Proposed Watermain Improvements**

Proposed watermain improvements.



## SOUTH DAKOTA DEPARTMENT OF GAME, FISH AND PARKS

523 EAST CAPITOL AVENUE | PIERRE, SD 57501

### Environmental Review Report

#### Project Information

Report Generation Date: 6/14/2022 10:00:45 AM  
Project ID: 2022-06-14-431  
Project Title: Town of Buffalo Gap's Cast Iron and 4-inch PVC Pipe Replacement project.  
User Project Number(s):  
Project Type: Other  
Project Activities: None Selected  
County(s): Custer  
Township/Range/Section(s): 006S007E29; 006S007E32  
Watershed(s) HUC8: None  
Latitude/Longitude: 43.492720 / -103.314538

#### Contact Information

Organization: Black Hills Council of Local Governments  
Contact Name: Kailey Snyder  
Contact Phone: 6053942681  
Contact Email: ksnyder@wrbsc.com  
Contact Address: 730 E Watertown St Rapid City SD 57701  
Submitted On Behalf Of:

#### Project Description

The Town of Buffalo Gap is proposing to replace the cast iron pipe and 4-inch PVC drinking water mains throughout town. This project will address all known system deficiencies related to the cast iron pipe and 4-inch mains and will further boost the water system flows assisting in the future integrity of the system. These improvements will allow the Town the opportunity to buy bulk water from the Fall River Water Users District. The estimated project cost is \$3,176,000. The replacement of the cast iron pipe and 4-inch PVC will occur on previously disturbed land, no significant environmental effects are anticipated as a result of this project. Maps of the project location are attached for your reference.



## SOUTH DAKOTA DEPARTMENT OF GAME, FISH AND PARKS

523 EAST CAPITOL AVENUE | PIERRE, SD 57501

### Introduction

The vision of South Dakota Department of Game, Fish and Parks (SDGFP) is to conserve our state's outdoor heritage to enhance the quality of life for current and future generations. SDGFP has a state-wide mission to manage wildlife and the habitats upon which they depend for their ecological values and enjoyment by the citizens of South Dakota and visiting publics. SDGFP strives to prevent or minimize unnecessary damage to species and their habitats by offering possible mitigation measures or alternative project actions.

### Disclaimer

The information provided in this report can only be used as a site clearance letter if no conflicts with sensitive wildlife resources were detected. This information provides an indication of whether or not public or protected lands and sensitive resources are known or likely to be located near the proposed project's location. The information generated in this report does not replace Endangered Species Act consultation obligations with the U.S. Fish and Wildlife Service (USFWS) for federal listed species.

A majority of the sensitive species records in the report originate from the South Dakota Natural Heritage Database (SDNHD). The SDNHD tracks species at risk and certain unique habitats. These species may be monitored because they are rare, indicative of a vulnerable habitat type, or are are legally designated as state or federal threatened or endangered species. Rare species are those that are declining and restricted to limited habitat, peripheral to a jurisdiction, isolated or disjunct due to geographic or climatic factors or classified as such due to lack of survey data. A list of monitored species can be found at <https://gfp.sd.gov/natural-heritage-program/>. Many places in South Dakota have not been surveyed for rare or protected species and habitats and the absence of a species from a proposed project area does not preclude its presence. Accuracy of species lists, report information and project recommendations should be verified after 90 days.

No environmental conflicts were detected by South Dakota Game, Fish and Parks for your proposed project. This report is considered final, and can serve as documentation for environmental clearance from South Dakota Game, Fish and Parks. This report does not replace coordination with the US Fish and Wildlife Service for Endangered Species Act compliance.





## SOUTH DAKOTA DEPARTMENT OF GAME, FISH AND PARKS

523 EAST CAPITOL AVENUE | PIERRE, SD 57501

### Project Type Recommendations

No recommendations have been identified for this project type.

### Legal Obligations

#### South Dakota Endangered and Threatened Species Law

This state law (Chapter 34A-8) defines nongame, threatened and endangered species and wildlife and describes the relevant authorities of the Game, Fish and Parks Secretary and Commission. The SDGFP Commission may list, delist or change the status of state threatened or endangered species. The Secretary shall conduct investigations to address information needs on population, distribution, habitat needs, limiting factors and other data gaps to ensure these species are managed in perpetuity. Take of state threatened or endangered species is prohibited except for certain, authorized purposes or to protect life or property. This state law also prohibits the reintroduction of a species on the federal list of threatened or endangered species that is considered extirpated from the state, unless authorized by the South Dakota Legislature. More information about obtaining a state endangered take authorization is available here:

<https://gfp.sd.gov/forms/endangeredspecies/>

#### Aquatic Invasive Species

South Dakota Administrative Rule 41:10:04:02 forbids the possession and transport of aquatic invasive species (AIS). Any construction vehicles, vessels, or equipment that will come into contact with surface waters in South Dakota that have previously been used outside of the state or in and AIS positive water within South Dakota must be thoroughly power washed with hot water (>140°F) and completely dried for a minimum of 7 days prior to use. All attached dirt, mud debris and vegetation must be removed and all compartments and tanks capable of holding standing water shall be drained and dry. This applies, but is not limited to, all equipment, pumps, lines, hoses and holding tanks. The list of AIS positive waters is available

at <http://sdleastwanted.com/maps/default.aspx> or by calling 605-223-7706.

#### Federal Laws

The following federal laws contribute to the conservation and management of fish and wildlife resources in the United States: Endangered Species Act, Bald and Golden Eagle Protection Act, Migratory Bird Treaty Act, Clean Water Act, and the Fish and Wildlife Coordination Act. The National Environmental Policy Act (NEPA) requires compliance with these statutes and regulations.



## SOUTH DAKOTA DEPARTMENT OF GAME, FISH AND PARKS

523 EAST CAPITOL AVENUE | PIERRE, SD 57501

### Contact Information

**U.S. Fish and Wildlife Service, Ecological Services Field Office** 420 S. Garfield Ave, Suite 400  
Pierre, South Dakota 57501 605-224-8693

**U.S. Army Corp of Engineers, South Dakota Regulatory Office** 28563 Powerhouse Road  
Pierre, South Dakota 57501 605-224-8531

### Bald and Golden Eagle Protection Act

The Bald and Golden Eagle Protection Act (16 U.S.C. 668–668d) provides for the protection of the bald eagle (*Haliaeetus leucocephalus*) and golden eagle (*Aquila chrysaetos*). Under this federal act, “take of eagles, their parts, nests or eggs is prohibited unless a permit is issued for certain purposes and under certain circumstances as long as the authorized take is compatible with the preservation of eagles. Disturbance resulting in injury, decreased productivity, or nest abandonment by substantially interfering with normal breeding, feeding or sheltering behavior is also considered take. This report does not replace consultation with the USFWS regarding the protection of bald and golden eagles. Eagle nests are protected under this law, whether active or inactive.

### Migratory Bird Treaty Act

The Migratory Bird Treaty Act (16 U.S. C. 703-712) provides international protection to migratory bird species included in treaties among the United States, Great Britain, Mexico and Japan. This federal act prohibits the taking, killing, possession and transportation (among other actions) of migratory birds, their eggs, parts, and nests, unless specifically permitted by regulations. This act has no provisions for allowing unauthorized take. Effective steps can be taken to avoid take of migratory birds. Work closely with the USFWS to identify protective measures to avoid migratory bird take. A list of migratory bird species protected under this act can be found at 50 CFR 10.13. Introduced bird species are not protected under this Act. This report does not replace consultation with the USFWS regarding the protection of migratory bird species.

### Endangered Species Act

The Endangered Species Act (16 U.S.C. 1531–1544) provides protections for native plant and animal species that are in danger of becoming extinct. Under Section 9, it is unlawful for the “take” of a listed species. This is defined as “... to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or attempt to engage in any such conduct”. However, a permit may be issued for take that is the result of an otherwise legal activity. Please contact the USFWS to determine if a permit is needed.

The USFWS is in charge of the protection of listed species and their critical habitat. Similarly, other federal agencies are also directed to conserve listed species and ensure their actions do not jeopardize a listed species existence or destroy or adversely modify critical habitat. As such, under Section 7, federal agencies should consult with the USFWS to ensure compliance with this Act. This report does not replace consultation with the USFWS regarding listed species.



## SOUTH DAKOTA DEPARTMENT OF GAME, FISH AND PARKS

523 EAST CAPITOL AVENUE | PIERRE, SD 57501

### Clean Water Act

The intent of the Clean Water Act (33 U.S.C. 1251 et seq.) is "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters". SDGFP has concerns for any impacts to wetlands, streams and riparian habitats from development. We recommend that proper planning take place to first and foremost avoid impacts to wetlands, streams, and associated riparian corridors. If dredge or fill materials will be placed into waterways or wetlands, the U.S. Army Corps of Engineers Regulatory Office should be contacted to determine if a 404 permit is needed.

### Fish and Wildlife Coordination Act

The Fish and Wildlife Coordination Act (15 U.S.C. 661-667e) provides habitat protection by requiring a federal agency to consult with the USFWS and SDGFP (i.e. the state fish and wildlife agency) whenever an agency is proposing to control or modify a stream or other body of water. The intent of this consultation is to conserve wildlife resources by preventing habitat loss or damage. If control or modification of a water body is proposed, please begin consultation with the USFWS and SDGFP.

Table 1. Special Status Species Documented within 1 Miles of Project Vicinity

Scientific Name	Common Name	Taxonomic Group	Federal Status	State Status	Global Rank	State Rank	SGCN	Last Obs Date
<i>Ardea herodias</i>	Great Blue Heron	Vertebrate Animal			G5	S4B	No	2011-04-29
<i>Fundulus sciadicus</i>	Plains Topminnow	Vertebrate Animal			G4	S3	No	06/21/2004
<i>Pantosteus jordani</i>	Mountain Sucker	Vertebrate Animal			G5	S3	Yes	06/21/2004

SGCN = Species of Greatest Conservation Need, FE = Federally Endangered, FT = Federally Threatened, SE = State Endangered, ST = State Threatened. For definitions of

State and Global rank status, please see: <http://dftp.sd.gov/rare-animals/> or <http://dftp.sd.gov/rare-plants/>

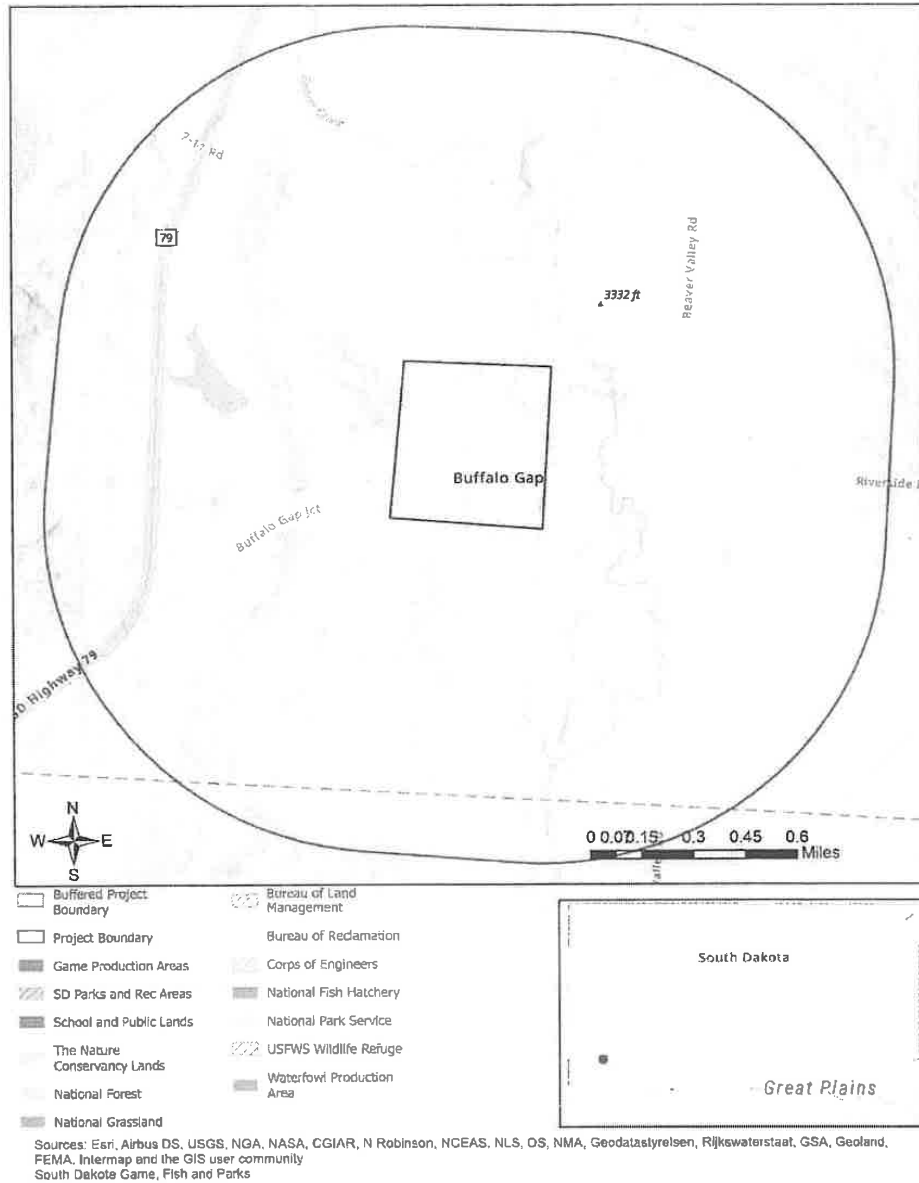
No Protected Lands were detected within the project vicinity.



# SOUTH DAKOTA DEPARTMENT OF GAME, FISH AND PARKS

523 EAST CAPITOL AVENUE | PIERRE, SD 57501

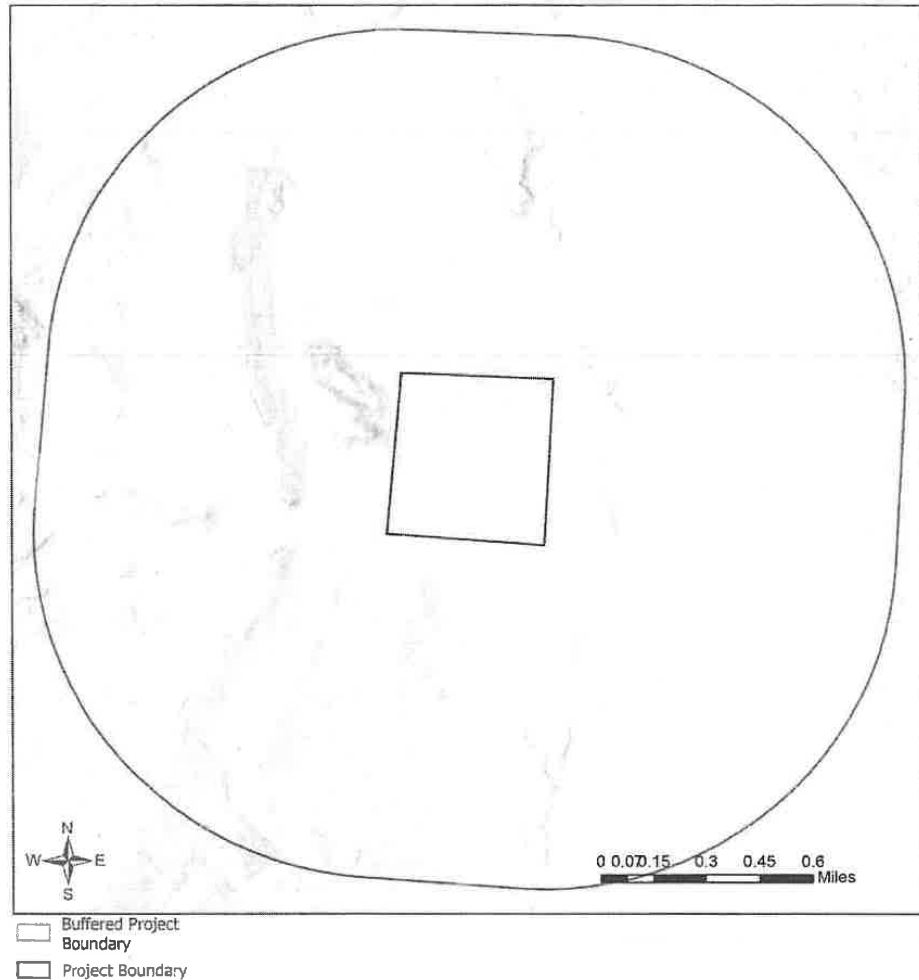
## Town of Buffalo Gap's Cast Iron and 4-inch PVC Pipe Replacement project. Topo Basemap with Land Ownership, Tribal Lands, and Locator Map





**SOUTH DAKOTA DEPARTMENT OF  
GAME, FISH AND PARKS**  
523 EAST CAPITOL AVENUE | PIERRE, SD 57501

**Town of Buffalo Gap's Cast Iron and 4-inch PVC Pipe Replacement project.**  
Web Map As Submitted By User



Sources: Esri, Airbus DS, USGS, NGA, NASA, CGIAR, N Robinson, NCEAS, NLS, OS, NMA, Geodatastyrelsen, Rijkswaterstaat, GSA, Geoland, FEMA, Intermap and the GIS user community



June 13, 2022

South Dakota Dept. of Game, Fish and Parks  
Division of Wildlife  
523 E. Capitol Avenue  
Pierre, SD 57501-3181

RE: Environmental Review for the Town of Buffalo Gap's Cast Iron and 4-inch PVC Pipe Replacement project.

To Whom it May Concern,

Black Hills Council of Local Governments is assisting the Town of Buffalo Gap, located in Custer County, South Dakota, with conducting an environmental review for their Cast Iron and 4-inch PVC Pipe Replacement project. This environmental review is necessary as the Town of Buffalo Gap is seeking funding from South Dakota Department of Agriculture and Natural Resources' Drinking Water State Revolving Fund Program and the Community Development Block Grant program.

The Town of Buffalo Gap is proposing to replace the cast iron pipe and 4-inch PVC drinking water mains throughout town. This project will address all known system deficiencies related to the cast iron pipe and 4-inch mains and will further boost the water system flows assisting in the future integrity of the system. These improvements will allow the Town the opportunity to buy bulk water from the Fall River Water Users District. The estimated project cost is \$3,176,000.

The replacement of the cast iron pipe and 4-inch PVC will occur on previously disturbed land, no significant environmental effects are anticipated as a result of this project. Maps of the project location are attached for your reference.

**Please provide a written response to this letter within 30 days.** Even if there are no concerns on behalf of your agency, please send a written response stating such. If you have any questions regarding this letter, or require additional information, please contact me at [ksnyder@wrbsc.com](mailto:ksnyder@wrbsc.com) or (605) 394-2681. Thank you in advance for your response.

Sincerely,

A handwritten signature in black ink that reads "Kailey Snyder". The signature is written in a cursive, flowing style.

Kailey Snyder  
Community Development Planner

Encl. Project Maps



June 13, 2022

United States Dept. of Agriculture  
Natural Resources Conservation Service  
200 Fourth St. SW  
Huron, SD 57350-2475

RE: Environmental Review for the Town of Buffalo Gap's Cast Iron and 4-inch PVC Pipe Replacement project.

To Whom it May Concern,

Black Hills Council of Local Governments is assisting the Town of Buffalo Gap, located in Custer County, South Dakota, with conducting an environmental review for their Cast Iron and 4-Inch PVC Pipe Replacement project. This environmental review is necessary as the Town of Buffalo Gap is seeking funding from South Dakota Department of Agriculture and Natural Resources' Drinking Water State Revolving Fund Program and the Community Development Block Grant program.

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Sincerely,

A handwritten signature in black ink that reads "Kailey Snyder". The signature is written in a cursive, flowing style.

Kailey Snyder  
Community Development Planner

Encl. Project Maps



June 13, 2022

U.S. Department of Interior  
Fish and Wildlife Service  
420 S. Garfield Ave  
Pierre, SD 57501-5408

RE: Environmental Review for the Town of Buffalo Gap's Cast Iron and 4-inch PVC Pipe Replacement project.

Ms. Bass,

Black Hills Council of Local Governments is assisting the Town of Buffalo Gap, located in Custer County, South Dakota, with conducting an environmental review for their Cast Iron and 4-inch PVC Pipe Replacement project. This environmental review is necessary as the Town of Buffalo Gap is seeking funding from South Dakota Department of Agriculture and Natural Resources' Drinking Water State Revolving Fund Program and the Community Development Block Grant program.

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Sincerely,

A handwritten signature in black ink that reads "Kailey Snyder". The signature is written in a cursive, flowing style.

Kailey Snyder  
Community Development Planner

Encl. Project Maps





June 13, 2022

U.S Army Corps of Engineers, Omaha Dist.  
Planning Division  
Attention: CENWO-PMA-C  
1616 Capitol Ave.  
Omaha, NE 68102-4901

RE: Environmental Review for the Town of Buffalo Gap's Cast Iron and 4-inch PVC Pipe Replacement project.

To Whom it May Concern,

Black Hills Council of Local Governments is assisting the Town of Buffalo Gap, located in Custer County, South Dakota, with conducting an environmental review for their Cast Iron and 4-inch PVC Pipe Replacement project. This environmental review is necessary as the Town of Buffalo Gap is seeking funding from South Dakota Department of Agriculture and Natural Resources' Drinking Water State Revolving Fund Program and the Community Development Block Grant program.

The Town of Buffalo Gap is proposing to replace the cast iron pipe and 4-inch PVC drinking water mains throughout town. This project will address all known system deficiencies related to the cast iron pipe and 4-inch mains and will further boost the water system flows assisting in the future integrity of the system. These improvements will allow the Town the opportunity to buy bulk water from the Fall River Water Users District. The estimated project cost is \$3,176,000.

The replacement of the cast iron pipe and 4-inch PVC will occur on previously disturbed land, no significant environmental effects are anticipated as a result of this project. Maps of the project location are attached for your reference.

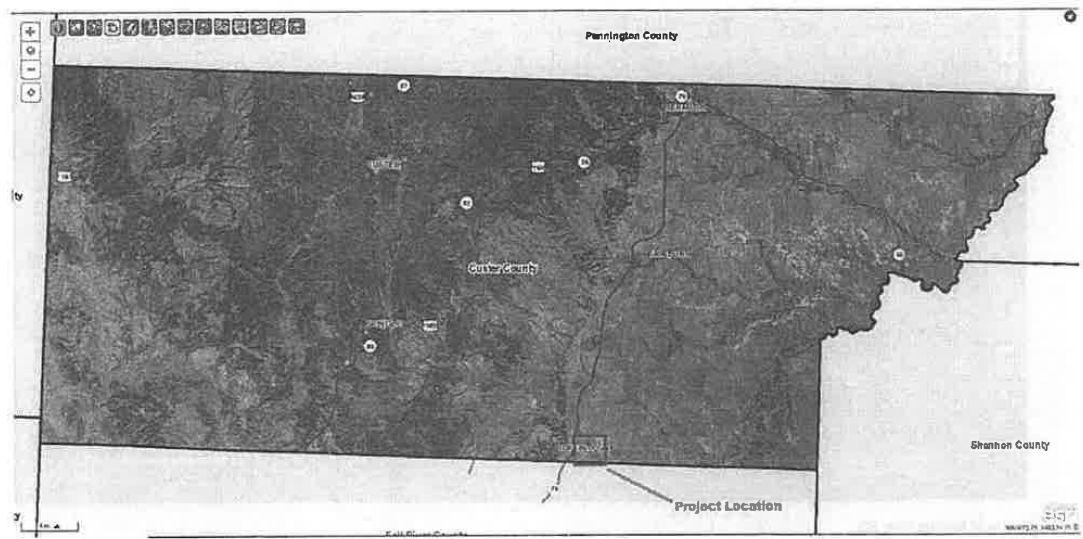
**Please provide a written response to this letter within 30 days.** Even if there are no concerns on behalf of your agency, please send a written response stating such. If you have any questions regarding this letter, or require additional information, please contact me at [ksnyder@wrbsc.com](mailto:ksnyder@wrbsc.com) or (605) 394-2681. Thank you in advance for your response.

Sincerely,

A handwritten signature in black ink that reads "Kailey Snyder". The signature is written in a cursive, flowing style.

Kailey Snyder  
Community Development Planner

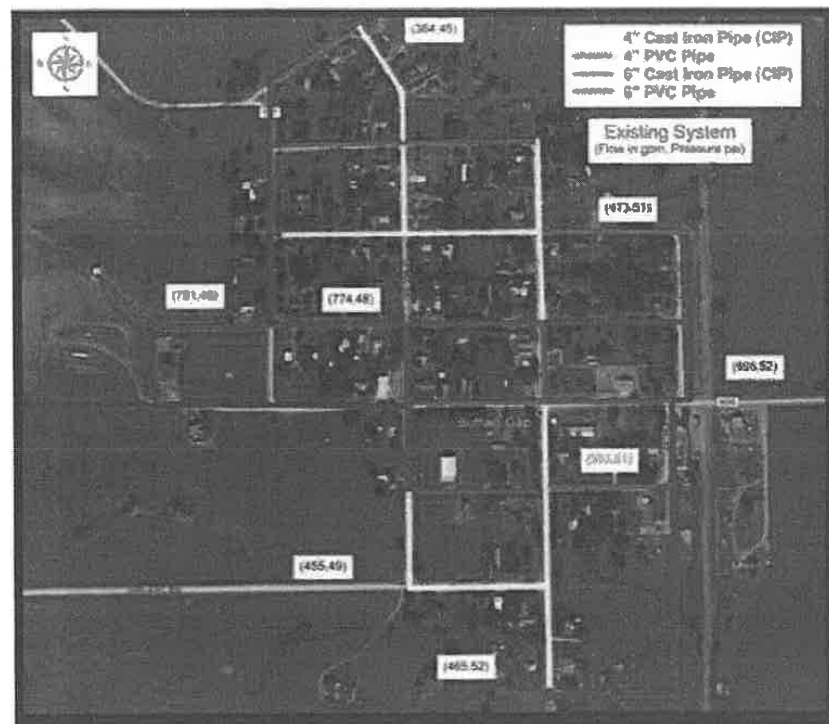
Encl. Project Maps



Town of Buffalo Gap's location in Custer County, SD

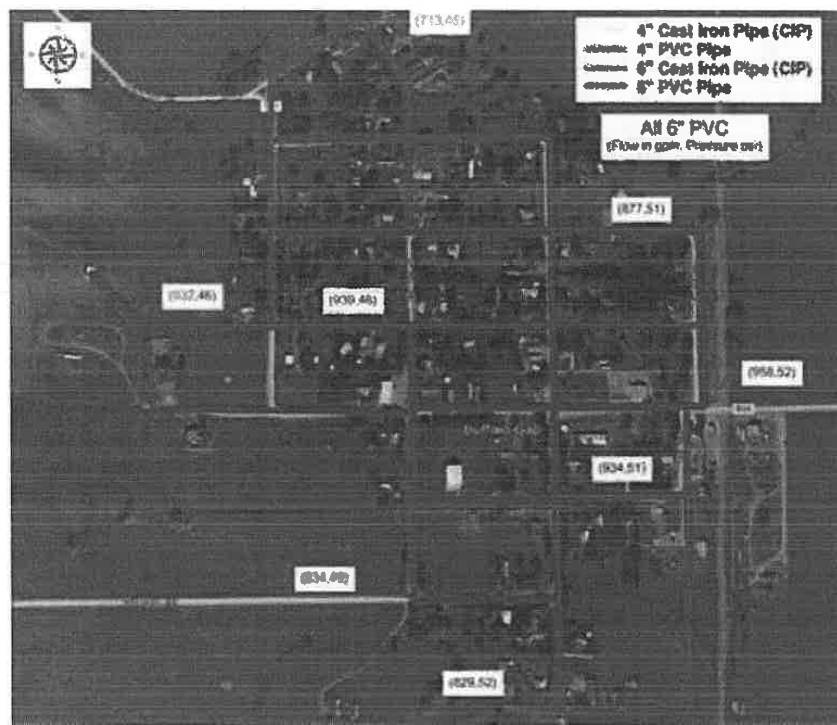


Town of Buffalo Gap, SD.



**Figure 3.6.4-1: Existing System Model**

Existing system.



**Figure 5.5.3-1: Proposed Watermain Improvements**

Proposed watermain improvements.



May 2022







*Town of Buffalo Gap  
\$1,147,000 Drinking Water Project Revenue Borrower Bond  
dated June 23, 2023*

**CERTIFICATE OF RESOLUTION**

I, Heather Besco-Clyde, the duly qualified and Finance Officer, of the Town of Buffalo Gap do hereby certify that attached hereto is a true and correct copy of the resolution of the Board of Trustees of the Town of Buffalo Gap which approved the loan, loan agreement and the collateral documents which were adopted by the Board of Trustees at a meeting duly called and held December 6, 2022, at which a quorum was present and acting throughout.

Witness my hand officially as such Finance Officer and the official seal of the Town of Buffalo Gap this June 23, 2023.

  
Finance Officer



RESOLUTION NO \_2022-03

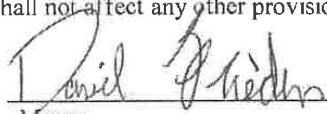
A RESOLUTION PROVIDING FOR A SURCHARGE FOR IMPROVEMENTS TO THE CITY'S WATER SYSTEM, FOR PAYMENT OF REVENUE BOND AND YEARLY REVIEW OF RATE

1. Surcharge for Bond Issue. There shall be charged a monthly surcharge for the services provided by the improvement financed by the Borrower Bond Series 2022 designated as DW-01. The surcharge shall be segregated from other revenues of the utility and shall be used for the payment of the revenue bonds. Provided that such surcharge shall create net income, remaining from time to time after first paying all reasonable and current expenses of maintenance, repairs, replacements and operation, sufficient to fund interest, reserve and debt service fund annual requirements.
2. Rates and collection. The City does hereby establish the special charge or surcharge payable by each customer of its System who receives or benefits from the services of the Project. Such charge or surcharge shall be set at a level which, assuming a 10% delinquency rate, will produce income at the times and in amounts sufficient to pay when due the principal of and interest on the Borrower Bond Series 2022 and the administrative expense surcharges and all other payments as may be required under the loan agreement and Borrower Bond Series 2022.
3. Borrower Bond Series 2022 Surcharge. The following water debt service surcharge shall be applicable to all customers served whether in or out of the city or whether retail or sales or resale:

Borrower Bond (Drinking Water) Series 2022 Surcharge: \$12.00 per user per month to start six months prior to the Loan Amortization Date which will be set forth in the Loan Agreement for DW-01.

This surcharge shall remain in effect until such time as the revenue bonds are discharged. The initial surcharge shall be collected at the same time as other charges of the water system. The surcharge is found to be equitable for the services provided by the improvement.
4. Segregation. The debt service surcharge shall be segregated from other income of the water system in a separate account and is pledged to the South Dakota Conservancy District for the payment of the loan payments on the Borrower Bond Series 2022.
5. Yearly review. The amount of the surcharge shall be reviewed from year to year and may be modified in order to provide such funds as are set forth herein. The charges shall be reviewed yearly by city personal and administratively adjusted, upwards or downwards, pursuant to SDCL § 9-40-15 to such amounts as may be necessary to pay principal, interest, administrative surcharge and other charges as may become due and owing under the Borrower Bond Series 2022.
6. Billing and Accounting. The surcharge shall be included in the monthly user water bill. Nothing contained herein requires the surcharge be indicated on the billing, however, the surcharge segregation shall be indicated on the books of the City.

7. Surcharge not to create constitutional indebtedness. The charges provided herein are for the purpose of paying the Borrower Bond, Series 2022 of the City which do not constitute indebtedness within the meaning of South Dakota Constitutional Chapter XIII Section 4.
8. If any one or more of the provisions of the shall be held invalid, illegal, or unenforceable in any respect, by final decree of any court of lawful jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other provision hereof.

  
\_\_\_\_\_  
Mayor

ATTEST:

  
Finance Officer

First Reading: <sup>Dec</sup> ~~Nov~~ 2022

Passed: ✓ <sup>Jan</sup> ~~Dec~~ 2023

Published ✓ <sup>Jan</sup> ~~Dec~~ 2023

Effective: Jan 2023

**Affidavit of Publication**  
State of South Dakota

County of Custer

Jerry Lee Lanander of said county, being duly sworn, on oath says that he is publisher of the Custer County Chronicle, a weekly newspaper printed and published in Custer City, said County of Custer and has full and personal knowledge of all the facts herein stated; that said newspaper is a legal newspaper and has a bona-fide circulation of at least two hundred copies weekly, and has been published within said County for fifty-two successive weeks next prior to the publication of the notice herein, mentioned, and was and is printed wholly or in part in an office maintained at said place of publication; that the

Town of Buffalo Gap  
Resolution No 2022-03

a printed copy of which, taken from the paper in which the same was published, is attached to this sheet, and is made a part of this Affidavit, was published in said newspaper at least once each week for one successive week(s), on which said newspaper was regularly published, to wit:

Feb 8, 2023

the full amount of the fees for the publication of the annexed notice is \$ 40.70

Subscribed and sworn to me before this 8th

of February, 2023;

Jeanne Fuerstenberg

NOTARY PUBLIC

MY COMMISSION EXPIRES: 11-30-2027



**TOWN OF**  
**BUFFALO GAP**  
RESOLUTION NO. 2022-03  
A RESOLUTION PROVIDING FOR A SURCHARGE FOR IMPROVEMENTS TO THE CITY'S WATER SYSTEM, FOR PAYMENT OF REVENUE BOND AND YEARLY REVIEW OF RATE.

1. Surcharge for Bond Issue. There shall be charged a monthly surcharge for the services provided by the improvement financed by the Borrower Bond Series 2022 designated as DW-01. The surcharge shall be segregated from other revenues of the utility and shall be used for the payment of the revenue bonds. Provided that such surcharge shall create, net income, remaining from time to time after first paying all reasonable and current expenses of maintenance, repairs, replacements and operation, sufficient to fund interest, reserve and debt service fund annual requirements.

2. Rates and Collection. The City does hereby establish the special charge or surcharge payable by each customer of the System who receives or benefits from the services of the Project. Such charge or surcharge shall be set at a level which, assuming a 10% delinquency rate, will produce income sufficient to pay the principal of and interest on the Borrower Bond Series 2022 and the administrative expense surcharge and all other payments as may be required under the loan agreement and Borrower Bond Series 2022.

3. Borrower Bond Series 2022 Surcharge. The following water debt service surcharge shall be applicable to all customers served whether in or out of the city, or whether retail or sales or reseller: Borrower Bond (Drinking Water) Series 2022 Surcharge \$12.00 per user per month to start 48 months prior to the Loan Amortization Date which will be set forth in the Loan Agreement for DW-01.

This surcharge shall remain in effect until such time as the revenue bonds are discharged. The initial surcharge shall be collected at the same time as the charges of the water system. The surcharge is found, to be necessary for the services provided by the improvement.

4. Segregation. The debt service surcharge shall be segregated from other income of the water system in a separate account and is pledged to the South Dakota Conservancy District for the payment of the loan payments on the Borrower Bond Series 2022.

5. Yearly review. The amount of the surcharge shall be reviewed from year to year and may be modified in order to provide such funds as are set forth herein. The charges shall be reviewed yearly by city personal and administratively adjusted, upwards or downwards, pursuant to SDCL § 9-40-15 to such amounts as may be necessary to pay principal, interest, administrative surcharge and other charges as may become due and owing under the Borrower Bond Series 2022.

6. Billing and Accounting. The surcharge shall be included in the monthly user water bill. Nothing contained herein requires the surcharge be indicated on the billing; however, the surcharge segregation shall be indicated on the books of the City.

7. Surcharge not to create constitutional indebtedness. The charges provided herein are for the purpose of paying the Borrower Bond, Series 2022 of the City which do not constitute indebtedness within the meaning of South Dakota Constitutional Chapter XIII Section 4.

8. If any one or more of the provisions of the shall be held invalid, illegal, or unenforceable in any respect, by final decree of any court of lawful jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other provision hereof.

ATTEST:  
Finance Officer  
First Reading:  
Passed:  
Published:  
Effective:  
Published once at the approximate cost of \$40.70 and may be viewed free of charge at [www.sdpublishertices.com](http://www.sdpublishertices.com).

2/8

Resolution  
Providing for the  
Issuance of a  
Borrower Bond  
and Affidavit of  
Publication

RESOLUTION NO. 2022-02

**RESOLUTION GIVING APPROVAL TO CERTAIN DRINKING WATER FACILITIES IMPROVEMENTS; GIVING APPROVAL TO THE ISSUANCE AND SALE OF A REVENUE BOND TO FINANCE, DIRECTLY OR INDIRECTLY, THE IMPROVEMENTS TO THE FACILITIES; APPROVING THE FORM OF THE LOAN AGREEMENT AND THE REVENUE BOND AND PLEDGING PROJECT REVENUES AND COLLATERAL TO SECURE THE PAYMENT OF THE REVENUE BOND; AND CREATING SPECIAL FUNDS AND ACCOUNTS FOR THE ADMINISTRATION OF FUNDS FOR OPERATION OF THE SYSTEM AND RETIREMENT OF THE REVENUE BOND AND PROVIDING FOR A SEGREGATED SPECIAL CHARGE OR SURCHARGE FOR THE PAYMENT OF THE BONDS.**

**WHEREAS**, one of the purposes of SDCL Chapter 9-40 (the "Act") as found and determined by the Legislature is to provide for financing the acquisition, maintenance, operation, extension or improvement of any system or part of any system of waterworks for the purpose of providing water and water supply for domestic, municipal, together with extensions, additions, and necessary appurtenances; and,

**WHEREAS**, a municipality is authorized by Section 6 of the Act to issue revenue bonds to defray the cost of extensions, additions and improvements to any utility previously owned without pledging its credit and is authorized to pledge the net income or revenues from the Project in accordance with Section 15 of the Act; and,

**WHEREAS**, the Town of Buffalo Gap (the "Town") currently operates a water distribution system to supply municipal, industrial and domestic water to its inhabitants and has determined that improvements to the drinking water facilities are necessary for the conduct of its governmental programs and qualifies as an improvement, extension or addition to its drinking water system; and,

**WHEREAS**, the Town has determined to issue its revenue bonds to finance the improvements to its system of waterworks for the purpose of providing water and water supply for domestic, municipal, and industrial purposes (the "System") and has applied to the South Dakota Conservancy District (the "District") for a Drinking Water State Revolving Fund Loan to finance the improvements;

**WHEREAS**, the Town shall adopt special rates or surcharges for the improvements to be pledged, segregated and used for the payment of the Bonds.

**NOW THEREFORE BE IT RESOLVED** by the Town as follows:

**SECTION 1. Definitions.** The terms when used in this Resolution shall have the following meanings set forth in this section unless the context clearly requires otherwise. All terms used in this Resolution which are not defined herein shall have the meanings assigned to them in the Loan Agreement unless the context clearly otherwise requires.

“**Act**” means South Dakota Codified Laws Chapter 9-40.

“**Loan**” means the Loan made by the South Dakota Conservancy District to the Town pursuant to the terms of the Loan Agreement and as evidenced by the Revenue Bond.

“**Project**” means the Town of Buffalo Gap Cast Iron and 4-inch PVC replacement Project.

“**Revenue Bond**” means the revenue bond or bonds issued the date of the Loan Agreement by the Town to the South Dakota Conservancy District to evidence the Town’s obligation to repay the principal of and pay interest and Administrative Expense Surcharge on the Loan.

“**System**” means the Town’s system of waterworks used for the purpose of providing water and water supply for domestic, municipal, and industrial purposes.

## **SECTION 2. Declaration of Necessity and Findings.**

**2.1. Declaration of Necessity.** The Town hereby declares and determines it is necessary to construct and finance improvements to its drinking water facilities within its System described as the Project.

**2.2. Findings.** The Town does hereby find as follows:

**2.2.1.** The Town hereby expressly finds that if the Project is not undertaken, the System will pose a health hazard to the Town and its inhabitants, and will make the Town unable to comply with state and federal law.

**2.2.2.** Because of the functional interdependence of the various portions of the System, the fact that the System may not lawfully operate unless it complies with State and federal laws, including SDCL Chapter 34A-3A, and the federal Safe Drinking Water Act, and the nature of the improvements financed, the Town hereby finds and determines that the Project will substantially benefit the entire System and all of its users within the meaning of Sections 15 and 17 of the Act.

**2.2.3.** The Town hereby determines and finds that for the purposes of the Act, including, in particular, Sections 15 and 17 of the Act, that only the net income from the Project financed by the Revenue Bond be pledged for its payment.



### **SECTION 3. Authorization of Loan, Pledge of Revenue and Security.**

**3.1. Authorization of Loan.** The Town hereby determines and declares it necessary to finance up to \$1,147,000 of the costs of the Project through the issuance of bonds payable from the revenue of the Project and other funds secured by the Town. The Town hereby determines that because the Revenue Bond is issued in connection with a financing agreement described in SDCL 46A-1-49, pursuant to Section 15 of the Act no election is required to issue the Revenue Bond.

**3.2. Approval of Loan Agreement.** The execution and delivery of the Revenue Obligation Loan Agreement (the "Loan Agreement"), the form of which is on file with the Town Finance Officer (the "Finance Officer") and open to public inspection, between the Town as Borrower and the District, is hereby in all respects authorized, approved and confirmed, and the President and Finance Officer are hereby authorized and directed to execute and deliver the Loan Agreement in the form and content attached hereto, with such changes as the Attorney for the Town deems appropriate and approves, for and on behalf of the Town. The President and Finance Officer are hereby further authorized and directed to implement and perform the covenants and obligations of the Town set forth in or required by the Loan Agreement. The Loan Agreement herein referred to and made a part of this Resolution is on file in the office of the Finance Officer and is available for inspection by any interested party.

**3.3. Approval of Revenue Bond.** The issuance of a revenue bond in a principal amount not to exceed \$1,147,000 as determined according to the Loan Agreement in the form and content set forth in Appendix B attached to the form of Loan Agreement (the "Revenue Bond") shall be and the same is, in all respects, hereby authorized, approved, and confirmed and the President, Finance Officer, and other appropriate officials shall be and are hereby authorized and directed to execute and seal the Revenue Bond and deliver the Revenue Bond to the District, for and on behalf of the Town, upon receipt of the purchase price, and to use the proceeds thereof in the manner set forth in the Loan Agreement. The President and Finance Officer are hereby authorized to approve the final terms of the Revenue Bond and their execution and delivery thereof shall evidence that approval. The Revenue Bond shall be issued under the authority of SDCL Chapter 9-40 and SDCL Chapter 6-8B, and the provisions of the Act are hereby expressly incorporated herein as provided in Section 19 of the Act.

**3.4. Pledge of Revenues.** The Revenue Bond together with the interest thereon, shall not constitute a charge against the Town's general credit or taxing power, but shall be a limited obligation of the Town payable solely out of the Project Debt Service Account, which payments, revenues and receipts are hereby and in the Loan Agreement pledged and assigned for the equal and ratable payments of the Revenue Bond and shall

be used for no other purpose than to pay the principal, interest and Administrative Surcharge on the Revenue Bond, except as may be otherwise expressly authorized in the Loan Agreement (including the purpose of securing Additional Bonds issued as permitted by the terms thereof). The Town covenants and agrees to charge rates for all services from the Project or establish special charges or surcharges which will be sufficient to provide for the payments upon the Revenue Bond issued hereunder as and when the same become due, and as may be necessary to provide for the operation and maintenance and repairs of the Project, and depreciation, and the Rate Resolution shall be revised from time to time so as to produce these amounts. The Town hereby reserves the right to determine on a periodic basis the appropriate allocation of operation and maintenance expenses, depreciation, repair and reserves associated with the facilities financed with the Revenue Bond, provided that such determination of allocable operation and maintenance expenses shall in no event abrogate, abridge or otherwise contravene the covenant of the Town set forth in this Section 3 or any other covenant or agreement in the Loan Agreement.

**SECTION 4. Special Charge or Surcharge for Revenue Bond.** The Town does hereby create the Revenue Bond Special-Surcharge District (the "Surcharge District") which shall include all users which benefit from the Project. There shall be charged a special charge or surcharge pursuant to Section 15 of the Act for the services provided by Project financed by the Revenue Bond. The special charge or surcharge shall be segregated from other revenues of the System and shall be used for the payment of the Revenue Bond. The special charge or surcharge shall create net income, remaining from time to time after first paying all reasonable and current expenses of maintenance, repairs, replacements and operation, sufficient to fund interest, reserve and debt service fund annual requirements and shall be 110% of the debt service requirements on the Revenue Bond.

**4.1. Rates and collection.** The rate herein specific will be collected as a special charge or surcharge for the Project. This special charge or surcharge shall remain in effect until such time as the Revenue Bond is defeased or paid in full.

**4.2. Initial Surcharge.** The initial special charge or surcharge shall be set by resolution and collected at the same time as other charges of the utility. All users within the Surcharge District which benefit from the Project, current and future, shall be charged the special charge or surcharge. The special charge or surcharge is found to be equitable for the services provided by the Project. The special charge or surcharge shall begin at such time as will produce sufficient revenue to pay principal, interest and Administrative Surcharge on the Revenue Bond when due.

**4.3. Segregation.** The Finance Officer shall set up bookkeeping accounts in accordance with South Dakota Legislative Audit guidelines for the segregation of the revenue, special charges and surcharges.

**4.4. Periodic review.** The amount of the surcharge shall be reviewed from time to time, not less than yearly, and shall be modified in order to produce such funds as are necessary and required to comply with the Loan Agreement's rate covenant and to pay principal of, interest and Administrative Surcharge on the Revenue Bond when due. The surcharge may be set by resolution in accordance with this Section. The rate resolution shall be necessary for the support of government and shall be effective upon passage.

**SECTION 5. Additional Bonds.** As permitted by Sections 8 and 9 of the Act, Additional Bonds payable from revenues and income of the System or Project may be issued, as permitted in the Loan Agreement, and no provision of this Resolution shall have the effect of restricting the issuance of, or impairing the lien of, such additional parity bonds with respect to the net revenues or income from the extensions, additions or improvements. The Town shall have the right to issue additional bonds secured by a lien subordinate to the lien from the Revenue Bond pursuant to the Loan Agreement.

**SECTION 6. Project Fund Accounts.** For the purpose of application and proper allocation of the income of the Project and to secure the payment of principal, Administrative Surcharge and interest on the Revenue Bond, the following mandatory asset segregations shall be included in the water system account of the Town and shall be used solely for the following respective purposes until payment in full of the principal, interest and Administrative Surcharge on the Revenue Bond:

**6.1. Project Revenue Account.** There shall be deposited periodically into the Project Revenue Account the net revenues as defined in Section 17 of the Act derived from the operation of the Project collected pursuant to the resolutions and ordinances of the Town of Buffalo Gap, South Dakota (collectively the "Rate Resolution"). Moneys from the Project Revenue Account shall be transferred periodically into separate funds and accounts as provided below.

**6.2. Project Debt Service Account.** Out of the revenues in the Project Revenue Account, there shall be set aside no later than the 25<sup>th</sup> day of each month into the account designated Project Debt Service Account, a sum sufficient to provide for the payment as the same become due of the next maturing principal of, interest and Administrative Surcharge on the Revenue Bonds and any reserve determined by the Town's governing body to be necessary. The amount set aside monthly shall be not less than one-third of the total principal, interest, and Administrative Surcharge payable on the following February 15, May 15, August 15 or November 15 and if there shall be any deficiency in the amount previously set aside, then the amount of such deficiency shall be added to the current requirement.

**6.3. Depreciation Account.** There shall be established a General Depreciation Account. Out of the revenues of the Project Revenue Account there shall be set aside each month into the General Depreciation Account an amount determined by the

Common Council to be a proper and adequate amount for repair and depreciation of the Project.

**6.4. Project Surplus Account.** There shall be established the Project Surplus Account. Revenues remaining in the Project Revenue Account at the end of any fiscal year after all periodic transfers have been made therefrom as above required, shall be deemed to be surplus and shall be transferred to the Project Surplus Account. If at any time there shall exist any default in making any periodic transfer to the Project Debt Service Account, the Common Council shall authorize the Town Finance Officer to rectify such default so far as possible by the transfer of money from the Project Surplus Account. If any such default shall exist as to more than one account or fund at any time, then such transfer shall be made in the order such funds and accounts are listed above.

When not required to restore a current deficiency in the Project Debt Service Account, moneys in the Project Surplus Account from time to time may be used for any of the following purposes and not otherwise:

- (a) To redeem and prepay the Revenue Bond when and as such Revenue Bond becomes prepayable according to its terms;
- (b) To pay for repairs of or for the construction and installation of improvements or additions to the System; and, if the balances in the Project Debt Service Account and the Project Depreciation Account are sufficient to meet all payments required or reasonably anticipated to be made there from prior to the end of the then current fiscal year, then:
- (c) To be held as a reserve for redemption and prepayment of any bonds of the System which are not then but will later be prepayable according to their terms; or
- (d) To be used for any other authorized municipal purpose designated by the Common Council.
- (e) No moneys shall at any time be transferred from the Project Surplus Account or any other account of the Fund to any other fund of the Town, nor shall such moneys at any time be loaned to other municipal funds or invested in warrants, special improvements bonds or other obligations payable from other funds, except as provided in this Section.

**SECTION 7. Approval of Paying Agent/Registrar.** The Revenue Bond shall be payable at the office of U.S. Bank National Association, St. Paul, Minnesota, hereby designated as paying agent and registrar.

**SECTION 8. Approval of Bond Counsel.** Meierhenry Sargent LLP is hereby retained as Bond Counsel with respect to the Revenue Bond.

**SECTION 9. Tax Matters.** The Interest on the Revenue Bond shall be excludable from gross income for federal income tax purposes under the Internal Revenue Code of 1986, as amended ("the Code") and applicable Treasury Regulations (the "Regulations").

**SECTION 10. Covenants.** The Town hereby covenants and agrees with the District and other owners of the Revenue Bond as follows:

**10.1.** The Town will punctually perform all duties with reference to the Project, the System and the Revenue Bond required by the constitution and laws of the State of South Dakota and by this Resolution.

**10.2.** The Town agrees and covenants that it will promptly construct the improvements included in the Project.

**10.3.** The Town covenants and agrees that pursuant to Sections 25 through 27 of the Act, the lawful holders of the Revenue Bond shall have a statutory mortgage lien upon the Project and the extensions, additions and improvements thereto acquired pursuant to the Act, until the payment in full of the principal, interest and Administrative Surcharge on the Revenue Bond, and the Town agrees not to sell or otherwise dispose of the System, the Project, or any substantial part thereof, except as provided in the Loan Agreement and shall not establish, authorize or grant a franchise for the operation of any other utility supplying like products or services in competition therewith, or permit any person, firm or corporation to compete with it in the distribution of water for municipal, industrial, and domestic purposes within the Town.

**10.4.** The Town covenants and agrees with the District and other owners of the Revenue Bond that it will maintain the System in good condition and operate the same in an efficient manner and at a reasonable cost, so long as any portion of the Revenue Bond remains outstanding; that it will maintain insurance on the System for the benefit of the holders of the Revenue Bond in an amount which usually would be carried by private companies in a similar type of business; that it will prepare, keep and file records, statements and accounts as provided for in this Resolution and the Loan Agreement. The Revenue Bond shall refer expressly to this Resolution and the Act and shall state that it is subject to all provisions and limitations thereof pursuant to Section 19 of the Act.

**SECTION 11. Depositories.** The Finance Officer shall cause all moneys pertaining to the Funds and Accounts to be deposited as received with one or more banks which are duly qualified public depositories under the provisions of SDCL Ch. 4-6A, in a deposit account or accounts,

which shall be maintained separate and apart from all other accounts of the Town, so long as any of the Bonds and the interest thereon shall remain unpaid. Any of such moneys not necessary for immediate use may be deposited with such depository banks in savings or time deposits. No money shall at any time be withdrawn from such deposit accounts except for the purposes of the Funds and Accounts as authorized in this Resolution; except that moneys from time to time on hand in the Funds and Accounts may at any time, in the discretion of the Town's governing body, be invested in securities permitted by the provisions of SDCL 4-5-6; provided, however, that the Depreciation Fund may be invested in such securities maturing not later than ten years from the date of the investment. Income received from the deposit or investment of moneys shall be credited to the Fund or Account from whose moneys the deposit was made or the investment was purchased, and handled and accounted for in the same manner as other moneys therein.

**SECTION 12. Consent to Appointment.** In the event of mismanagement of the Project, a default in the payment of the principal or interest of the Revenue Bond, or in any other condition thereof materially affecting the lawful holder of the Revenue Bond, or if the revenues of the Project are dissipated, wasted or diverted from their proper application as set forth in the Loan Agreement, Revenue Bond, or herein, the Town hereby consents to the appointment of a receiver pursuant to Section 33 of the Act, and agrees that the receiver will have the powers set forth therein, and in Sections 34 and 35 of the Act to operate and administer the Project, and charge and collect rates as described therein.

**SECTION 13. Severability.** If any section, paragraph, clause or provision of this Resolution, the Loan Agreement, the Revenue Bond, or any other Loan Document shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the other provisions of this Resolution or said Loan Agreement, Revenue Bond, or any other Loan Document.

**SECTION 14. Repeal of Resolution.** At such time as the Project Revenue Bond is defeased or paid in full, this Resolution and the special charge or surcharge shall automatically be repealed without any further action of the Town.

**SECTION 15. Authorization of Town Officials.** The President, Finance Officer, Town Attorney and Town officials shall be and they are hereby authorized to execute and deliver for and on behalf of the Town any and all other certificates, documents or other papers and to perform such other acts as they may deem necessary or appropriate in order to implement and carry out the actions authorized herein.

**SECTION 16. Effective Date.** This Resolution shall take effect on the 20<sup>th</sup> day following its publication, unless suspended by a referendum.

Adopted at Buffalo Gap, South Dakota, this 6<sup>th</sup> day of December 2022.

APPROVED:

David P. Rude  
President

(SEAL)

Attest:

Reathan B. Clyde  
Town Finance Officer

Adopted:

December 2022

Published:

Dec 2022

Effective:

Jan 2023

## TOWN OF BUFFALO GAP

**RESOLUTION NO. \_\_\_\_\_**  
**GIVING APPROVAL TO CERTAIN DRINKING WATER FACILITIES IMPROVEMENTS; GIVING APPROVAL TO THE ISSUANCE AND SALE OF A REVENUE BOND TO FINANCE, DIRECTLY OR INDIRECTLY, THE IMPROVEMENTS TO THE FACILITIES; APPROVING THE FORM OF THE LOAN AGREEMENT AND THE REVENUE BOND AND PLEDGING PROJECT REVENUES AND COLLATERAL TO SECURE THE PAYMENT OF THE REVENUE BOND; AND CREATING SPECIAL FUNDS AND ACCOUNTS FOR THE ADMINISTRATION OF FUNDS FOR OPERATION OF THE SYSTEM AND RETIREMENT OF THE REVENUE BOND AND PROVIDING FOR A SEGREGATED SPECIAL CHARGE OR SURCHARGE OR THE PAYMENT OF THE BONDS.**

WHEREAS, one of the purposes of SDCL Chapter 9-40 (the "Act") as found and determined by the Legislature is to provide for financing the acquisition, maintenance, operation, extension or improvement of any system or part of any system of waterworks for the purpose of providing water and water supply for domestic, municipal, together with extensions, additions, and necessary appurtenances; and,

WHEREAS, a municipality is authorized by Section 6 of the Act to issue revenue bonds to defray the cost of extensions, additions and improvements to any utility system owned without pledge

that the System may not lawfully operate unless it complies with State and federal laws, including SDCL Chapter 34A-3A, and the federal Safe Drinking Water Act, and the nature of the improvements financed, the Town hereby finds and determines that the Project will substantially benefit the entire System and all of its users within the meaning of Sections 15 and 17 of the Act.

1.3. The Town hereby determines and finds that for the purposes of the Act, including, in particular, Sections 15 and 17 of the Act, that only the net income from the Project financed by the Revenue Bond be pledged for its payment.

2. Authorization of Loan, Pledge of Revenue and Security.

2.1. Authorization of Loan. The Town hereby determines and declares it necessary to finance up to \$1,147,000 of the costs of the Project through the issuance of bonds payable from the revenue of the Project and other funds secured by the Town. The Town hereby determines that because the Revenue Bond is issued in connection with a financing agreement described in SDCL 46A-1-49, pursuant to Section 15 of the Act no election is required to issue the Revenue Bond.

2.2. Approval of Loan Agreement. The execution and delivery of the Revenue Obligation Loan Agreement (the "Loan Agreement"), the form of which is on file with the Town Finance Officer (the "Finance Officer") and open to public inspection, between the Town as Borrower and the District, is hereby in all respects authorized, approved and confirmed, and the President and Finance Officer are hereby authorized and directed to execute and deliver the Loan Agreement in the form and content attached hereto, with such changes as the Attorney for the Town deems appropriate and approves, for and on behalf of the Town. The President and Finance Officer are hereby further authorized and directed to implement and perform the covenants and obligations of the Town set forth in or required by the Loan Agreement. The Loan Agreement herein referred to and made a part of this Resolution is on file in the office of the Finance Officer and is available for inspection by any interested party.

2.3. Approval of Revenue Bond. The issuance of a revenue bond in a principal amount not to exceed \$1,147,000 as determined according to the Loan Agreement in the form and content set forth in Appendix B attached to the form of Loan Agreement (the "Revenue Bond") shall be and the same is, in all respects, hereby authorized, approved, and confirmed and the President, Finance Officer, and other appropriate officials shall be and are hereby authorized and directed to execute and seal the Revenue Bond and deliver the Revenue Bond to the District, for and on behalf of the Town, upon receipt of the purchase price, and to use the proceeds thereof in the manner set forth in the Loan Agreement. The

until such time as the Revenue Bond is defeased or paid in full.

3.2. Initial Surcharge. The initial special charge or surcharge shall be set by resolution and collected at the same time as other charges of the utility. All users within the Surcharge District which benefit from the Project, current and future, shall be charged the special charge or surcharge. The special charge or surcharge is found to be equitable for the services provided by the Project. The special charge or surcharge shall begin at such time as will produce sufficient revenue to pay principal, interest and Administrative Surcharge on the Revenue Bond when due.

3.3. Segregation. The Finance Officer shall set up bookkeeping accounts in accordance with South Dakota Legislative Audit guidelines for the segregation of the revenue, special charges and surcharges.

3.4. Periodic review. The amount of the surcharge shall be reviewed from time to time, not less than yearly, and shall be modified in order to produce such funds as are necessary and required to comply with the Loan Agreement's rate covenant and to pay principal of, interest and Administrative Surcharge on the Revenue Bond when due. The surcharge may be set by resolution in accordance with this Section. The rate resolution shall be necessary for the support of government and shall be effective upon passage.

4. Additional Bonds. As permitted by Sections 8 and 9 of the Act, Additional Bonds payable from revenues and income of the System or Project may be issued, as permitted in the Loan Agreement, and no provision of this Resolution shall have the effect of restricting the issuance of, or impairing the lien of, such additional parity bonds with respect to the net revenues or income from the extensions, additions or improvements. The Town shall have the right to issue additional bonds secured by a lien subordinate to the lien from the Revenue Bond pursuant to the Loan Agreement.

5. Project Fund Accounts. For the purpose of application and proper allocation of the income of the Project and to secure the payment of principal, Administrative Surcharge and interest on the Revenue Bond, the following mandatory asset segregations shall be included in the water system account of the Town and shall be used solely for the following respective purposes until payment in full of the principal, interest and Administrative Surcharge on the Revenue Bond:

5.1. Project Revenue Account. There shall be deposited periodically into the Project Revenue Account the net revenues as defined in Section 17 of the Act derived from the operation of the Project collected pursuant to the resolutions and ordinances of the Town of Buffalo Gap, South Dakota collectively the "Rate Resolution". Moneys from the Project Revenue Account shall be transferred periodically into the

Project Surplus Account or any other account of the Fund to any other fund of the Town, nor shall such moneys at any time be loaned to other municipal funds or invested in warrants, special improvements bonds or other obligations payable from other funds, except as provided in this Section.

6. Approval of Paying Agent/Registrar. The Revenue Bond shall be payable at the office of U.S. Bank National Association, St. Paul, Minnesota, hereby designated as paying agent and registrar.

7. Approval of Bond Counsel. Meierhenry Sargent LLP is hereby retained as Bond Counsel with respect to the Revenue Bond.

8. Tax Matters. The interest on the Revenue Bond shall be excluded from gross income for federal income tax purposes under the Internal Revenue Code of 1986, as amended ("the Code") and applicable Treasury Regulations (the "Regulations").

Covenants. The Town hereby covenants and agrees with the District and other owners of the Revenue Bond as follows:

8.1. The Town will punctually perform all duties with reference to the Project, the System and the Revenue Bond required by the constitution and laws of the State of South Dakota and by this Resolution.

8.2. The Town agrees and covenants that it will promptly construct the improvements included in the Project.

8.3. The Town covenants and agrees that pursuant to Sections 25 through 27 of the Act, the lawful holders of the Revenue Bond shall have a statutory mortgage lien upon the Project and the extensions, additions and improvements thereto acquired pursuant to the Act, until the payment in full of the principal, interest and Administrative Surcharge on the Revenue Bond, and the Town agrees not to sell or otherwise dispose of the System, the Project, or any substantial part thereof, except as provided in the Loan Agreement and shall not establish, authorize or grant a franchise for the operation of any other utility supplying like products or services in competition therewith, or permit any person, firm or corporation to compete with it in the distribution of water for municipal, industrial, and domestic purposes within the Town.

8.4. The Town covenants and agrees with the District and other owners of the Revenue Bond that it will maintain the System in good condition and operate the same in an efficient manner and at a reasonable cost, so long as any portion of the Revenue Bond remains outstanding; that it will maintain insurance on the System for the benefit of the holders of the Revenue Bond in an amount which usually would be carried by private companies in a similar type of business; that it will prepare, keep and file records, statements and accounts as provided for in this Resolution and the Loan Agreement. The Revenue Bond shall refer expressly to this Resolution and the Act and shall

the actions above. Date. Effective Resolution shall take effect on the 20th day following its publication, unless suspended by a referendum. Adopted at Buffalo Gap, South Dakota, this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

APPROVED:

President (Seal)  
 Attest:

Town Finance Officer  
 Adopted:

Published:

Effective:

Published once at an approximate cost of \$232.88 and may be viewed free of charge at [www.sdpublicnotices.com](http://www.sdpublicnotices.com).

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the Project in accordance with Section 15 of the Act; and, WHEREAS, the Town of Buffalo Gap (the "Town") currently operates a water distribution system to supply municipal, industrial and domestic water to its residents and has determined that improvements to the drinking water facilities are necessary for the conduct of its governmental affairs and qualifies as an improvement, extension or addition to its drinking water system;

WHEREAS, the Town has determined to issue its revenue bonds to finance the improvements to its system of waterworks for the purpose of providing water and sewer supply for domestic, municipal, and industrial purposes (the "system") and has applied to the South Dakota Conservancy District (the "District") for a Drinking Water State Revolving Fund Loan to finance the improvements;

WHEREAS, the Town shall adopt special rates or surcharges for the improvements to be pledged, segregated and used for the payment of the bonds.

NOW, THEREFORE BE IT RESOLVED by the Town as follows:

**Definitions.** The terms when used in this Resolution shall have the following meanings set forth in this section unless the context clearly requires otherwise. All terms used in this Resolution which are not defined herein shall have the meanings assigned to them in the Loan Agreement unless the context clearly otherwise requires.

"Act" means South Dakota Codified Laws Chapter 9-40.

"Loan" means the Loan made by the South Dakota Conservancy District to the Town pursuant to the terms of the Loan Agreement and as evidenced by the Revenue Bond.

"Project" means the Town of Buffalo Gap Cast Iron and 4-inch PVC replacement Project.

"Revenue Bond" means the revenue bond or bonds issued the date of the Loan Agreement by the Town to the South Dakota Conservancy District to evidence the Town's obligation to repay the principal of and pay interest and Administrative Expense Surcharge on the Loan.

"System" means the Town's system of waterworks used for the purpose of providing water and sewer supply for domestic, municipal, and industrial purposes.

**1. Declaration of Necessity and Findings.**

Declaration of Necessity. The Town hereby declares and determines it is necessary to construct and finance improvements to its drinking water facilities within its System described as the Project.

**1.1. Findings.** The Town does hereby find as follows:

**1.1.1.** The Town hereby expressly finds that if the Project is not undertaken, the System will pose a health hazard to the Town and its inhabitants, and will make the Town unable to comply with state and federal law.

**1.1.2.** Because of the function,

initial terms of the Revenue Bonds and their execution and delivery thereof shall evidence that approval. The Revenue Bond shall be issued under the authority of SDCL Chapter 9-40 and SDCL Chapter 6-8B, and the provisions of the Act are hereby expressly incorporated herein as provided in Section 19 of the Act.

**2.4. Pledge of Revenues.** The Revenue Bond together with the interest thereon, shall not constitute a charge against the Town's general credit or taxing power, but shall be a limited obligation of the Town payable solely out of the Project Debt Service Account, which payments, revenues and receipts are hereby and in the Loan Agreement pledged and assigned for the equal and ratable payments of the Revenue Bond and shall be used for no other purpose than to pay the principal, interest and Administrative Surcharge on the Revenue Bond, except as may be otherwise expressly authorized in the Loan Agreement (including the purpose of securing Additional Bonds issued as permitted by the terms thereof). The Town covenants and agrees to charge rates for all services from the Project or establish special charges or surcharges which will be sufficient to provide for the payments upon the Revenue Bond issued hereunder as and when the same become due, and as may be necessary to provide for the operation and maintenance and repairs of the Project, and depreciation, and the Rate Resolution shall be revised from time to time so as to produce these amounts. The Town hereby reserves the right to determine on a periodic basis the appropriate allocation of operation and maintenance expenses, depreciation, repair and reserves associated with the facilities financed with the Revenue Bond, provided that such determination of allocable operation and maintenance expenses shall in no event abrogate, abridge or otherwise contravene the covenant of the Town set forth in this Section 3 or any other covenant or agreement in the Loan Agreement.

**3. Special Charge or Surcharge for Revenue Bond.** The Town does hereby create the Revenue Bond Special-Surcharge District (the "Surcharge District") which shall include all users who benefit from the Project. There shall be charged a special charge or surcharge pursuant to Section 15 of the Act for the services provided by Project financed by the Revenue Bond. The special charge or surcharge shall be segregated from other revenues of the System and shall be used for the payment of the Revenue Bond. The special charge or surcharge shall create net income, remaining from time to time after first paying all reasonable and current expenses of maintenance, repairs, replacements and operation, sufficient to fund interest, reserve and debt service fund annual requirements and shall be 110% of the debt service requirements on the Revenue Bond.

**3.1. Rates and collection.** The rate herein specific will be collected as a special charge or surcharge

Account. Out of the revenues in the Project Revenue Account, there shall be set aside no later than the 25th day of each month into the account designated Project Debt Service Account, a sum sufficient to provide for the payment as the same become due of the next maturing principal of, interest and Administrative Surcharge on the Revenue Bonds and any reserve determined by the Town's governing body to be necessary. The amount set aside monthly shall be not less than one-third of the total principal, interest, and Administrative Surcharge payable on the following February 15, May 15, August 15 or November 15 and if there shall be any deficiency in the amount previously set aside, then the amount of such deficiency shall be added to the current requirement.

**5.3. Depreciation Account.** There shall be established a General Depreciation Account. Out of the revenues of the Project Revenue Account there shall be set aside each month into the General Depreciation Account an amount determined by the Common Council to be a proper and adequate amount for repair and depreciation of the Project.

**5.4. Project Surplus Account.** There shall be established the Project Surplus Account. Revenues remaining in the Project Revenue Account at the end of any fiscal year after all periodic transfers have been made therefrom as above required, shall be deemed to be surplus and shall be transferred to the Project Surplus Account. If at any time there shall exist any default in making any periodic transfer to the Project Debt Service Account, the Common Council shall authorize the Town Finance Officer to rectify such default so far as possible by the transfer of money from the Project Surplus Account. If any such default shall exist as to more than one account or fund at any time, then such transfer shall be made in the order such funds and accounts are listed above.

When not required to restore a current deficiency in the Project Debt Service Account, moneys in the Project Surplus Account from time to time may be used for any of the following purposes and not otherwise:

(a) To redeem and prepay the Revenue Bond when and as the Revenue Bond becomes prepayable according to its terms;

(b) To pay for repairs of or for the construction and installation of improvements or additions to the System; and, if the balances in the Project Debt Service Account and the Project Depreciation Account are sufficient to meet all payments required or reasonably anticipated to be made there from prior to the end of the then current fiscal year, then:

(c) To be held as a reserve for redemption and prepayment of any bonds of the System which are not then but will later be prepayable according to their terms; or

(d) To be used for any other authorized municipal purpose designated by the Common Council.

Officer shall cause all moneys not necessary for immediate use may be deposited with such depository banks in savings or time deposits. No money shall at any time be withdrawn from such deposit accounts except for the purposes of the Funds and Accounts as authorized in this Resolution; except that moneys from time to time on hand in the Funds and Accounts may at any time, in the discretion of the Town's governing body, be invested in securities permitted by the provisions of SDCL 4-5-6; provided, however, that the Depreciation Fund may be invested in such securities maturing not later than ten years from the date of the investment. Income received from the deposit or investment of moneys shall be credited to the Fund or Account from whose moneys the deposit was made or the investment was purchased, and handled and accounted for in the same manner as other moneys therein.

**10. Consent to Appointment.** In the event of mismanagement of the Project, a default in the payment of the principal or interest of the Revenue Bond, or in any other condition thereof materially affecting the lawful holder of the Revenue Bond, or if the revenues of the Project are dissipated, wasted, or diverted from their proper application as set forth in the Loan Agreement, Revenue Bond, or herein, the Town hereby consents to the appointment of a receiver pursuant to Section 33 of the Act and agrees that the receiver will have the powers set forth therein and in Sections 34 and 35 of the Act to operate and administer the Project, and charge and collect rates as described therein.

**Severability.** If any section, paragraph, clause or provision of this Resolution, the Loan Agreement, the Revenue Bond, or any other Loan Document shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the other provisions of this Resolution or said Loan Agreement, Revenue Bond, or any other Loan Document.

**11. Repeal of Resolution.** At such time as the Project Revenue Bond is defeased or paid in full this Resolution and the special charge or surcharge shall automatically be repealed without any further action of the Town.

**Authorization of Town Officials.** The President, Finance Officer, Town Attorney and Town officials shall be and they are hereby authorized to execute and deliver for and on behalf of the Town any and all other certificates, documents or other papers and to perform such other acts as they may deem necessary or



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

**RESOLUTION NO. 2022-419**

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

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

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

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

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

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

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

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

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

**WHEREAS**, effective June 23, 2022, the U.S. Bank National Association, as Trustee was succeeded by U.S Bank Trust Company National Association as Successor Trustee (the “Trustee”); and

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

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

**WHEREAS**, the Town of Buffalo Gap (the “Borrower”) has applied to the Board for financial assistance in the principal amount not to exceed \$1,147,000, for purposes authorized and permitted by the Relevant Federal Act; and,

**WHEREAS**, the Borrower will adopt a Resolution (the “Applicant Resolution”) describing the Project and approving a Loan Agreement (the “Loan Agreement”) between the Borrower and the District and a Borrower Bond of the Borrower (the “Loan Obligation”) pursuant to SDCL Chapters 9-40 and 6-8B, copies of which Loan Agreement and Loan Obligation are presently on file with the District;

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

1. The Board of Water and Natural Resources hereby approves a State Revolving Fund Loan up to a maximum Committed Amount of \$1,147,000 with up to 73.8% principal forgiveness, not to exceed \$846,000, as is set forth with particularity in the Loan Agreement and Loan Obligation contingent upon 1) the Borrower adopting a bond resolution and the resolution becoming effective; 2) the Borrower establishing a surcharge at a level sufficient to provide the

required debt coverage; and 3) the receipt of the 2022 Drinking Water State Revolving Fund capitalization grants from EPA. Borrower is a Public Entity within the meaning of SDCL §46A-2-4, and the purpose of the proposed Loan is authorized by the Relevant Federal Act and any currently applicable District/EPA Agreements.

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

3. The Loan Agreement and Loan Obligation are to be secured by special charges or surcharges payable by each customer of its System who receives or benefits from the services of the Project (project income) within the meaning of SDCL §9-40-15, and the Loan Agreement contains the applicable rate covenant and additional debt test required of the Borrower.

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

5. Borrower has represented that it will obtain or receive all necessary approvals to raise rates applicable to services furnished by the facilities financed with the Loan within statutory and constitutional limits when and as needed to pay debt service on the Loan Agreement and Loan Obligation out of the sources therein specified.

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

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

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

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

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

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

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

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

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

Dated this 29 day of September 2022.

(SEAL)

**SOUTH DAKOTA CONSERVANCY DISTRICT**

  
\_\_\_\_\_  
Chairman, Board of Water and  
Natural Resources

ATTEST:

  
\_\_\_\_\_  
Secretary, Board of Water and  
Natural Resources





### CERTIFICATE

The undersigned Heather Besco-Clyde, being duly appointed, qualified, and acting Finance Officer of the Town of Buffalo Gap and having in that capacity personal knowledge of the matters referred to herein, certifies that the following persons were elected or appointed to the offices set forth opposite their respective names below, and as such officers at the date hereof, and that no successor to any of said officers has been selected at any subsequent time, and each of said persons is duly qualified and acting in the office to which he/she was originally elected.

President

Daniel Frieden

Finance Officer

Heather Besco-Clyde

Town Attorney

Lance Russell

Trustee

Raymond Hussey

Trustee

Terry Kizer

WITNESS my hand this 23<sup>rd</sup> day of June 2023.

  
Heather Besco-Clyde, Finance Officer





United States  
Environmental Protection Agency  
Washington, D.C. 20460

EPA Project Control number

**CERTIFICATION REGARDING  
DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS**

**CERTIFICATION FOR CONTRACTS, GRANTS,  
LOANS, AND COOPERATIVE AGREEMENTS**

The prospective participant certifies to the best of its knowledge and belief that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- (b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
- (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

I understand that a false statement on this certification may be grounds for rejection of this proposal or termination of the award. In addition, under 18 USC Sec. 1001, a false statement may result in a fine of up to \$10,000 or imprisonment for up to 5 years, or both.

Heather Besco-Clyde, Finance Officer  
Typed Name & Title of Authorized Representative

 06/23/2023  
Signature of Authorized Representative Date



I am unable to certify to the above statements. My explanation is attached.

### **Instructions**

Under Executive Order 12549, an individual or organization debarred or excluded from participation in Federal assistance or benefit programs may not receive any assistance award under a Federal program, or a subagreement thereunder for \$25,000 or more.

Accordingly, each prospective recipient of an EPA grant, loan, or cooperative agreement and any contract or subagreement participant thereunder must complete the attached certification or provide an explanation why they cannot. For further details, see 40 CFR 32.510, Participants' responsibilities, in the regulation.

### **Where to Submit**

The prospective EPA grant, loan, or cooperative agreement recipient must return the signed certification or explanation with its application to the appropriate EPA Headquarters or Regional office, as required in the application instructions.

A prospective prime contractor must submit a completed certification or explanation to the individual or organization awarding the contract.

Each prospective subcontractor must submit a completed certification or explanation to the prime contractor for the project.

### **How to Obtain Forms:**

EPA includes the certification form, instructions, and a copy of its implementing regulation \* (40 CFR Part 32) in each application kit. Applicants may reproduce these materials as needed and provide them to their prospective prime contractor, who, in turn, may reproduce and provide them to prospective subcontractors.

Additional copies/assistance may be requested from:

Office of Grants and Debarment  
Suspension and Debarment Division  
U.S. Environmental Protection Agency  
401 M. Street, S.W.  
Washington, D.C. 20460  
(Telephone: 202-260-8025)



## BORROWER BOND

**FOR VALUE RECEIVED**, the undersigned, Town of Buffalo Gap, PO Box 295, Buffalo Gap, SD 57722, (the "Borrower"), promises to pay, but only from the sources described herein, to the order of the South Dakota Conservancy District (the "District"), or its successors and assigns, the principal sum equal to the sum of the amounts entered on Schedule A hereto under "Total Amount Advanced," less the amount of principal forgiven pursuant to Section 4.2 of the Loan Agreement, but not to exceed the maximum committed amount. The said principal shall be payable in quarterly installments, each payable on the fifteenth day of February, May, August and November of each year (each such date for payment of principal is referred to herein as a "Loan Payment Date") commencing on the first Loan Payment Date occurring after the Initial Loan Amortization Date, subject to revision as required by Sections 4.2 and 5.1 of the Loan Agreement (as defined below). Each installment shall be in the amount set forth opposite its due date in Schedule B hereto under "Payment Amount." The portion of each such payment consisting of principal shall be as set forth in Schedule B hereto.

Upon each disbursement of Loan amounts to the Borrower pursuant to the Loan Agreement described below, the District shall enter (or cause to be entered) the amount advanced on Schedule A under "Advances" and the total amount advanced under the Loan Agreement, including such disbursement under "Total Amount Advanced." The District shall prepare Schedule B and revised Schedules B, or cause Schedule B and revised Schedules B to be prepared, as provided in Sections 4.2 and 5.1 of the Loan Agreement. Past-due payments of principal bear interest at the rate of 8% per annum, compounded on each Loan Payment Date, until paid.

All payments under this Borrower Bond shall be payable at the principal corporate trust office of U.S. Bank Trust Company, National Association, in St. Paul, Minnesota, or such other place as the District may designate in writing.

This Borrower Bond is issued pursuant to and is secured by a certain Loan Agreement, dated the date hereof (the "Loan Agreement"), by and between the Borrower and the District, the terms and provisions of which are incorporated herein by reference. This Borrower Bond is further secured by the Collateral Documents and other Loan Documents, each of which terms have the meanings assigned thereto in the Loan Agreement.

The Borrower shall not prepay any principal payment set forth on Schedule B to the Borrower Bond any more than 15 days prior to the due date set forth in such Schedule B, unless the District consents in writing to such prepayment. If the Loan



is prepaid in part, principal payments shall be reduced in inverse order of maturity. A prepayment without the District's consent shall be returned to the Borrower.

The Borrower shall, as authorized by SDCL § 9-40-15 segregate the income from the Project ("Project Income") in a separate account. For this purpose, the Borrower shall establish a special charge or surcharge payable by each customer of its System who receives or benefits from the services of the Project. Such charge or surcharge shall be set at a level which, assuming a 10% delinquency rate, will produce Project Income at the times and in the amounts sufficient to pay when due the principal on this Borrower Bond and all other payments under the Loan Agreement and this Borrower Bond. The Borrower pledges to the District for the payment of the Loan Payments all Project Income.

All payments of principal on this Borrower Bond and other payment obligations of the Borrower hereunder shall be limited obligations of the Borrower payable solely out of the income and revenues described in the preceding paragraph and shall not be payable out of any other revenues of the Borrower. The obligations of the Borrower under this Borrower Bond shall never constitute an indebtedness of the Borrower within the meaning of any State constitutional provision or statutory limitation and shall never constitute or give rise to a pecuniary liability of the Borrower or a charge against its general credit or taxing power.

This Borrower Bond is issued pursuant to South Dakota Codified Laws Chapters 9-40 and 6-8B and any acts amendatory thereto and Resolution No. 2022-02 of the Borrower adopted on December 6, 2022 and is subject to all the provisions and limitations of such Chapters 9-40 and 6-8B, any amendatory acts and such Resolution and by this reference, all provisions and limitations of the Resolution and SDCL chapter 9-40, and any amendments to SDCL chapter 9-40 shall become a part of this Borrower Bond as if set forth at length herein. Accordingly, pursuant to SDCL 9-40-18 the taxing powers of the Borrower may not be used to pay any Loan Payment, and no funds or property of the Borrower other than those referred to in the preceding paragraph may be used to pay Loan Payments, except as may be otherwise provided by law.

In the event of default in the payment of this Borrower Bond and if the same is collected by an attorney at law, the Borrower agrees to pay all costs of collection, including a reasonable attorneys' fee.

The Borrower hereby waives presentment for payment, demand, protest, notice of protest and notice of dishonor.



This Borrower Bond and all instruments securing the same are to be construed according to the laws of the State of South Dakota. Signed and sealed this 23rd day of June 2023.

[SEAL]

**TOWN OF BUFFALO GAP,  
SOUTH DAKOTA**

Attest:

By: *Heather B. Clyde*  
Title Finance Officer

By: *[Signature]*  
Title President

Date of Authentication: June 23, 2023

Authenticated by:  
U.S. Bank Trust Company,  
National Association

Countersigned by:

By: *[Signature]*  
Title: Vice President

*[Signature]*  
Todd V. Meierhenry,  
Resident Attorney



© 0085 746

Pursuant to the Amended and Restated Master Trust Indenture dated as of July 1, 2004, by and between the District and The First National Bank in Sioux Falls, Sioux Falls, South Dakota, as Trustee, a First Amendment to Amended and Restated Master Trust Indenture dated October 1, 2005, a Second Amendment to Amended and Restated Master Trust Indenture dated April 1, 2006, a Third Amended and Restated Master Trust Indenture dated March 1, 2008, the Series 2008 Supplemental Indenture dated March 1, 2008, a Fourth Amended and Restated Master Trust Indenture dated August 1, 2009, a Fifth Amended and Restated Master Trust Indenture dated September 1, 2010, and a First Amendment to Fifth Amended and Restated Master Trust Indenture dated February 17, 2015 (the "Indenture"), and Section 8.1 of the Loan Agreement, the District hereby assigns, grants and conveys any and all of the District's rights, title and interest in this Borrower Bond to U.S. Bank Trust Company, National Association and any successor Trustee, except as otherwise provided in the Granting Clauses of the Indenture.

Dated: June 23, 2023

**SOUTH DAKOTA  
CONSERVANCY DISTRICT**

Attest:

By: Todd Bernhard  
Todd Bernhard (Jun 14, 2023 15:51 CDT)

Its: Secretary

By: Jerome Scholtz  
Jerome Scholtz (Jun 14, 2023 15:26 CDT)  
Its: Chairman

(SEAL)

LITHO IN U.S.A.

### SCHEDULE OF AMOUNTS ADVANCED

[illegible]

SCHEDULE B

<u>Payment Number</u>	<u>Payment Date</u>	<u>Payment Amount</u>	<u>Interest and Administrative Surcharge</u>	<u>Principal Paid</u>	<u>Remaining Balance</u>
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STANDARD

ALLONGE

Pursuant to the Amended and Restated Master Trust Indenture dated as of July 1, 2004, by and between the District and The First National Bank in Sioux Falls, Sioux Falls, South Dakota, as Trustee, a First Amendment to Amended and Restated Master Trust Indenture dated October 1, 2005, a Second Amendment to Amended and Restated Master Trust Indenture dated April 1, 2006, a Third Amended and Restated Master Trust Indenture dated March 1, 2008, the Series 2008 Supplemental Indenture dated March 1, 2008, a Fourth Amended and Restated Master Trust Indenture dated August 1, 2009, a Fifth Amended and Restated Master Trust Indenture dated September 1, 2010, and a First Amendment to Fifth Amended and Restated Master Trust Indenture dated February 17, 2015 (the "Indenture"), and Section 8.1 of the Loan Agreement, the District hereby assigns, grants and conveys any and all of the District's rights, title and interest in this Borrower Bond to U.S. Bank Trust Company, National Association and any successor Trustee, except as otherwise provided in the Granting Clauses of the Indenture.

Dated: June 23 2023

**SOUTH DAKOTA CONSERVANCY  
DISTRICT**

Attest:

By: [Signature]  
Its: Secretary

By: [Signature]  
Its: Chairman

(SEAL)

Name of Borrower: Buffalo Gap



**SOUTH DAKOTA CONSERVANCY DISTRICT  
STATE REVOLVING FUND**

**REVENUE OBLIGATION LOAN AGREEMENT  
PROJECT INCOME**

**LOAN AGREEMENT** made and entered into this June 23, 2023, by and between the State of South Dakota, acting through the South Dakota Conservancy District, a governmental agency, and body politic and corporate of the State of South Dakota, and the South Dakota Board of Water and Natural Resources, Joe Foss Building, 523 East Capitol Ave., Pierre, SD 57501-3182 (the "District"), and City of Buffalo Gap, PO Box 295, Buffalo Gap, SD 57722, a political subdivision of the State of South Dakota, (the "Borrower").

**WITNESSETH:**

**WHEREAS**, pursuant to SDCL 46A-1-60.1, the State has established a state water pollution control revolving fund program as authorized by the Clean Water Act as defined herein, and a state drinking water revolving fund program as authorized by the Safe Drinking Water Act as defined herein (the "Programs"), 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 and to or in trust for the holder or holders of the bonds 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**, to fund the Programs, the United States Environmental Protection Agency makes annual capitalization grants to the states for each Program, on the condition that each state provide an appropriate match for such state's revolving funds; and

**WHEREAS**, the District has entered into an Amended and Restated Master Trust Indenture dated July 1, 2004, a First Amendment to Amended and Restated Master Trust Indenture dated October 1, 2005, a Second Amendment to Amended and Restated Master Trust Indenture dated April 1, 2006, a Third Amended and Restated Master Trust Indenture dated March 1, 2008, the Series 2008 Supplemental Indenture dated March 1, 2008, a Fourth Amended and Restated Master Trust Indenture dated August 1, 2009, a Fifth Amended and Restated Master Trust Indenture dated September 1, 2010, and a First Amendment to Fifth Amended and Restated Master Trust Indenture dated February 17, 2015 (as hereafter amended or supplemented, the "Indenture") with The First National Bank in Sioux Falls, Sioux Falls, South Dakota, as Trustee (together with any



successor trustee the "Trustee") pursuant to which the District will, from time to time, issue bonds for the purpose of loaning the proceeds thereof to Borrowers in furtherance of the Programs; and

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

**WHEREAS**, effective June 23, 2022, the U.S. Bank National Association, as Trustee was succeeded by U.S. Bank Trust Company National Association as Successor Trustee (the "Trustee"); and

**WHEREAS**, the District is authorized and empowered by the provisions of SDCL chapters 46A-1 and 46A-2, as amended (the "Act"), 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 eligible Borrowers to secure and provide for the payment of such loans; and,

**WHEREAS**, the District is duly constituted as an instrumentality of the State exercising public and governmental functions under the operation, management and control of the Board of Water and Natural Resources of South Dakota (the "Board"), pursuant to the Act, and is authorized to issue bonds and to make loans to eligible Borrowers through the purchase of Loan Obligations as defined herein; and

**WHEREAS**, SDCL 46A-1-60.2 provides that funds from the Programs 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 SDCL 46A-1-60.3, inclusive; and

**WHEREAS**, the Borrower has applied to the District for Program assistance for the Project described herein and is authorized under applicable statutes, ordinances and regulations to enter into this Loan Agreement, and to issue its Borrower Bond, as herein defined, to the District for the purposes described herein, and pursuant to its powers under the Act, the District desires to loan to the Borrower from the applicable Program Subfund the amount necessary to enable the Borrower to finance, refinance or reimburse itself for the costs of the Project; and

**WHEREAS**, loaning amounts from the applicable Program Subfund to the Borrower to enable the Borrower to finance, refinance or reimburse itself for the costs of the Project, as herein defined, will carry out the purposes of the Relevant Federal Act as defined herein; and

**WHEREAS**, the Borrower desires to borrow such amount from the District subject to the terms and conditions and for the purposes set forth in this Loan Agreement, and the Borrower is authorized under applicable laws, ordinances and regulations to enter into this Loan Agreement and to issue the Borrower Bond for the purposes set forth herein; and

**WHEREAS**, the District will fund the Loan in part, directly or indirectly, with proceeds of its State Revolving Fund Revenue Bonds (the "Bonds") issued under the Indenture and in part, directly or indirectly, with funds provided by the federal Environmental Protection Agency;

**NOW THEREFORE**, for and in consideration of the premises and the covenants and representations herein contained, the parties mutually agree as follows:

## **ARTICLE I**

### **DEFINITIONS AND RULES OF INTERPRETATION**

Section 1.1. Definitions. The following terms when used in this Loan Agreement shall have the meanings indicated in this section unless the context clearly requires otherwise:

“Accountant” or “Accountants” means an independent certified public accountant or a firm of independent certified public accountants to whom the District makes no objection.

“Act” means SDCL chapters 46A-1 and 46A-2, as now in effect and as it may be from time to time amended, together with any applicable rules promulgated by the Board thereunder.

“Additional Bonds” means any of the Bonds of the District other than the Series 2010 Bonds, the Series 2012 Bonds, the Series 2014 Bonds, the Series 2017 Bonds, or the Series 2018 Bonds authorized by a Series Resolution and secured by the Master Indenture.

“Authorized Representative” means, in the case of the District, the Chairman or Secretary of the Board; in the case of the Borrower, the President of its governing body or its Finance Officer, or both; and such additional persons as, at the time, are designated by resolution to act on behalf of the Board or the Borrower, as the case may be.

“Board” means the South Dakota Board of Water and Natural Resources, a state agency created pursuant to SDCL 1-40-5, both as such Board and as the South Dakota Conservancy District, a governmental agency, body politic and corporate, created pursuant to SDCL 46A-2-1, as set forth in SDCL 46A-2-5.

“Board Resolution” means Resolution No. 2022-419 adopted by the Board of Water and Natural Resources on the 29<sup>th</sup> day of September, 2022 with respect to the Borrower, the Project, and this Loan Agreement.

“Bond Counsel” means any Counsel acceptable to the District which is a nationally recognized bond counsel. A Counsel is a nationally recognized bond counsel if it has rendered a sole legal opinion in connection with the sale of state and municipal bonds (short-term issues excluded) during the two-year period preceding the date of determination. The legal opinion rendered may be on either publicly offered or privately placed bond issues. Attorneys acting only as counsel to the underwriter do not qualify.

“Bondholder” or “Holder” or similar terms, when used with respect to the Borrower Bond, means the registered owner of the Borrower Bond.

“Bond Payment Date” means any date on which principal or Redemption Price (as defined in the Indenture) is due and payable on any Bonds.



“Bonds” means the Series 2010 Bonds, the Series 2012 Bonds, the Series 2014 Bonds, the Series 2017 Bonds, the Series 2018 Bonds, and any Additional Bonds.

“Borrower” means the eligible public entity which has entered into this Loan Agreement with the District.

“Borrower Bond” means the revenue bond or bonds issued the date of this Loan Agreement by the Borrower to the District to evidence the Borrower’s obligation to repay the principal on the Loan.

“Borrower Resolution” means Resolution No. 2022-02 adopted by the Borrower on the 6<sup>th</sup> day of December, 2022 with reference to the Project, the Borrower Bond and this Loan Agreement.

“Business Day” means any day which (i) is not a Saturday or Sunday, (ii) is not a day on which banks in South Dakota are authorized or required by law to remain closed, and (iii) in the case of notices to be given to, or other actions to be taken with respect to, a Credit Enhancer, is not a day on which such Credit Enhancer is closed.

“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.

“Closing Date” means the date of execution and delivery of this Loan Agreement and the Borrower Bond.

“Code” means the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder or officially proposed to be promulgated thereunder.

“Collateral Documents” means all resolutions authorizing the Borrower Bond or the Project, including the Borrower Resolution, and any mortgage, security agreement, guaranty, or other document or agreement received by the District securing the obligations of the Borrower under this Loan Agreement and the Borrower Bond. If no Collateral Documents are entered into, then further reference to Collateral Documents in this Loan Agreement shall be of no force and effect.

“Committed Amount” means the amount committed to be loaned to the Borrower by the District pursuant to the terms of this Loan Agreement.

“Completion Certificate” means the certificate regarding completion of the Project required by Section 3.4.

“Completion Date” means the date of completion of the Project as evidenced by a Completion Certificate.

"Construction Advance" means an advance of the Committed Amount to pay costs of the Project pursuant to Section 4.1 (a) or to reimburse the Borrower pursuant to Section 4.1 (c) for costs of a Project not yet completed.

"Consultant" means a nationally recognized consultant or firm of consultants, or an independent engineer or firm of independent engineers, or an Accountant, which in any case is qualified and has skill and experience in the preparation of financial feasibility studies or projections for facilities similar to the Borrower's System or Project, as the case may be, selected by the Borrower and satisfactory to the District.

"Counsel" means an attorney duly admitted to practice law before the highest court of any state.

"Credit Enhanced," when used with reference to any Bonds or Series of Bonds, means Bonds or a Series of Bonds the payment of the principal on which is insured or guaranteed by a Credit Enhancer.

"Credit Enhancement" or "Credit Facility" means any letter of credit, insurance policy, guaranty bond or other instrument or agreement delivered to the Trustee to provide credit enhancement for a Series of Bonds (or a portion of such Series). "Credit Enhancement" or "Credit Facilities" means, collectively, all Credit Enhancement which is then in existence with respect to any outstanding Bonds; references to Credit Enhancement, Credit Facility, Credit Enhanced and Credit Enhancer shall be disregarded if no Bonds are, at such time, Credit Enhanced and shall be disregarded with respect to any Bonds which are not Credit Enhanced.

"Credit Enhancer" means, with respect to any Bonds, the institution providing Credit Enhancement for such Bonds.

"Debt" means (1) indebtedness of the Borrower for borrowed money or for the deferred purchase price of property or services, and expressly including the obligation to pay principal and interest on or with respect to revenue bonds, (2) the obligation of the Borrower as lessee under leases which should be recorded as capital leases under generally accepted accounting principles, and (3) obligations of the Borrower under direct or indirect guarantees in respect of, and obligations, contingent or otherwise, to purchase or otherwise acquire, or otherwise to assure a creditor against loss in respect of, indebtedness or obligations of others of the kinds referred to in subdivisions (1) and (2) above.

"District" means the South Dakota Conservancy District, a governmental agency, body politic and corporate constituted as an instrumentality of the State of South Dakota exercising public and essential governmental functions and created by the Act, or any body, agency or instrumentality of the State of South Dakota which shall hereafter succeed to the powers, duties or functions of the District under the Indenture and this Loan Agreement.

"District-EPA Agreements" means any and all capitalization grant agreements and other agreements between the District or the S.D. Department of Agriculture and Natural Resources (the "Department") and the EPA relating to the Programs and the use of moneys governed by such agreements.

"District Officer" means the Chairman or Secretary of the governing body of the District, and, when used with reference to an act or document, also means any other person authorized by resolution of the District to perform such act or sign such document. If authorized by resolution of the District, a District Officer may delegate any portion of his authority as a District Officer to another person and such person shall be deemed a District Officer for purposes of exercising such authority.

"EPA" means the Environmental Protection Agency, an agency of the United States of America, and any successor to its functions under the Relevant Federal Act, or any other agency of the United States of America having jurisdiction with respect to the funding of Loans for the Program.

"EPA Capitalization Grant" means a grant of funds to the State by the EPA under the Relevant Federal Act and any grant made available by the EPA for deposit in the State Revolving Fund pursuant to the Relevant Federal Act.

"Event of Default" means any event described in section 9.1 hereof.

"Governmental Unit" means governmental unit as such term is defined in Section 150(a) of the Code.

"Indenture" means the Amended and Restated Master Trust Indenture dated as of July 1, 2004, between the District and the Trustee, a First Amendment to Amended and Restated Master Trust Indenture dated October 1, 2005, a Second Amendment to Amended and Restated Master Trust Indenture dated April 1, 2006, a Third Amended and Restated Master Trust Indenture dated March 1, 2008, the Series 2008 Supplemental Indenture dated March 1, 2008, a Fourth Amended and Restated Master Trust Indenture dated August 1, 2009, a Fifth Amended and Restated Master Trust Indenture dated September 1, 2010, a First Amendment to Fifth Amended and Restated Master Trust Indenture dated February 17, 2015, and all Series Resolutions and other supplements and amendments thereto, including the Series 2018 Resolution.

"Initial Loan Amortization Date" means August 15, 2025 or, if earlier, the earliest of the following: (a) the first Loan Payment Date following the month the full Committed Amount is disbursed pursuant to Section 4.1, or (b) the first Loan Payment Date following the date on which

Borrower is required to deliver the Completion Certificate pursuant to Section 3.4 of the Loan Agreement.

"Initial Operation Date" means the date on which operation of the Project begins for the purposes for which it was planned, designed and constructed.

"Loan" means the Loan made by the District to the Borrower pursuant to the terms of this Loan Agreement and as evidenced by the Borrower Bond.

"Loan Agreement" means this Loan Agreement, including the Appendices and amendments attached hereto.

"Loan Documents" means this Loan Agreement, the Borrower Bond and the Collateral Documents, collectively.

"Loan Obligation" means any evidence of indebtedness or other obligation to repay a loan, acquired by the District pursuant to the Loan Agreement, which is issued by a Public Entity and payable from taxes, non-ad valorem sales taxes, or from rates, revenues, charges or assessments, or distributions of revenue pursuant to a state appropriation or statutory or constitutional provision, or payable from a pledge of property, or other amounts.

"Loan Payment Date" means the fifteenth day of February, May, August and November of each year, on which Loan Payments on the Borrower Bond are due as set forth herein.

"Loan Payments" means the payments of principal on or with respect to the Loan pursuant to this Loan Agreement and the Borrower Bond and all other payments required under this Loan Agreement and the Borrower Bond.

"Loan Proceeds Account" means the account of the District from which the Loan is to be funded, whether such account is established with the Trustee or otherwise.

"Loan Term" means the period commencing with the Closing Date and continuing until the Borrower Bond has been paid in full, or provision for such payment has been made as provided herein, and all obligations hereunder have been satisfied.

"Nonexempt Person" means a Person which is not a Governmental Unit.

"Opinion of Bond Counsel" means a written Opinion of Counsel by Bond Counsel provided as required herein, which opinion shall comply with the requirements of Section 6.6 hereof.

"Opinion of Counsel" means a written opinion of Counsel selected by the Borrower and acceptable to the District and, if the opinion pertains to a Series of Bonds all or a portion of which is Credit Enhanced, the Credit Enhancer for such Series or portion thereof.

"Person" means any Private Person, Private Entity or Public Entity.

“Private Entity” means any nonprofit or cooperative corporation but not a public body or political subdivision.

“Private Person” means any natural person, firm, partnership, association or corporation but not a public body or political subdivision.

“Program” means any program now or hereafter described in the Act pursuant to which the Board of Water and Natural Resources makes loans to private or public entities for various environmental, health, or infrastructure purposes, including projects or purposes authorized by either the Clean Water Act or by the Safe Drinking Water Act, whichever is applicable to the Project herein described.

“Project” means the facilities, improvements and activities financed, or the cost of which is being reimbursed to the Borrower pursuant to this Loan Agreement and the Borrower Bond, as described in Appendix A hereto.

“Project Costs” means all those costs and expenses of the Project approved by the District as eligible costs.

“Project Debt” has the meaning given such term in Section 6.5.

“Project Income” has the meaning given such term in Section 5.5(a).

“Public Entity” means a state agency or a municipality, county, sanitary district, water user district, water project district, township, irrigation district, watershed district, water development district, conservation district, recycling and waste management district or any other political or administrative subdivision of state government recognized by state law.

“Related Person” means related person, as such term is described in Section 147(a)(2) of the Code.

“Relevant Federal Act” means the Clean Water Act or the Safe Drinking Water Act as defined herein, whichever is applicable to the Project herein described.

“Safe Drinking Water Act” means the federal Safe Drinking Water Act, 42 U.S.C. § 300f et seq., including the Safe Drinking Water Act Amendments of 1996, any subsequent amendments thereto and any other applicable statutes governing any Program funded hereunder, and includes the EPA’s Drinking Water State Revolving Fund Program Guidelines, any amendments thereof issued pursuant thereto, and any other applicable regulations.

“Series” means all Bonds issued under the Indenture on the same date and designated by the District to be of the same Series.

“Series 2010 Bonds” means the District’s State Revolving Fund Revenue Bonds, Series 2010AB, issued pursuant to the Indenture.

“Series 2012 Bonds” means the District’s State Revolving Fund Revenue Bonds, Series 2012, issued pursuant to the Indenture.

“Series 2014 Bonds” means the District’s State Revolving Fund Revenue Bonds, Series 2014, issued pursuant to the Indenture.

“Series 2017 Bonds” means the District’s State Revolving Fund Revenue Bonds, Series 2017, issued pursuant to the Indenture.

“Series 2018 Bonds” means the District’s State Revolving Fund Revenue Bonds, Series 2018, issued pursuant to the Indenture.

“Series 2018 Resolution” means the Series Resolution adopted by the Board of Water and Natural Resources on November 8, 2018 in connection with the issuance and sale of the Series 2018 Bonds.

“Series Resolution” means a resolution authorizing a series of Bonds to be issued under and secured by the Indenture.

“State” means the State of South Dakota.

“Subsequent Loan Amortization Date” means, if the Initial Loan Amortization Date occurs prior to the first Loan Payment Date following the first month after the date on which the Borrower is required to deliver the Completion Certificate pursuant to Section 3.4 of the Loan Agreement, (i) the first Loan Payment Date following every sixth month after the Initial Loan Amortization Date until the date in the following clause (ii) occurs and (ii) the first Loan Payment Date following the fifth month after the date on which the Borrower is required to deliver the Completion Certificate pursuant to Section 3.4 of the Loan Agreement.

“System” means the Borrower’s drinking water system.

“System Debt” means Debt incurred to acquire, construct, extend, improve, add to or otherwise pay expenses of or related to the Borrower’s System, without regard to whether the source of payment or security for such Debt constitutes general obligation or revenue Debt.

“Trustee” means U.S. Bank Trust Company, National Association or any successor thereto as trustee under the Indenture.

Section 1.2. Rules of Interpretation. For all purposes of this Loan Agreement, except as otherwise expressly provided or unless the context otherwise requires: (a) the singular includes the plural and the plural, the singular; (b) words importing any gender include the other genders; (c) references to statutes are to be construed as including all statutory provisions consolidating, amending or replacing the statute to which reference is made and all regulations promulgated pursuant to such statutes; (d) references to “writing” include printing, photocopy, typing, lithography and other means of reproducing words in a tangible visible form; (e) the words

“including,” “includes” and “include” shall be deemed to be followed by the words “without limitation”; (f) references to the introductory paragraph, preliminary statements, articles, sections (or subdivisions of sections), exhibits, appendices, annexes or schedules are to those of this Loan Agreement unless otherwise indicated; (g) references to agreements and other contractual instruments shall be deemed to include all subsequent amendments and other modifications to such instruments, but only to the extent that such amendments and other modifications are permitted or not prohibited by the terms of this Loan Agreement; (h) references to Persons, including the District and the Trustee, include their respective successors and assigns permitted or not prohibited by the terms of this Loan Agreement; (i) an accounting term not otherwise defined has the meaning assigned to it in accordance with financial and reporting standards as promulgated by the Governmental Accounting Standards Board, the Financial Accounting Standards Board, or an Other Comprehensive Basis of Accounting, as applicable; (j) “or” is not exclusive but contemplates or permits one or more or all of the alternatives conjoined; (k) provisions apply to successive events and transactions; (l) references to documents or agreements which have been terminated or released or which have expired shall be of no force and effect after such termination, release or expiration; (m) references to mail shall be deemed to refer to first-class mail, postage prepaid, unless another type of mail is specified; (n) all references to time shall be to Pierre, South Dakota time; (o) references to specific persons, positions or officers shall include those who or which succeed to or perform their respective functions, duties or responsibilities referred to in the Loan proceedings; (p) the terms “herein,” “hereunder,” “hereby,” “hereto,” “hereof” and any similar terms refer to this Loan Agreement as a whole and not to any particular article, section or subdivision hereof, and the term “heretofore” means before the date of execution of this Loan Agreement, the term “now” means at the date of execution of this Loan Agreement and the term “hereafter” means after the date of execution of this Loan Agreement; and (q) references to payments of principal include any premium payable on the same date.

Section 1.3 Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment.

As required by 2 CFR 200.216, EPA recipients and sub-recipients, including borrowers under EPA funded revolving loan fund programs, are prohibited from obligating or expending loan or grant funds to procure or obtain; extend or renew a contract to procure or obtain; or enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities). Recipients, sub-recipients, and borrowers also may not use EPA funds to purchase:

- a. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

b. Telecommunications or video surveillance services provided by such entities or using such equipment.

c. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country. Consistent with 2 CFR 200.471, costs incurred for telecommunications and video surveillance services or equipment such as phones, internet, video surveillance, and cloud servers are allowable except for the following circumstances: Obligor or expending EPA funds for covered telecommunications and video surveillance services or equipment or services as described in 2 CFR 200.216 to:

(1) Procure or obtain, extend or renew a contract to procure or obtain;

(2) Enter into a contract (or extend or renew a contract) to procure; or

(3) Obtain the equipment, services, or systems. Certain prohibited equipment, systems, or services, including equipment, systems, or services produced or provided by entities identified in section 889, are recorded in the System for Award Management exclusion list.

## ARTICLE II

### REPRESENTATIONS AND COVENANTS

Section 2.1. Representations of the Borrower. The Borrower makes the following representations:

(a) The Borrower is a Public Entity duly organized and existing under the laws of the State; has taken all proper action, including adoption of the Borrower Resolution, to authorize the execution, delivery and performance of its obligations under the Loan Documents and the incurring of the debt represented by the Borrower Bond in the maximum amount of the Committed Amount; and has the necessary power and authority, together with all licenses and permits required to own and operate the System and carry on its current activities with respect to the System, and to enter into and consummate all transactions contemplated by the Loan Documents, and to carry out its obligations hereunder and thereunder.

(b) There is no action, suit, proceeding, inquiry or investigation at law or in equity, by or before any judicial or administrative court, agency or body, pending or threatened against the Borrower or its System, wherein an unfavorable decision, ruling, or finding would materially adversely affect the validity or enforceability of the Loan Documents or would materially adversely affect the ability of the Borrower to comply with its obligations under the Loan Documents.



(c) No referendum petition has been filed with respect to any ordinance or resolution of the Borrower relating to the Loan Documents, and the period for filing any such petition has expired.

(d) Neither the execution and delivery of the Loan Documents, the consummation of the transactions contemplated thereby, nor the fulfillment of, or compliance with the provisions of the Loan Documents will conflict with or result in the breach of any of the terms, conditions or provisions of the Act, or any restriction, agreement, or instrument to which the Borrower is a party, or by which it is bound, or result in the creation or imposition of any lien of any nature upon any of the property of the Borrower under the terms of any such instrument or agreement, nor will such action result in the violation of any provisions of any laws, ordinances, governmental rules and regulations, or court or other governmental orders to which the Borrower, its property or operations are subject.

(e) No event of default has occurred in any agreement or instrument as to any outstanding indebtedness of the Borrower for money borrowed, and no condition, event or act exists which, with the lapse of time or the giving of notice, would constitute an event of default under any such agreement or instrument. The Borrower is not in violation of any term of any restriction, agreement, indenture, ordinance, resolution, charter, or other instrument to which it is a party or which it or its property may be bound, which violation would materially adversely affect the transactions contemplated hereby or the compliance by the Borrower with the terms of the Loan Documents.

(f) The Borrower has duly acquired and obtained those rights-of-way, easements, permits, licenses, or other authorizations necessary for the conduct of its activities, including the ownership and operation of the System and the construction of the Project, except those licenses, permits and other authorizations to be received upon completion of the Project, and agrees to acquire all such authorizations in the future as may be required for its System and the operation thereof, which failure to obtain might materially and adversely affect the ability of the Borrower to operate its System as presently operated, or the condition of the Borrower's System, financial or otherwise, or the Borrower's ability to perform its obligations under the Loan Documents.

(g) This Loan Agreement, the Borrower Bond, and any Collateral Documents to which the Borrower is a party are the legal, valid and binding obligations and agreements of the Borrower, enforceable against the Borrower according to their terms, except as the enforceability thereof may be limited by laws relating to bankruptcy, insolvency or other similar laws affecting creditors' rights generally and general principles of equity.

(h) The Project consists of the facilities, improvements and activities described in Appendix A, as such Appendix may be amended from time to time.

(i) There is no fact that the Borrower has not specifically disclosed in writing to the District that materially and adversely affects or, except so far as pending or proposed legislation or regulations that are a matter of general public information, that will materially adversely affect the properties, operations and finances of the Borrower's System, its status as a Public Entity, its ability to own and operate the System, in the manner it is currently operated, or the Borrower's ability to perform its obligations under the Loan Documents, or to pledge any revenues or property to the payment of the Loan Payments.

(j) The total outstanding System Debt of the Borrower (including, for these purposes, the Committed Amount of the Borrower Bond) is \$1,147,000.

Section 2.2. Covenants of the Borrower. The Borrower covenants and agrees as follows:

(a) The Borrower shall, at all times during the term of this Loan Agreement and while any of the Borrower Bond is outstanding, keep and maintain with respect to the Project and the System property and casualty insurance and liability insurance with insurers licensed to do business in the State, or risk pool coverage programs described in SDCL chapter 3-22, against such risks and in such amounts as are customary in the State for entities of the same or similar size and type as the Borrower, and similarly situated with facilities of the System's type, and provide proof of such coverage to the District.

(b) In the event of cancellation of coverage the Borrower will promptly obtain replacement insurance with the same or substantially similar coverage and provide proof of such coverage to the District. In the event of a substantial change in insurance, issuance of a new policy, renewal, replacement, or changes in coverage, the Borrower will promptly provide written notice of such changes to the District and provide a new certificate of insurance showing continuous coverage in the amounts required.

(c) The Borrower shall grant the District and its authorized representatives the right, at all reasonable times and upon reasonable notice, to enter upon the property of the Borrower for the purpose of inspecting the System and/or any or all books and records of the Borrower related to the System.

(d) The Borrower shall immediately upon the execution and delivery of this Loan Agreement, at its own expense, cause this Loan Agreement, the Borrower Bond, and any Collateral Documents granting a first security interest or a first lien in revenues or property, and any financing statements or other documents relating thereto to be filed, recorded, or registered in such manner and in such places as are specified by the District in writing, and to otherwise do such acts as are reasonably deemed necessary or advisable by the District to fully perfect and protect the validity and priority of the lien and security interest granted to the District, and to continue the perfection of such security interest and lien. The Borrower agrees to execute any further documents, agreements, instruments or other writings that may

be requested by the District for such perfection and protection, including executing and filing continuation statements.

(e) The Borrower agrees to maintain the necessary and appropriate accounts, records and books in which full and correct entries are made, capable of allowing the preparation of annual financial statements prepared in accordance with generally accepted financial and reporting standards as promulgated by the Governmental Accounting Standards Board, or the Financial Accounting Standards Board, as appropriate, or an Other Comprehensive Basis of Accounting as defined by the American Institute of Certified Public Accountants, and agrees to maintain Project accounts as separate accounts as required by the Relevant Federal Act. The District and its authorized representatives shall have the right to inspect such books and accounts upon reasonable notice, during normal business hours.

(f) The Borrower agrees that each year it shall prepare and send to the District:

- (1) when adopted, its final budget, within 30 days of adoption; and,
- (2) an unaudited statement of the financial position of the Borrower as of the close of the fiscal year and the related statements of revenues and expenses, cash flows, fund balances and changes in fund balances for such fiscal year in accordance with financial and reporting standards as promulgated by the Governmental Accounting Standards Board, the Financial Accounting Standards Board, or an Other Comprehensive Basis of Accounting as appropriate, and certified by a responsible official of the Borrower. Such statement shall be prepared by the Borrower within 120 days of the end of the Borrower's fiscal year.

In addition, Borrower shall send the District copies of any financial and compliance audit required by state law within 15 days of issuance or acceptance by the State Department of Legislative Audit. In addition, Borrower will send to the District a copy of any internal control review report done by or submitted to the State Department of Legislative Audit within 15 days after it has been issued or accepted by the State Department of Legislative Audit. The Borrower agrees to comply with the Single Audit Act of 1984 as amended.

The Borrower agrees to provide to the District, in connection with the issuance and sale by the District of Additional Bonds or with any sale or other assignment by the District of any or all of its rights under the Loan Documents and the Borrower Bond, any and all financial and other information and documents which the District requests in order to prepare a preliminary or final official statement or other disclosure document to be delivered to purchasers or offerees of the Additional Bonds or of direct or indirect interests in any or all of the rights of the District under the Loan Documents and the Borrower Bond.

The Borrower represents that any such information and documents supplied by the Borrower, taken as a whole, will not contain any untrue or misleading statement of a material fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(g) The Borrower agrees, whenever requested by the District, to provide and certify, or cause to be provided and certified, such information concerning the Borrower, its System, its finances, the Project, or such other topics as the District from time to time reasonably considers necessary or appropriate, including such information as necessary to enable the District or its authorized representatives to make any reports required by state or federal law or regulation.

(h) After reasonable notice from the EPA, the Borrower shall make available to the EPA such records as the EPA reasonably requires to review and determine compliance with the Relevant Federal Act.

(i) The Borrower has complied and shall comply with all conditions and requirements of the Relevant Federal Act pertaining to the Loan, Project or the System, and covenants to comply with all representations, covenants, conditions and agreements, if any, set forth in Appendix C hereto.

(j) The Borrower does not and shall not in the construction, maintenance and operation of its System discriminate in any way on the basis of race, creed, color, religion, sex or national origin.

(k) The Borrower will provide an Opinion of Bond Counsel in substantially the form of Appendix D attached hereto prior to closing.

(l) The Borrower represents that within six months after the date of this Loan Agreement, the Borrower expects to incur a substantial binding obligation to commence or acquire the Project to be financed by the Loan and upon incurring such binding obligation, agrees that work on or acquisition of the Project will proceed with due diligence to completion. The Borrower further represents that it expects to expend all proceeds of the Borrower Bond within three (3) years after the date of this Loan Agreement.

### ARTICLE III

#### PURCHASE OF BONDS

Section 3.1. Use of the Proceeds. The Borrower shall apply the proceeds of the Loan from the District solely as follows:

(a) The Borrower shall apply the proceeds of the Loan solely to the financing, refinancing or reimbursement of the costs of the Project as set forth in Appendix A hereto. The Loan will be disbursed in accordance with Article IV hereof. Unless the Project has been completed prior to closing, the Borrower agrees to construct the Project with all reasonable dispatch and to use all reasonable efforts to cause such construction to be completed and the Committed Amount expended for the costs of the Project as soon as reasonably possible.

(b) No portion of the proceeds of the Loan shall be used to reimburse the Borrower for costs paid prior to the date of this Loan Agreement of a Project the construction or acquisition of which occurred or began earlier than July 1, 1993 for a drinking water project, or before March 7, 1985 for a clean water project. If any proceeds of the Loan are to be used (1) to reimburse the Borrower for expenditures made prior to the Closing or (2) to refinance taxable debt any of the proceeds of which were used to reimburse the Borrower for expenditures made prior to the Closing, the Borrower represents that it has complied with the requirements of treasury regulation Section 1.150-2, or any successor thereto, so that on the date such proceeds are disbursed they will be considered under such Regulation to be proceeds of the Borrower Bond which have been spent.

(c) Any Debt being refinanced with proceeds of the Loan shall have been incurred after July 1, 1993 for a Project the construction or acquisition of which occurred or began after July 1, 1993 for a drinking water project, or incurred after March 7, 1985 for a Project the construction or acquisition of which occurred or began after March 7, 1985 for a clean water project.

Section 3.2. The Project. Set forth in Appendix A hereto is the Borrower's description of the purposes for which it intends to use the proceeds of the Loan. The property which has been or is to be acquired, installed or improved, the construction which has been or is to be undertaken, and the other activities, if any, to be funded, as described in Appendix A, are herein referred to as the Project. The Project may consist of more than one facility or activity. The Project may be amended by the Borrower with the prior written consent of the District. Proposed amendments to the Project shall be submitted to the District in writing, stating the reasons for the amendment and the impact of the amendment on the amount of Loan proceeds required to complete the Project. The proposed amendment shall be accompanied by an Opinion of Bond Counsel stating that the Project, as constituted after such amendment, could have been financed under the Act at the time of issuance of any Bonds the proceeds of which funded the Loan, such amendment will not violate the Act or the laws governing the issuance of the Borrower Bond, and such amendment will not adversely affect the exclusion of interest on any of the Bonds and the Borrower Bond from gross

income for purposes of federal income taxation. Such an Opinion of Bond Counsel shall not be required for amendments which do not affect the type of costs or facility to be constructed or the activity to be funded.

Section 3.3. Project Representations and Covenants. The Borrower hereby represents and covenants that:

(a) all construction on the Project has complied and will comply with applicable federal, state and local laws, regulations, ordinances, and standards, including specifically federal requirements that all of the iron and steel products used in the Project are to be produced in the United States;

(b) all construction will be done pursuant only to a fixed price contract, and that the Borrower will obtain performance and payment bonds from the contractor for each construction contract in the amount of 100% of the contract price and will ensure that such bonds are maintained until the construction is completed;

(c) all land surveys will be conducted by a land surveyor registered in the State of South Dakota, and the final plans and specifications will be prepared under the supervision of a professional architect or engineer licensed and registered in the State of South Dakota. All construction will be done in accordance with the plans and specifications on file with the District, and all changes made in those plans and specifications will be filed with the District. The Borrower will maintain an "as built" set of plans and specifications and an acceptance certificate completed by the architect or engineer in charge of the Project at its principal place of business;

(d) the Project is the type of project permitted to be financed under the applicable Program, the Act, and the laws governing the issuance of the Borrower Bond.

Section 3.4. Completion of the Project. Upon completion of the Project, the Borrower shall deliver to the District a Completion Certificate stating that the Project is complete, indicating the amount of the Committed Amount which will be required to pay any remaining Project costs, stating that all other costs and expenses of the Project have been paid, and that there exists no lien or encumbrance with respect to the System, and releasing the remainder of the Committed Amount, if any. If Appendix A describes more than one separate project as making up the Project, a Completion Certificate shall be required for each project. The Completion Certificate shall be accompanied by an acceptance certificate from the architect or engineer in charge of inspecting and monitoring the construction of the Project for the Borrower, stating that the construction was completed substantially in accordance with the plans and specifications therefore.

Section 3.5. Reduction of Project Costs. If all or a portion of the Project is canceled or scaled back and the costs of the Project are thereby reduced, or if for any reason the Borrower will not require the full Committed Amount, the Borrower shall promptly notify the District and release the portion of the Committed Amount which will not be needed.

Section 3.6. Loan Term. The Borrower's obligations under the Loan Documents shall commence on the date hereof unless otherwise expressly provided in this Loan Agreement. Provided, however, that the obligation to make payments as set forth herein and in the Borrower Bond shall commence only upon the first disbursement of Loan proceeds. The Borrower's obligations shall terminate upon payment in full of all amounts due under the Loan Documents. Provided, however, that the Borrower's obligations as set forth in sections 6.3(c), 7.1, 9.4 and 10.5 hereof shall survive such termination.

#### ARTICLE IV

#### LOAN TO THE BORROWER

Section 4.1. The Loan; Disbursement of Loan. The District agrees that upon satisfaction of the terms and conditions set forth in this Loan Agreement and compliance by the Borrower with those state laws dealing with the issuance of the Borrower Bond for the Project, it will loan to the Borrower an amount up to \$1,147,000 (the "Committed Amount") in accordance with the terms and conditions of this Loan Agreement, such Loan to be evidenced by the purchase by the District from the Borrower of the Borrower Bond, for the purpose of financing, refinancing, or reimbursing the Borrower for the eligible costs of the Project. The Loan shall be disbursed as follows:

(a) The Loan proceeds will be disbursed to the Borrower based upon the Borrower's request for disbursements subject to satisfaction of the terms and conditions of this Loan Agreement and satisfaction of all applicable preconditions imposed upon the District, Borrower and Project by law. In order to obtain a disbursement, the Borrower shall submit to the District a signed request for disbursement on a form prescribed by the District, together with all attachments required by such form. Disbursements may be obtained only for those Project costs which have been legally incurred, and which are due and payable, or have been paid by the Borrower. The Borrower will designate, by duly adopted resolution, an official to certify on Borrower's behalf that the request submitted is correct and is a valid expenditure for the Project. The Borrower is required to submit a W-9 form with the "Required Direct Deposit Information" completed which will authorize the Board to make electronic payments by direct deposit and provide electronic payment notification to the Borrower. This form is available through the DANR Fiscal Office or it can be downloaded directly from <http://DANR.sd.gov/dfta/wwf/SRFACHW-9Form.pdf>. The Borrower must fax the completed form to (605) 773-4068, or scan and email to [DANRmail@state.sd.us](mailto:DANRmail@state.sd.us) with "Attn: SRF Section" in the subject line, or mail it to:

Department of Agriculture and Natural Resources  
Division of Financial and Technical Assistance  
523 East Capitol  
Pierre, SD 57501-3182  
Attention SRF Section

The District reserves the right, at its option, to disburse the funds directly to the contractor or sub-contractor supplying the service or material for which the payment is sought.

(b) For refinancings, a disbursement schedule complying with the requirements of the Relevant Federal Act shall be established by the District and the Borrower at Closing. The Loan amounts shall be disbursed directly to the holder of the debt being refinanced according to such schedule. If the Borrower should repay all or a portion of the debt to be refinanced from other sources or should otherwise not need any portion of the Loan which was to have been used to refinance such debt, it shall inform the District and Trustee of such fact pursuant to Section 3.5 and a new disbursement schedule shall be drawn up by the District. The Trustee or District shall obtain a receipt from the holder of the debt being refinanced for each disbursement made to pay or prepay a portion of such debt.

(c) If all or a portion of a Loan is made to reimburse the Borrower for Project costs paid by it prior to Closing, the Borrower shall present at Closing the items required by Section 4.1 (a) relating to such costs. Such amounts will be disbursed to the Borrower pursuant to a disbursement schedule complying with the requirements of the Relevant Federal Act and the Program established by the District and the Borrower at the Closing.

(d) Notwithstanding anything else provided herein, the District shall not be obligated to disburse Loans any faster or to any greater extent than it has available for disbursement amounts derived from EPA Capitalization Grants, proceeds of Bonds, State appropriated funds and other amounts in the Loan Proceeds Account. The Borrower acknowledges that if project costs are incurred faster than the Borrower projected at Closing, there may be delays in making Loan disbursements for such costs because of the schedule under which EPA makes EPA Capitalization Grant moneys available to the District. The District will use its best efforts to obtain an acceleration of such schedule if necessary.

(e) The Trustee shall note the disbursements and the amount of principal forgiven on each disbursement on Schedule A to the Borrower Bond.



Section 4.2. Principal Forgiveness. The amount of principal forgiven shall be determined on each disbursement made to the Borrower pursuant to Section 4.1 hereof. The District will forgive the repayment of up to 73.8%, not to exceed \$846,000 of the amounts disbursed to the Borrower.

## ARTICLE V

### REPAYMENT OF LOAN

Section 5.1. Repayment. The Borrower shall repay the amounts loaned to it pursuant to Section 4.1 hereof, in Loan Payments, due at the times and in the amounts calculated as set forth below, over a term of thirty (30) years from the Initial Loan Amortization Date. Loan Payments will be in lawful money of the United States and shall be paid to the District.

The payments of principal with respect to the Loan shall be due on the dates and in the amounts shown in Schedule B to the Borrower Bond, as such Schedule B shall be modified to reflect any principal forgiveness pursuant to Section 4.2 hereof, or as otherwise modified from time to time as provided below. The portion of each such Loan Payment consisting of principal shall be set forth in Schedule B to the Borrower Bond. Upon each disbursement of Loan amounts to the Borrower pursuant to Section 4.1 hereof, the Trustee shall enter or cause to be entered the amount advanced on Schedule A to the Borrower Bond under "Advances" and the total amount advanced under Section 4.1, including such disbursement, under "Total Amount Advanced."

If the advance was for refinancing pursuant to Section 4.1 (b) or reimbursement for a completed Project pursuant to Section 4.1 (c), the District shall on the date of the advance prepare Schedule B to the Borrower Bond, as follows, and send a copy of Schedule B to the Borrower:

(a) The principal of the advance shall be repayable quarterly on the fifteenth day of February, May, August and November, subject to the requirements of this Section 5.1, beginning on the first such date after the advance is made, and the amount of each principal payment shall be calculated on the basis of substantially level annual debt service over the remaining term of the Loan; and

(b) The principal of such advances shall be repayable quarterly on the fifteenth day of February, May, August and November, subject to the requirements of this Section 5.1, beginning on the first such date after the Initial Loan Amortization date and the amount of each principal payment shall be calculated on the basis of substantially level annual debt service over the remaining term of the Loan with combined interest and Administrative Expense Surcharge at a rate of 0% per annum.

Once the Completion Certificate for the Project is required to be delivered pursuant to Section 3.4, or the full Committed Amount is disbursed, the Trustee shall prepare or revise Schedule A and Schedule B to the Borrower Bond, the District shall verify the Trustee's calculations, and the Trustee shall send a copy of such Schedule A and Schedule B to the Borrower.

Such Schedule A and Schedule B shall be sent to the Borrower within one month after delivery of the Completion Certificate or the full Committed Amount is disbursed.

Past-due payments of principal shall bear interest at the rate of 8% per annum, compounded on each Loan Payment Date, until paid.

Any payment of principal under this Section 5.1 shall be credited against the same payment obligation under the Borrower Bond.

Section 5.2. Other Amounts Payable. The Borrower shall also pay within 30 days of receipt of a bill therefore, all reasonable expenses of the District with relation to this Loan, the Loan Agreement, the Borrower Bond, and the Collateral Documents, including but not limited to:

- (a) the costs of reproducing the Loan Documents;
- (b) the fees and disbursements of Bond Counsel and other counsel used by the District in connection with the Loan Documents, and the administration, interpretation or enforcement thereof;
- (c) all taxes and governmental charges of any kind whatsoever which may at any time be lawfully assessed or levied against or with respect to the execution and delivery of the Loan Documents and the System, including all recording and filing fees;
- (d) all expenses, including attorney fees, relating to any amendment, waiver, consents, collection proceedings, or enforcement actions in connection with or with respect to the Loan Documents.

Section 5.3. Prepayment. The Borrower shall not prepay any principal payment set forth on Schedule B to the Borrower Bond unless the District consents in writing to such prepayment. If the Loan is prepaid in part, principal payments shall be reduced in inverse order of maturity. A prepayment without the District's consent shall be returned to the Borrower.

Section 5.4. Obligations of the Borrower Unconditional. The obligations of the Borrower to make the payments required by this Loan Agreement and the Borrower Bond and to perform and observe any and all of the other covenants and agreements on its part contained herein and therein shall be absolute and unconditional irrespective of any defense or any rights of setoff, recoupment or counterclaim it may otherwise have against the District or Bondholders. The Borrower agrees it will not (a) suspend, discontinue or abate any payments required by the Loan Agreement or the Borrower Bond, (b) fail to observe any of its other covenants and agreements in the Loan Documents, (c) seek judicial or other relief from the obligation to make such payments or perform such covenants and agreements, or (d) terminate this Loan Agreement, the Borrower Bond or the Collateral Documents for any cause whatsoever, including, without limitation, failure to complete the Project, failure of consideration, commercial frustration of purpose, destruction of or damage to the Project or the System, any dispute with the District, any change in applicable laws and regulations, or any failure of the District to perform any of its agreements, provided that

nothing contained in this section shall be construed to release the District from performance of its agreements on its part contained in this Loan Agreement.

Section 5.5. Security for Loan Payments.

(a). The Borrower shall, as authorized by SDCL § 9-40-15, segregate the income from the Project ("Project Income") in a separate account. For this purpose, the Borrower shall establish a special charge or surcharge payable by each customer of its System who receives or benefits from the services of the Project. Such charge or surcharge shall be set at a level which, assuming a 10% delinquency rate, will produce Project Income at the times and in amounts sufficient to pay when due the principal on the Loan and all other payments under this Loan Agreement and the Borrower Bond. The Borrower hereby pledges to the District for the payment of the Loan Payments all Project Income. The Borrower has not granted and shall not grant or permit to exist any other lien on the Project Income without the written consent of the District, except for the parity debt set forth in Appendix F hereto, and except as provided in Section 6.5., and that other than the liens granted to secure the indebtedness set forth in Appendix F, it shall not grant or permit to exist any lien on such revenues which is superior to the lien granted in this section.

(b) The Borrower recognizes that the statutory mortgage provisions of SDCL chapter 9-40 are applicable to this Loan Agreement and the Borrower Bond. The District, as holder of the Borrower Bond, shall have all the rights and remedies of a bondholder under SDCL chapter 9-40, including without limitation the statutory mortgage provisions. The Borrower agrees that the rights and remedies may be enforced by the Trustee.

Section 5.6. Limited Liability. All Loan Payments, and other payment obligations of the Borrower pursuant to this Loan Agreement and the Borrower Bond shall be limited obligations of the Borrower payable solely out of the income and revenues pledged by the Borrower herein and shall not be payable out of other revenues of the Borrower. The obligations of the Borrower shall never constitute an indebtedness of the Borrower within the meaning of any State constitutional provision or statutory limitation and shall never give rise to a pecuniary liability of the Borrower or charge against its general credit or taxing power. Unless otherwise permitted by law, the taxing powers of the Borrower may not be used to pay any Loan Payment, and no funds or property of the Borrower, other than those described herein, may be used to pay Loan Payments.

Section 5.7. Incorporation of SDCL Chapter 9-40. The Borrower is entering into this Loan Agreement and issuing the Borrower Bond pursuant to SDCL chapter 9-40, and any acts amendatory thereto, and SDCL chapter 6-8B, and any acts amendatory thereto, and Resolution No. 2022-02 adopted December 6, 2022, and this Loan Agreement and the Borrower Bond are subject to the provisions and limitations thereof, all of which are hereby incorporated by reference.

## ARTICLE VI

### SPECIAL COVENANTS

Section 6.1. Maintenance of the System. The Borrower shall maintain its System, including the Project, in good condition and repair and make all necessary renewals, replacements, additions, betterments and improvements thereto. The Borrower shall not grant or permit to exist any lien on the System or the Project other than liens securing Project Debt where a parity or superior lien secures this Loan Agreement and the Borrower Bond, provided that this Section shall not be deemed violated if a mechanic's or contractor's lien is filed against the property, as long as the Borrower uses its best efforts to obtain the discharge of such lien, and promptly reports the filing of such lien, the proposed steps to discharge the lien, and the discharge of the lien to the District.

Section 6.2. Maintenance of Existence. The Borrower shall maintain its corporate existence as a Public Entity and Governmental Unit, except that it may (a) consolidate with or merge into another Governmental Unit, (b) permit one or more Governmental Units to consolidate with or merge into it; or (c) may transfer all or substantially all of its assets to another Governmental Unit and then dissolve if the surviving, resulting or transferee entity (if other than the Borrower) (i) is a Public Entity and Governmental Unit, (ii) assumes in writing all of the obligations of the Borrower under the Loan Documents and the Borrower Bond, (iii) such action does not result in any default in the performance or observance of any of the terms, covenants or agreements of the Borrower under the Loan Documents and the Borrower Bond, (iv) such action does not violate the Act or the Relevant Federal Act and would not adversely affect the exclusion of interest on the Bonds and the Borrower Bond from gross income for federal income tax purposes, and (v) the Borrower delivers to the District and the Trustee on the date of such action an Opinion of Bond Counsel that such action will not violate the Act or adversely affect the exclusion of interest on the Bonds and the Borrower Bond from gross income for federal income tax purposes.

The Borrower shall not transfer its System or any component thereof to any other Person prior to the earlier of (a) the last date of the reasonably expected economic life of such component (determined as of the date of this Loan Agreement) or (b) the last maturity date of the Borrower Bond, unless the provisions of clauses (iii), (iv) and (v) of the preceding paragraph are satisfied and, in addition, the District consents to such transfer.

Section 6.3. Covenants Relating to the Tax-Exempt Status of the Bonds. The Borrower covenants and agrees that it will not use or permit to be used any of the funds provided by the District hereunder or any other funds of the Borrower, directly or indirectly, in a manner that, in the Opinion of Bond Counsel, would cause, or take any other action that would cause, any Bond or the Borrower Bond to be an "arbitrage bond" within the meaning of Section 148 of the Code or would otherwise cause the interest on the Bonds or the Borrower Bond to be included in gross income for purposes of federal income taxation. In addition, the Borrower agrees that it will not enter into, or allow any "related person" (as defined in Section 147(a) (2) of the Code) to enter into, any arrangement, formal or informal, for the purchase of the Bonds or any other obligations of the District in an amount related to the amount of the Loan or the portion of the Loan derived directly or indirectly from proceeds of any Bonds or that, in the Opinion of Bond Counsel, would otherwise cause any Bond or the Borrower Bond to be an "arbitrage bond" within the meaning of Section 148 of the Code. The Borrower further covenants and agrees as follows:

(a) The Borrower shall not use or permit the use of any portion of the Project or the System directly or indirectly in any trade or business carried on by any Person who is not a Governmental Unit. For the purpose of this subparagraph, use as a member of the general public shall not be taken into account and any activity carried on by a Person other than a natural person shall be treated as a trade or business.

(b) Any portion of the Project or the System being refinanced or the cost of which is being reimbursed was acquired by and is now and shall, during the term of the Loan, be owned by the Borrower and not by any other Person. Any portion of the Project or System being financed shall be acquired by and shall, during the term of the Loan, be owned by the Borrower and not by any other Person. Notwithstanding the previous two sentences, the Borrower may transfer the Project or a portion thereof to another Governmental Unit which is also a Public Entity if such transfer is otherwise permitted hereunder and if such organization agrees with the District and the Trustee to comply with Sections 2.2 and 6.3 hereof and if the District and the Trustee receive an Opinion of Bond Counsel that such transfer will not violate the Act or the laws governing the issuance of the Borrower Bond, or adversely affect the exclusion of interest on the Bonds and the Borrower Bond from gross income for purposes of federal income taxation. Except as otherwise provided herein or in any Loan Documents, and except upon receipt of the Opinion of Bond Counsel described in the preceding sentence, the Borrower shall not sell or otherwise dispose of the Project or any component thereof prior to the earlier of (a) the last date of the reasonably expected economic life of such component (determined as of the date of this Loan Agreement) or (b) the last maturity date of the Borrower Bond.

(c) The Borrower shall comply with the Arbitrage Rebate Instructions, if any, delivered to it by the District at Closing, as such Instructions may be amended or replaced by the District from time to time. The Arbitrage Rebate Instructions may be amended or replaced by new Arbitrage Rebate Instructions delivered by the District and accompanied by an Opinion of Bond Counsel addressed to the Trustee

and the Borrower to the effect that the use of said amended or new Arbitrage Rebate Instructions will not adversely affect the excludability of interest on the Bonds and the Borrower Bond from gross income of the recipients thereof for federal income tax purposes. The Borrower agrees to make any and all arbitrage rebate payments required to be made to the United States Department of Treasury in connection with the Borrower Bond pursuant to Section 148(f) of the Code.

(d) The Borrower agrees that during the Loan Term it will not contract with or permit any Nonexempt Person to manage the Project or any portion thereof unless (i) such management contract complies with the requirements of federal income tax regulations Sections 1.141-1 through 1.141-16, and Rev. Proc. 97-13 or any subsequent revenue procedures, revenue rulings or regulations promulgated by the United States Department of Treasury or (ii) the District and the Trustee shall have received an Opinion of Bond Counsel to the effect that such management contract will not adversely affect the exclusion of interest on the Bonds and the Borrower Bond from gross income for purposes of federal income taxation.

(e) The Borrower may not lease the System or the Project or any portion thereof to any Person except as follows: (1) the Borrower may lease all or any portion of the Project or the System to a Governmental Unit which agrees in writing with the Borrower and the Trustee not to cause any Event of Default to occur under this Loan Agreement and (2) the Borrower may lease all or any portion of the Project or the System to a Nonexempt Person pursuant to a lease which, in the Opinion of Bond Counsel delivered to the District and the Trustee, will not adversely affect the exclusion of interest on the Bonds and the Borrower Bond from gross income for purposes of federal income taxation.

(f) The Borrower shall not change the use or nature of the Project or the System unless (i) the action does not violate the Act or the Relevant Federal Act, and (ii) in the Opinion of Bond Counsel delivered to the District and the Trustee such change will not adversely affect the exclusion from gross income of interest on the Bonds or the Borrower Bond for federal income tax purposes.

(g) In connection with the Loan Agreement, neither the Borrower nor any Related Person has on hand any funds which could legally and practically be used for the purposes for which the proceeds of the Loan are being lent to the Borrower which are not pledged, budgeted, earmarked or otherwise necessary to be used for other purposes. Accordingly, no portion of the Loan will be used (i) directly or indirectly to replace funds of the District, the Borrower or any Related Person to the District or the Borrower that could be used for the purpose for which the Loan is being issued or (ii) to replace any proceeds of any prior issuance of obligations by the District, the Borrower or any Related Person to the District or the Borrower.

(h) The Borrower shall not use the proceeds of any tax-exempt obligation (within the meaning of Section 103 of the Code) to pay any portion of the principal of or interest on the Borrower Bond without the prior written consent of the District.

Section 6.4 Rate Covenant. The Borrower shall ensure that in each fiscal year its Project Income equals at least 110% of its Loan Payments and debt service payments on any other Debt secured by Project Income for such fiscal year and any past-due Loan Payments and debt service payments on any other Debt secured by Project Income and shall, as soon as practicable and in any event by the date it is required to deliver unaudited financial statements to the District pursuant to Section 2.2(f), (a) calculate its Project Income for such fiscal year and the coverage ratio and (b) certify such figures to the District. The certification described in clause (b) of the preceding sentence shall be substantially in the form of the certificate attached hereto as Appendix E to this Loan Agreement. If the percentage specified in clause (3) of the certificate required by the preceding sentence is less than 110%, then the Borrower shall provide such further certifications as the District shall reasonably require to determine the Borrower's compliance with the requirements of this Loan Agreement. Failure to meet the coverage test is not an Event of Default if (a) coverage is at least 100% and (b) the Borrower, within 30 days of its certification to the District, retains a Consultant to make recommendations in a report to be delivered to the Borrower within 60 days of his being retained, as to the actions required in order to achieve compliance and, upon receipt of the report, takes the actions which are recommended (except to the extent it receives the written consent of the District to not take any such actions). The Borrower shall supply the District with quarterly reports on the actions it is taking to correct its coverage deficiency until it delivers an annual coverage certificate showing compliance with the first sentence of this Section.

Notwithstanding anything provided to the contrary in the preceding paragraph, if the Borrower has issued Debt secured by Project Income to finance the construction of expansions to the Project ("Expansion Debt") and construction was not complete prior to the beginning of a fiscal year, the coverage ratio called for in the previous paragraph shall be 110% with respect to all Debt secured by Project Income, except such Expansion Debt and 100% for such Expansion Debt, and capitalized interest funded from the proceeds of such Expansion Debt or other sources shall be counted as Project Income in the period for which such capitalized interest is to be applied to pay interest on the Expansion Debt.

Section 6.5. Additional Debt. The Borrower shall not incur any Debt which is a lien on or constitutes a right to payment from the Project Income ("Project Debt") which is superior to that of this Loan Agreement and the Borrower Bond. The Borrower may incur Project Debt which is on a parity with or subordinate to that of this Loan Agreement and Borrower Bond, if:

- (a) such debt is incurred to pay or prepay or defease other Project Debt, and the maximum annual debt service of the new Project Debt is not greater than the Project Debt being paid, prepaid or defeased; or
- (b) such debt may also be incurred so long as prior to the issuance of such Project Debt the Borrower has taken or caused to be taken any and all action necessary to raise the surcharge described in Section 5.5 and taken or caused to be taken any other necessary action so that the rate covenant set forth in Section 6.4 will be met for the 12 months following the incurrence of such Project Debt and has delivered to the District a written forecast of a Consultant that such rate covenant will be met during such 12 months, setting forth in detail its calculations; provided, however, that, for

expansions of the Project, the Consultant's forecast may state that, for such 12 months, both (1) Project Income will equal at least 100% of debt service on all Project Debt and (2) assuming that the expansion was complete and placed in service on the date of the forecast and all other conditions expected to be in effect on the expected date of completion were in effect on the date of the forecast, Project Income would equal at least 110% of debt service on all Project Debt.

The Borrower may not incur Project Debt if the debt is variable rate debt, or if the principal and interest on such debt in any fiscal year are more than 150% of the payment of principal and interest for any other fiscal year, unless the District has consented in writing to the incurring of such debt.

Section 6.6. Additional Tax Covenant and Requirements for an Opinion of Bond Counsel.

(a) The Borrower acknowledges that the District has advised the Borrower that the District intends to and reserves the right to have maximum flexibility to allocate and reallocate from time to time the proceeds of the Bonds, the moneys made available to the District pursuant to the District-EPA Agreements and all other funds in any manner which is advantageous to the District in its sole discretion, and that accordingly, unless waived in writing by an Authorized Representative of the District, the Borrower shall at all times treat the Loan as having been funded by the District with the proceeds of Bonds, the interest on which is intended to be excluded from gross income for federal income tax purposes.

(b) Any Opinion of Bond Counsel provided in connection with this Loan Agreement shall assume, for all purposes, that the Loan to the Borrower has been funded out of proceeds of the Bonds, the interest on which is intended to be excluded from gross income for federal income tax purposes.

## ARTICLE VII

### INDEMNIFICATION

Section 7.1. Indemnification. The Borrower shall indemnify and hold the District, its members, officers, agents and employees harmless from and against any and all claims, liability, actions, damages, demands, expenses, and losses, of any kind or character whatsoever, resulting from or in any way connected with the condition, use, operation, management, design, planning, construction, installation, management or financing of the Project, including all costs, reasonable attorney fees, expenses and liabilities incurred in any action or proceeding brought by reason of any such claim or demand. Borrower shall upon request defend any such claim or demand on behalf of the District. Provided, however, that the foregoing does not require the Borrower to indemnify the District, its members, officers, agents or employees from any claim or demand arising solely from the intentional or willful misconduct or negligence of the District, its members, officers, agents or employees.



Section 7.2. Indemnification of Trustee. The Borrower agrees to indemnify the Trustee and to hold it harmless against any loss, liability or expense incurred without negligence or bad faith on its part arising out of or in connection with the exercise or performance of any of its powers or duties hereunder or under the Borrower Bond or any of the Loan Documents or, insofar as such duties pertain to the Loan, under the Indenture.

## ARTICLE VIII

### ASSIGNMENT

Section 8.1. Assignment.

(a) The Borrower may not assign its rights and obligations under this Loan Agreement, the Borrower Bond, or other Loan Document except as provided in section 6.2 hereof.

(b) At any time after the total Committed Amount has been disbursed or otherwise satisfied or reduced pursuant to this Loan Agreement, the rights of the District under the Loan Agreement, the Borrower Bond and all other Loan Documents and the obligations of the Borrower are freely assignable by the District.

(c) Notwithstanding the terms of Section 8.1(b), the District shall have the unconditional right at any time to assign its rights under this Loan Agreement, the Borrower Bond and all other Loan Documents to the Trustee to secure any Bonds, except to the extent otherwise provided in the Indenture.

(d) U.S. Bank Trust Company, National Association or such other financial institution or public official as shall be designated by the Borrower and approved by the District shall serve as registrar for this Loan Agreement and the Borrower Bond, and the registrar shall register the transfer of this Loan Agreement and the Borrower Bond upon their presentation by the holder thereof endorsed for transfer or with a separate document assigning the Bondholder's interest in them.

Section 8.2. Refunding Bonds. In the event Bonds are refunded by bonds which are not Additional Bonds, the District may assign the Loan Documents and the Borrower Bond to secure such refunding bonds, and all references in this Loan Agreement to Series 2018 Bonds, Bonds and Additional Bonds shall be deemed to refer to the refunding bonds and any bonds of the District issued on a parity with such refunding bonds (together, "Refunding Bonds") or, in the case of a crossover refunding, to the Series 2018 Bonds, Bonds and Additional Bonds and the Refunding Bonds and references to the Trustee, Credit Enhancer and other terms herein shall be deemed to refer to the trustee, credit enhancer or other party or document for the Refunding Bonds (or both the Refunding Bonds and the Bonds prior to the crossover date of a crossover refunding) and the District may assign the Loan Documents and the Borrower Bond to such trustee to secure the Refunding Bonds. In the event Bonds are refunded by an issue of Additional Bonds, all references in the Loan Documents to the Bonds so refunded shall be deemed to refer to such Additional Bonds and any

other Bonds then outstanding under the Indenture, or, in the case of a crossover refunding, both the Bonds so refunded and such Additional Bonds.

## ARTICLE IX

### EVENTS OF DEFAULT AND REMEDIES

Section 9.1. Events of Default Defined. Any one of the following shall constitute an Event of Default under this Loan Agreement:

(a) The failure by the Borrower to pay or cause to be paid, when due, the Loan Payments hereunder or under the Borrower Bond;

(b) The failure by the Borrower to observe or perform any covenant, term, condition or agreement hereunder, or under any other Loan Document, on its part to be observed and performed (except for any covenant, term, condition or agreement referred to in sections 9.1(a) and 9.1(c) through 9.1(j) hereof) for a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied, is given by the District to the Borrower; provided, however, if by reason of force majeure the Borrower shall be unable in whole or in part to carry out its obligations hereunder, and if the Borrower shall give prompt written notice and full particulars of such force majeure to the District, the Borrower shall not be deemed in default under this section 9.1(b) during the continuation of such inability, provided that force majeure shall not excuse any other Event of Default. The term "force majeure" as used herein shall include, without limitation, acts of God, acts of public enemies, orders of any kind of the government of the United States or the State, or any of their agencies, departments, or officials, or any civil or military authority, strikes, lock-outs, or other industrial disturbances, insurrections, riots, epidemics, landslides, lightning, earthquakes, fire, hurricanes, storms, washouts, droughts, explosions, breakage or accident to machinery, transmission pipes, canals, partial or entire failure of utilities, or any other cause or event not reasonably within the control of the Borrower;

(c) The dissolution or liquidation of the Borrower; the filing by the Borrower of a voluntary petition under any bankruptcy, moratorium, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law; the failure by the Borrower within sixty (60) days to lift any execution, garnishment or attachment of consequence as will impair its ability to carry on its operation of the System; the commission by the Borrower of any act of bankruptcy; the filing against the Borrower of a petition under any bankruptcy, moratorium, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law which is not dismissed in thirty (30) days; the assignment of assets by the Borrower for the benefit of its creditors; the entry by the Borrower into an agreement of composition with its creditors; the approval by a court of competent jurisdiction of a petition applicable to the Borrower in any proceeding for its reorganization under the provisions of any bankruptcy or similar law; or the appointment of a receiver of

the whole or a substantial portion of Borrower's property, including the System, unless such receiver is released or discharged within sixty (60) days;

(d) any warranty or representation contained in the Loan Documents or in any certificate or document furnished pursuant hereto or thereto is false or misleading in any material respect;

(e) the District or its assigns shall fail to have a valid and enforceable first priority perfected security interest in or lien on the revenues described herein (including any revenues pledged pursuant to the Borrower Resolution) or the Collateral described herein or in the Collateral Documents, except as otherwise expressly provided in section 5.5;

(f) the Borrower defaults on any agreement to which it is a party, evidencing, securing or otherwise respecting any Project Debt if, as a result thereof, such debt may be declared immediately due and payable, or other remedies may be exercised with respect thereto or with respect to the System;

(g) any material provision of the Loan Documents or the Borrower Bond shall at any time for any reason cease to be valid and binding on the Borrower, or the obligor of any Collateral Documents, or shall be declared null and void, or the enforceability or validity thereof shall be contested by the Borrower or the obligor of any such Collateral Documents, or any governmental agency or authority (other than the District), or the Borrower or the obligor of such Collateral Documents, shall deny any further liability or obligation under any of the Loan Documents or the Borrower Bond.

(h) Any event of default shall occur under the Collateral Documents;

(i) Any event occurs which permits a draw under a letter of credit or other third-party guaranty securing the Loan; or

(j) Failure by the Borrower to comply with any condition or requirement of the Relevant Federal Act pertaining to the Loan or the Project for a period of 30 days after written notice, specifying such failure and requesting that it be remedied, is given to the Borrower by the District, unless the District shall agree in writing to an extension of such time or shall waive such failure in writing.

Section 9.2. Remedies on Default. Whenever any Event of Default has occurred and is continuing, the District may take any one or more of the following remedial steps:

(a) Suspend the making of disbursements of the Loan pursuant to Section 4.1 hereof;

(b) Revoke or reduce the remainder of the Committed Amount, if any;

- (c) Exercise the remedies available to a bondholder under the statutory mortgage and other provisions of SDCL chapter 9-40, and other successor or supplementary statutory provisions or laws;
- (d) Pursue its remedies under the Borrower Bond and the Collateral Documents, including the Borrower Resolution and the Borrower Bond; and
- (e) Take whatever other action at law or in equity may appear necessary or desirable to collect the amounts then due and thereafter to become due hereunder, to enforce the obligations, agreements or covenants of the Borrower under the Loan Documents, or to enforce any other of the District's rights hereunder.

Section 9.3. Remedies Cumulative. No remedy herein conferred upon or reserved to the District is intended to be exclusive of any other available remedy, but each and every remedy shall be cumulative and in addition to every other remedy given under this Loan Agreement, or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed as a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In the event that any breach by the Borrower is specifically waived in writing by the District, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other or subsequent breach.

Section 9.4. Attorney Fees and Collection Expenses. In the event the Borrower should default under any of the provisions of the Loan Documents, and the District or Trustee should employ attorneys or incur other expenses for the collection of the amounts payable hereunder and thereunder, or the enforcement of performance or observance of any obligations or agreements on the part of the Borrower, the Borrower shall, upon demand, pay to the District the reasonable fees of such attorneys and such other expenses so incurred. Commencement of an action to recover any amount payable shall be deemed a demand for the payment of such fees and expenses incurred in the course of the action.

Section 9.5. Application of Moneys. Any moneys collected by the District pursuant to Section 9.2 shall be applied first to pay attorney's fees and other expenses owed by the Borrower pursuant to Section 9.4; second to any interest and penalties due on the Loan; third to pay principal due on the Loan; fourth to pay any other amounts due under the Loan Documents, and fifth to pay principal and interest on the Loan, and other amounts due hereunder, as they become due, such payments to be made in the same order as set forth in this Section.

Section 9.6. Notice of Default. The Borrower agrees to give the Trustee and the District prompt written notice if any petition referred to in Section 9.1(c) is filed or of the occurrence of any other event or condition which constitutes, or would with the passage of time or notice and the passage of time constitute, an Event of Default immediately upon becoming aware of the existence thereof.

Section 9.7. Cooperation Agreement Relating to Bonds or other Financing of District. At the request of the District or any holder of the Borrower Bond, and to the extent not already required to be provided by the Borrower under this Loan Agreement, the Borrower Bond or any of the other Loan Documents, the Borrower shall at no cost or expense to the District, use all reasonable efforts to satisfy the market standards to which the District customarily adheres in any then existing program or borrowing of the District or which may be reasonably required in the marketplace or by any nationally recognized rating agency or by any underwriter engaged by the District or by any then holder of the Borrower Bond in connection with any sale or multiple sales, from time to time, of Bonds or any interest (including any participation interest) in the Borrower Bond or similar borrower bonds funded in connection with the Program so as to permit or otherwise enable the successful rating, marketing and sale of such Bonds or other interests (collectively referred to herein as "Financings"), including:

- (a) provide current financial or other information with respect to the Borrower, the Project, the System and the Borrower's general financial condition, including any information required to be provided to any purchasers of debt or other securities in connection with the Financings, including information which the District determines to be material to it or any such investors under any federal or state securities laws, and to cooperate with the District, any such other holder and any nationally recognized rating agency in connection with any such Financings;
- (b) agree to provide on a timely basis, and from time to time as requested by the District, any information which the District reasonably believes is required to be furnished to any broker dealer or other person by reason of the Securities and Exchange Commission Rule 15c2-12, or any agreement or undertaking pursuant to which the District is a party or which relates to any Bonds, Additional Bonds, Refunding Bonds or any other Financing;
- (c) provide or cause to be provided supplemental or confirming opinions of Bond Counsel as to any matters which the District, any underwriter involved in the Financings or any nationally recognized rating agency determines to be relevant to the Financings; and
- (d) agree to any amendments or supplements to this Loan Agreement, the Borrower Bond or any other Loan Documents which the District, in its reasonable judgment, determines to be necessary or appropriate in connection with such Financings, so long as no such amendment or supplement shall increase the aggregate amount of principal, interest and Administrative Expense Surcharge payments payable on or with respect to the Borrower Bond on any payment date specified therein or herein.

## ARTICLE X

### MISCELLANEOUS PROVISIONS

Section 10.1. Notices. All notices or other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given when delivered, and if delivered by mail, shall be sent by first class, registered or certified mail, postage prepaid, to the parties at the following addresses:

To the District: South Dakota Department of Agriculture  
and Natural Resources  
Attention: SRF Section  
523 East Capitol Ave.  
Pierre, SD 57501-3182

To the Borrower: Town of Buffalo Gap  
PO Box 295  
Buffalo Gap, SD 57722  
Attention: Finance Officer

To the Trustee: U.S. Bank Trust Company, National Association  
Seattle Tower  
1420 Fifth Avenue, 7<sup>th</sup> Floor  
Seattle, WA 98101  
Attention: Greg E. Skutnik

Any of the above parties may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates and other communications shall be sent.

Section 10.2. Amendments and Modifications. The Loan Documents may not be amended except in writing, which writing shall be expressly identified as a part hereof or thereof, and which writing will be signed by an authorized representative of each of the parties.

Section 10.3. Severability. In the event that any provision of this Loan 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.

Section 10.4. Binding Effect. This Loan Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

Section 10.5. Limited Liability. No recourse under or upon any obligation, covenant or agreement contained in this Loan Agreement shall be had against any member of the governing board, officer or employee, as such, past, present or future, of the District, Board or State, either directly or through the District, Board or State, or against any member of the governing body, officers or employees of the Borrower, past present or future, as long as such individual was acting

in good faith. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any officer or member of the governing body, or employee of the District, the Board, the State, or the Borrower is hereby expressly waived and released by the Borrower and the District as a condition of and in consideration for the execution of this Loan Agreement.

Section 10.6. Execution Counterparts. This Loan Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

Section 10.7. Benefit of Bondholders and Credit Enhancers; Compliance With Indenture. All covenants, agreements and representations on the part of the Borrower and the District, as set forth in this Loan Agreement, are hereby declared to be for the benefit of the Holders from time to time of the Bonds and all Credit Enhancers. The Borrower covenants and agrees to do all things within its power in order to comply with and to enable the District to comply with all requirements and to fulfill and to enable the District to fulfill all covenants of the Indenture. Each Credit Enhancer is a third-party beneficiary of those provisions herein which relate to the making of payments or following the directions of or giving of notice to or consent by or the performance of other acts to benefit it, and all such provisions shall be enforceable by each Credit Enhancer.

Section 10.8. Payments Due on Holidays. If the date for making any payment or the last date for performance of any act or the exercise of any right, as provided in this Loan Agreement, shall be a legal holiday or a day on which banking institutions in the State are required or authorized by law to remain closed, such payments may be made or act performed or right exercised on the next succeeding day not a legal holiday or a day on which such banking institutions are required or authorized by law to remain closed with the same force and effect as if done on the nominal date provided in this Loan Agreement.

Section 10.9. Right of Others To Perform Borrower's Covenants. In the event the Borrower shall fail to make any payment or perform any act required to be performed hereunder, then and in each such case the District, the Trustee, any Credit Enhancer or the provider of any Collateral Document may (but shall not be obligated to) remedy such default for the account of the Borrower and make advances for that purpose. No such performance or advance shall operate to release the Borrower from any such default and any sums so advanced by the District, any Credit Enhancer, the Trustee or the provider of any Collateral Document shall be paid immediately to the party making such advance and shall bear interest at the prime or corporate base rate of the Trustee plus 2% (or, if this Loan Agreement no longer secures any Bonds, of Citibank, N.A.) from the date of the advance until repaid. The District, any Credit Enhancer, the provider of any Collateral Document and the Trustee shall have the right to enter the Project or the facility or facilities of which the Project is a part or any other facility which is a part of the Borrower's System in order to effectuate the purposes of this Section.

Section 10.10. Applicable Law. This Loan Agreement shall be governed by and construed in accordance with the laws of the State.


Section 10.11. No Trustee or Credit Enhancers if All Bonds Paid. If all the Bonds are paid within the meaning of the Indenture, the Trustee will release to the District all its rights hereunder, and thereafter any right or duty of the Trustee or any Credit Enhancer hereunder shall be the right or duty of the District.

Section 10.12. Electronic signatures. The parties intend that faxed signatures and electronically imaged signatures such as .pdf files shall constitute original signatures and are binding on all parties. The parties agree that this Agreement, any addendum, exhibit or amendment hereto or any other document necessary for the consummation of the transactions contemplated by this Agreement may be accepted, executed or agreed to through the use of an electronic signature in accordance with E-Sign, UETA and any applicable state law. Any document accepted, executed or agreed to in conformity with such laws will be binding on all parties hereto to the same extent as if it were physically executed and each party hereby consents to the use of any secure third-party electronic signature capture service with appropriate document access tracking, electronic signature tracking and document retention as may be reasonably chosen by a signatory hereto, including but not limited to DocuSign.

**STATE OF SOUTH DAKOTA  
BOARD OF WATER AND NATURAL  
RESOURCES**

(SEAL)

ATTEST:

  
Todd Bernhard (Jun 14, 2023 15:51 CDT)

Secretary  
Board of Water and Natural Resources

By:   
Jeffrey Soholt (Jun 14, 2023 15:26 CDT)  
Chairman  
Board of Water and Natural Resources



**BORROWER:**

**TOWN OF BUFFALO GAP, SOUTH DAKOTA**

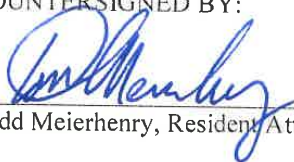
By:   
Its President

(SEAL)

ATTEST:

  
Its Finance Officer

COUNTERSIGNED BY:

  
Todd Meierhenry, Resident Attorney

Accepted and Agreed to by:

  
U.S. Bank Trust Company,  
National Association, as Trustee

## APPENDIX A

### DESCRIPTION OF THE PROJECT

Town of Buffalo Gap Cast iron and 4-inch PVC replacement as outlined in the facilities plan dated September 2021 and Amended February 2022.

The Borrower hereby certifies that the description of the property, improvements and activities set forth above constitutes an accurate description of the property, improvements and activities the costs of which are being financed, refinanced or reimbursed pursuant to the attached Loan Agreement. In case any portion of the Project is being refinanced, an accurate description of such debt and the dates on which it will be paid from proceeds of the Loan are also set forth above.

**TOWN OF BUFFALO GAP,  
SOUTH DAKOTA**

Borrower

By

Title President

Dated June 23, 2023



## APPENDIX B

### FORM OF BORROWER BOND

FOR VALUE RECEIVED, the undersigned, Town of Buffalo Gap, PO Box 295, Buffalo Gap, SD 57722, (the "Borrower"), promises to pay, but only from the sources described herein, to the order of the South Dakota Conservancy District (the "District"), or its successors and assigns, the principal sum equal to the sum of the amounts entered on Schedule A hereto under "Total Amount Advanced," less the amount of principal forgiven pursuant to Section 4.2 of the Loan Agreement, but not to exceed the maximum committed amount. The said principal shall be payable in quarterly installments, each payable on the fifteenth day of February, May, August and November of each year (each such date for payment of principal is referred to herein as a "Loan Payment Date") commencing on the first Loan Payment Date occurring after the Initial Loan Amortization Date, subject to revision as required by Sections 4.2 and 5.1 of the Loan Agreement (as defined below). Each installment shall be in the amount set forth opposite its due date in Schedule B hereto under "Payment Amount." The portion of each such payment consisting of principal shall be as set forth in Schedule B hereto.

Upon each disbursement of Loan amounts to the Borrower pursuant to the Loan Agreement described below, the District shall enter (or cause to be entered) the amount advanced on Schedule A under "Advances" and the total amount advanced under the Loan Agreement, including such disbursement under "Total Amount Advanced." The District shall prepare Schedule B and revised Schedules B, or cause Schedule B and revised Schedules B to be prepared, as provided in Sections 4.2 and 5.1 of the Loan Agreement. Past-due payments of principal bear interest at the rate of 8% per annum, compounded on each Loan Payment Date, until paid.

All payments under this Borrower Bond shall be payable at the principal corporate trust office of U.S. Bank Trust Company, National Association, in St. Paul, Minnesota, or such other place as the District may designate in writing.

This Borrower Bond is issued pursuant to and is secured by a certain Loan Agreement, dated the date hereof (the "Loan Agreement"), by and between the Borrower and the District, the terms and provisions of which are incorporated herein by reference. This Borrower Bond is further secured by the Collateral Documents and other Loan Documents, each of which terms have the meanings assigned thereto in the Loan Agreement.

The Borrower shall not prepay any principal payment set forth on Schedule B to the Borrower Bond any more than 15 days prior to the due date set forth in such Schedule B, unless the District consents in writing to such prepayment. If the Loan is prepaid in part, principal payments shall be reduced in inverse order of maturity. A prepayment without the District's consent shall be returned to the Borrower.

The Borrower shall, as authorized by SDCL § 9-40-15 segregate the income from the Project ("Project Income") in a separate account. For this purpose, the Borrower shall establish a special charge or surcharge payable by each customer of its System who receives or benefits from the services of the Project. Such charge or surcharge shall be set at a level which, assuming a 10% delinquency rate, will produce Project Income at the times and in the amounts sufficient to pay when due the principal on this Borrower Bond and all other payments under the Loan Agreement and this Borrower Bond. The Borrower pledges to the District for the payment of the Loan Payments all Project Income.

All payments of principal on this Borrower Bond and other payment obligations of the Borrower hereunder shall be limited obligations of the Borrower payable solely out of the income and revenues described in the preceding paragraph and shall not be payable out of any other revenues of the Borrower. The obligations of the Borrower under this Borrower Bond shall never constitute an indebtedness of the Borrower within the meaning of any State constitutional provision or statutory limitation and shall never constitute or give rise to a pecuniary liability of the Borrower or a charge against its general credit or taxing power.

This Borrower Bond is issued pursuant to South Dakota Codified Laws Chapters 9-40 and 6-8B and any acts amendatory thereto and Resolution No. 2022-02 of the Borrower adopted on December 6, 2022 and is subject to all the provisions and limitations of such Chapters 9-40 and 6-8B, any amendatory acts and such Resolution and by this reference, all provisions and limitations of the Resolution and SDCL chapter 9-40, and any amendments to SDCL chapter 9-40 shall become a part of this Borrower Bond as if set forth at length herein. Accordingly, pursuant to SDCL 9-40-18 the taxing powers of the Borrower may not be used to pay any Loan Payment, and no funds or property of the Borrower other than those referred to in the preceding paragraph may be used to pay Loan Payments, except as may be otherwise provided by law.

In the event of default in the payment of this Borrower Bond and if the same is collected by an attorney at law, the Borrower agrees to pay all costs of collection, including a reasonable attorneys' fee.

The Borrower hereby waives presentment for payment, demand, protest, notice of protest and notice of dishonor.

This Borrower Bond and all instruments securing the same are to be construed according to the laws of the State of South Dakota. Signed and sealed this 23rd day of June 2023.

[SEAL]

**TOWN OF BUFFALO GAP,  
SOUTH DAKOTA**

Attest:

By: Heather A. B. Clyde  
Title Finance Officer

By: [Signature]  
Title President

Date of Authentication: June 23, 2023

Authenticated by:  
U.S. Bank Trust Company, National Association

Countersigned by:

By: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Todd V. Meierhenry, Resident Attorney

Pursuant to the Amended and Restated Master Trust Indenture dated as of July 1, 2004, by and between the District and The First National Bank in Sioux Falls, Sioux Falls, South Dakota, as Trustee, a First Amendment to Amended and Restated Master Trust Indenture dated October 1, 2005, a Second Amendment to Amended and Restated Master Trust Indenture dated April 1, 2006, a Third Amended and Restated Master Trust Indenture dated March 1, 2008, the Series 2008 Supplemental Indenture dated March 1, 2008, a Fourth Amended and Restated Master Trust Indenture dated August 1, 2009, a Fifth Amended and Restated Master Trust Indenture dated September 1, 2010, and a First Amendment to Fifth Amended and Restated Master Trust Indenture dated February 17, 2015 (the "Indenture"), and Section 8.1 of the Loan Agreement, the District hereby assigns, grants and conveys any and all of the District's rights, title and interest in this Borrower Bond to U.S. Bank Trust Company, National Association and any successor Trustee, except as otherwise provided in the Granting Clauses of the Indenture.

Dated: June 23, 2023

**SOUTH DAKOTA CONSERVANCY  
DISTRICT**

Attest:

By: \_\_\_\_\_  
Its: Secretary

By: \_\_\_\_\_  
Its: Chairman

(SEAL)

## SCHEDULE A

### SCHEDULE OF AMOUNTS ADVANCED

[illegible]

**SCHEDULE B**

<u>Payment Number</u>	<u>Payment Date</u>	<u>Payment Amount</u>	<u>Interest and Administrative Surcharge</u>	<u>Principal Paid</u>	<u>Remaining Balance</u>
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## **APPENDIX C**

### **ADDITIONAL REPRESENTATIONS AND COVENANTS**

None.

## **APPENDIX D**

### **OPINION OF BOND COUNSEL** (Revenue Obligation)

[NOTE: any of the opinions given below may be given in reliance upon the opinion of another Bond Counsel; and one Bond Counsel may give some of the opinions and another Bond Counsel may give others.]

June 23, 2023

South Dakota Conservancy District  
c/o South Dakota Department of  
Agriculture and Natural Resources  
Division of Financial and Technical Assistance  
523 East Capitol Ave.  
Joe Foss Building  
Pierre, SD 57501-3182

U.S. Bank Trust Company, National Association  
Seattle Tower  
1420 Fifth Avenue, 7<sup>th</sup> Floor  
Seattle, WA 98101  
Attention: Greg E. Skutnik

Ladies and Gentlemen:

We have acted as Bond Counsel in connection with the execution and delivery by Town of Buffalo Gap, a municipality (the "Borrower") of a Loan Agreement dated June 23, 2023 (the "Loan Agreement") between the Borrower and the South Dakota Conservancy District (the "District") and the issuance of a revenue bond dated June 23, 2023 (the "Borrower Bond") by the Borrower to the District. All terms used in this opinion letter and not defined shall have the meanings given to them in the Loan Agreement.

In this connection, we have examined the following:

Certified copies of Borrower's Resolution No. 2022-02 adopted December 6, 2022;

An executed counterpart of the Loan Agreement;

The executed Borrower Bond; and

Such other documents as we deemed relevant and necessary in rendering this opinion.

As to questions of fact material to our opinion we have relied upon the certified proceedings and other certifications of public officials furnished to us without undertaking to verify the same by independent investigation.

Based upon the foregoing we are of the opinion that:

1. The Borrower is a municipality duly organized and validly existing under the laws of the State of South Dakota.

2. The Borrower is (i) a governmental unit, as such term is used in Section 145(a) of the Internal Revenue Code of 1986, as amended (the "Code") and (ii) a Public Entity, as defined in South Dakota Codified Laws §46A-2-4.

3. The Resolution authorizing the issuance of the Borrower Bond, the execution and delivery of the Loan Agreement and the pledge of Project Income to secure payment of the Borrower Bond has been duly approved by the Borrower.

4. The Borrower has the power and authority to undertake the Project, to enter into the Loan Agreement, to issue the Borrower Bond, to borrow the entire Committed Amount pursuant to the Loan Agreement and Borrower Bond and to perform its obligations under the Loan Agreement and the Borrower Bond.

5. The Loan Agreement and the Borrower Bond have been duly authorized, executed and delivered by the Borrower and are, and would be if the entire Committed Amount were advanced to the Borrower pursuant to the Loan Agreement on the date of this opinion, valid and legally binding special obligations of the Borrower, payable solely from the sources provided therefore in the Loan Agreement, enforceable in accordance with their respective terms, except to the extent that the enforceability thereof may be limited by laws relating to bankruptcy, insolvency or other similar laws affecting creditors' rights generally and general principles of equity.

6. Pursuant to SDCL 9-40 (the "Act"), the Resolution and Loan Agreement create a valid lien on the funds pledged by the Loan Agreement for the security of the Loan Agreement and Borrower Bond and no other Debt of the Borrower is secured by a superior lien on such funds.

7. The Borrower has obtained or made all approvals, authorizations, consents or other actions of, and filings, registrations or qualifications with, the Borrower or any other government authority which are legally required to allow the Borrower to enter into and perform its obligations under the Loan Agreement and the Borrower Bond and borrow the full Committed Amount pursuant to the Loan Agreement and Borrower Bond.

Any subsequent holder or assignee of the Borrower Bond may rely on this opinion as if this opinion were addressed to such holder or assignee.

Very truly yours,

**APPENDIX E**

**CERTIFICATION OF COMPLIANCE WITH RATE COVENANT  
PROJECT INCOME**

Pursuant to Section 6.4 of the Revenue Obligation Loan Agreement dated June 23, 2023 (the "Loan Agreement") between the South Dakota Conservancy District (the "District") and Town of Buffalo Gap (the "Borrower"), the Borrower hereby certifies as follows to the District (terms used in this Certificate and not defined are to have the meanings assigned to them in the Loan Agreement):

(1) For fiscal year \_\_\_\_\_ the Borrower's Project Income (as defined in Section 5.5 of the Loan Agreement) was \$ \_\_\_\_\_; and

(2) For fiscal year \_\_\_\_\_ the Borrower's Project Debt (as defined in Section 6.5 of the Loan Agreement) was \$ \_\_\_\_\_; and

(3) The amount in (1) \_\_\_\_\_ divided by the amount in (2) equals \_\_\_\_\_%.

Submitted on behalf of Buffalo Gap, South Dakota, on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by:

**TOWN OF BUFFALO GAP,  
SOUTH DAKOTA**

NAME: Heather Besco-Clyde  
TITLE: Finance Officer

## APPENDIX F

### PARITY DEBT



*Town of Buffalo Gap*  
*\$1,147,000 Drinking Water Project Revenue Borrower Bond*  
*dated June 23, 2023*


<b>STATE OF SOUTH DAKOTA</b>	)	
	:SS	
<b>COUNTY OF CUSTER</b>	)	<b>CERTIFICATE AS TO POPULATION, NUMBER OF SYSTEM CUSTOMERS AND SYSTEM DEBT</b>

The undersigned, as President of the Board of Trustees of the Town of Buffalo Gap (the "Town") charged together with the other members of the Board of Trustees, with the responsibility of issuing the Town's Drinking Water Project Revenue Borrower Bond in the aggregate principal amount of \$1,147,000. The Drinking Water Project Revenue Borrower Bond is dated June 23, 2023. The undersigned hereby certifies that:

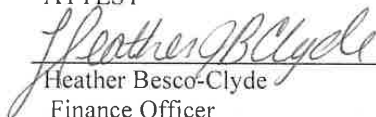
1. The population of the Town, according to the most recent information available from the U.S. Census, is 126. The Town's current population is estimated to be 131.
2. The number of customers is 92.
3. The current revenues of the wastewater system are sufficient to produce net revenues adequate to pay principal, interest and administrative surcharge as required by the Revenue Obligation Loan Agreement.

Dated this 23<sup>rd</sup> day of June 2023,

**TOWN OF BUFFALO GAP, SOUTH DAKOTA**

  
\_\_\_\_\_  
By Daniel Frieden  
President

ATTEST

  
\_\_\_\_\_  
Heather Besco-Clyde  
Finance Officer





*Town of Buffalo Gap  
\$1,147,000 Drinking Water Project Revenue Borrower Bond  
dated June 23, 2023*

**CERTIFICATE AS TO COUNTERSIGNING  
OF BOND BY RESIDENT ATTORNEY**

**STATE OF SOUTH DAKOTA    )**  
**:SS**  
**COUNTY OF MINNEHAHA    )**

I, Todd Meierhenry, being an attorney actually residing in the State of South Dakota and duly licensed to practice law therein, hereby certify that for the purpose of Sections 6-8B-21 and 6-8B-22 of South Dakota Codified Laws that I countersigned the Drinking Water Project Revenue Borrower Bond in the principal amount of \$1,147,000 dated June 23, 2023 issued by the Town of Buffalo Gap, that I reside in the State of South Dakota, that I am duly licensed to practice law therein; that by virtue of my signature on the Bond it shall not be rendered invalid or unenforceable by reason of the provisions of Section 6-8B-21 of SDCL.

WITNESS my hand this 23<sup>rd</sup> day of June 2023.

  
\_\_\_\_\_  
Todd Meierhenry  
Meierhenry Sargent LLP





Todd V. Meierhenry  
Clint Sargent  
Patrick J. Glover  
Raleigh Hansman  
Erin E. Willadsen  
Mae C.M. Pochop

Mark V. Meierhenry  
(1944-2020)

June 23, 2023

South Dakota Conservancy District  
c/o South Dakota Department of  
Agriculture and Natural Resources  
Division of Financial and Technical Assistance  
523 East Capitol Ave.  
Joe Foss Building  
Pierre, SD 57501-3182

U.S. Bank Trust Company, National Association  
Seattle Tower  
1420 Fifth Avenue, 7<sup>th</sup> Floor  
Seattle, WA 98101  
Attention: Greg E. Skutnik

Ladies and Gentlemen:

We have acted as Bond Counsel in connection with the execution and delivery by Town of Buffalo Gap, a municipality (the "Borrower") of a Loan Agreement dated June 23, 2023 (the "Loan Agreement") between the Borrower and the South Dakota Conservancy District (the "District") and the issuance of a revenue bond dated June 23, 2023 (the "Borrower Bond") by the Borrower to the District. All terms used in this opinion letter and not defined shall have the meanings given to them in the Loan Agreement.

In this connection, we have examined the following:

Certified copies of Borrower's Resolution No. 2022-02 adopted December 6, 2022;

An executed counterpart of the Loan Agreement;

The executed Borrower Bond; and

Such other documents as we deemed relevant and necessary in rendering this opinion.

As to questions of fact material to our opinion we have relied upon the certified proceedings and other certifications of public officials furnished to us without undertaking to verify the same by independent investigation.

315 South Phillips Avenue, Sioux Falls, South Dakota 57104  
(tel) 605•336•3075 (fax) 605•336•2593  
[www.meierhenrylaw.com](http://www.meierhenrylaw.com)

*with attorneys licensed in South Dakota, North Dakota, Nebraska, Minnesota, and Iowa*

Based upon the foregoing we are of the opinion that:

1. The Borrower is a municipality duly organized and validly existing under the laws of the State of South Dakota.
2. The Borrower is (i) a governmental unit, as such term is used in Section 145(a) of the Internal Revenue Code of 1986, as amended (the "Code") and (ii) a Public Entity, as defined in South Dakota Codified Laws §46A-2-4.
3. The Resolution authorizing the issuance of the Borrower Bond, the execution and delivery of the Loan Agreement and the pledge of Project Income to secure payment of the Borrower Bond has been duly approved by the Borrower.
4. The Borrower has the power and authority to undertake the Project, to enter into the Loan Agreement, to issue the Borrower Bond, to borrow the entire Committed Amount pursuant to the Loan Agreement and Borrower Bond and to perform its obligations under the Loan Agreement and the Borrower Bond.
5. The Loan Agreement and the Borrower Bond have been duly authorized, executed and delivered by the Borrower and are, and would be if the entire Committed Amount were advanced to the Borrower pursuant to the Loan Agreement on the date of this opinion, valid and legally binding special obligations of the Borrower, payable solely from the sources provided therefore in the Loan Agreement, enforceable in accordance with their respective terms, except to the extent that the enforceability thereof may be limited by laws relating to bankruptcy, insolvency or other similar laws affecting creditors' rights generally and general principles of equity.
6. Pursuant to SDCL 9-40 (the "Act"), the Resolution and Loan Agreement create a valid lien on the funds pledged by the Loan Agreement for the security of the Loan Agreement and Borrower Bond and no other Debt of the Borrower is secured by a superior lien on such funds.
7. The Borrower has obtained or made all approvals, authorizations, consents or other actions of, and filings, registrations or qualifications with, the Borrower or any other government authority which are legally required to allow the Borrower to enter into and perform its obligations under the Loan Agreement and the Borrower Bond and borrow the full Committed Amount pursuant to the Loan Agreement and Borrower Bond.

Any subsequent holder or assignee of the Borrower Bond may rely on this opinion as if this opinion were addressed to such holder or assignee.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Matthew Sargent".



STATE OF SOUTH DAKOTA



OFFICE OF ATTORNEY GENERAL

1302 East Highway 14, Suite 1  
Pierre, South Dakota 57501-8501  
Phone (605) 773-3215  
Fax (605) 773-4106  
TTY (605) 773-6585  
<http://atg.sd.gov>

**MARTY JACKLEY**  
ATTORNEY GENERAL

**MARK BARNETT**  
CHIEF DEPUTY ATTORNEY GENERAL

June 23, 2023

South Dakota Board of  
Water and Natural Resources  
Joe Foss Building  
523 E. Capitol  
Pierre, SD 57501-3182

Meierhenry Sargent, LLP  
315 South Phillips Ave.  
Sioux Falls, SD 57102-0718

U.S. BANK NATIONAL ASSOCIATION  
Seattle Tower  
1420 Fifth Avenue, 7<sup>th</sup> Floor  
Seattle, WA 98101  
Attention: Greg E. Skutnik

City of Buffalo Gap  
P.O. Box 295  
Buffalo Gap, SD 57722

RE: **Series 2023 State Revolving Fund Loan Agreement with the City of  
Buffalo Gap (\$1,147,000) (Drinking Water-01)**

Ladies & Gentlemen:

As the Attorney General of the State of South Dakota, I am the legal advisor to the South Dakota Conservancy District (the "District") and am authorized to furnish opinions to the District as is required pursuant to SDCL 46A-1-51, in connection with the execution and delivery of a financing agreement (the "Loan Agreement") dated June 23, 2023, by the City of Buffalo Gap, a municipality (the "Borrower"), between the Borrower and the District, and the issuance of a revenue bond dated June 23, 2023, (the "Borrower Bond") by the Borrower to the District. In that capacity, I have examined the following:

1. A true copy of Resolution No. 2022-02 adopted December 6, 2022 by the Borrower, in connection with the Loan Agreement and Borrower Bond;
2. An executed counterpart of the Loan Agreement;
3. The executed Borrower Bond;

4. The opinion dated of even date herewith of Meierhenry Sargent LLP, Bond Counsel and legal advisor for the Borrower, copies of which are being delivered concurrently with this opinion;
5. A copy of Resolution No. 2022-419 adopted by the Board of Water and Natural Resources on the 29th day of September 2022, approving the Loan to the Borrower pursuant to the Loan Agreement; and
6. Such other public records, documents and proceedings as I have deemed relevant and necessary in rendering this opinion.

As to questions of fact material to my opinion, I have relied upon representations of the Borrower contained in the documents described herein and other certifications of public officials and others, without undertaking to verify the same by independent investigation.

From such examination, I am of the opinion that:

1. The Borrower is a municipality duly organized and validly existing under the laws of the State of South Dakota.
2. The Borrower has the power and authority to adopt the Resolution, to enter into the Loan Agreement, to issue the Borrower Bond, to borrow the entire committed amount pursuant to the Loan Agreement and Borrower Bond, and to perform its obligations under the Loan Agreement and the Borrower Bond.
3. The Borrower has the power and authority to undertake the project as described in Appendix A to the Loan Agreement.
4. The Resolution has been duly adopted by the Borrower, and the Loan Agreement and the Borrower Bond have been validly authorized, executed and issued in accordance with the laws of the State of South Dakota now in force, and represent valid and binding special obligations of the Borrower, payable from the sources identified in the Loan Agreement, enforceable in accordance with their respective terms, except to the extent that the enforceability thereof may be by laws relating to bankruptcy, insolvency or other similar laws affecting creditors' rights generally



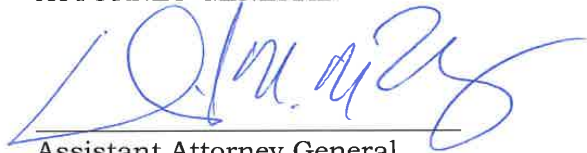
South Dakota Board of  
Water and Natural Resources  
June 23, 2023  
Page 3

and general principles of equity, or because the obligations are held to be contrary to public policy.

5. The Loan Agreement has been duly authorized, executed and delivered by the District, and constitutes the legal, valid and binding obligation of the District, in accordance with its terms, except to the extent that the enforceability thereof may be by laws relating to bankruptcy, insolvency or other similar laws affecting creditors' rights generally and general principles of equity.

Sincerely yours,

MARTY JACKLEY  
ATTORNEY GENERAL



Assistant Attorney General  
David M. McVey  
1302 E. Highway 14, Suite 1  
Pierre, SD 57501

Bond Information  
Statement and  
Certificate of  
Mailing

*Town of Buffalo Gap  
\$1,147,000 Drinking Water Project Revenue Borrower Bond  
dated June 23, 2023*

**CERTIFICATE OF MAILING INFORMATION RETURN**

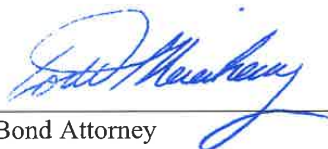
I, Todd Meierhenry, hereby state and certify as follows:

That for and on behalf of the Town of Buffalo Gap, I caused to be mailed, on the date hereof, an Information Statement required pursuant to SDCL §6-8B-19, to the Secretary of State, Capitol Building, 500 East Capitol Avenue, Suite 204, Pierre, South Dakota, 57501-5070, a copy of which is hereunto attached.

Dated this 27<sup>th</sup> day of July 2023.

By

Its Bond Attorney



*Town of Buffalo Gap  
\$1,147,000 Drinking Water Project Revenue Borrower Bond  
dated June 23, 2023*

**RECEIVED**

**JUL 31 2023**

**SD Secretary of State**

**BOND INFORMATION STATEMENT**  
State of South Dakota  
SDCL § 6-8B-19

**Return to:** Secretary of State  
State Capitol, Suite 204  
500 E. Capitol  
Pierre, SD 57501-5077

**FILING FEE:** \$10.00

**TELEPHONE:** # (605) 773-3537

Every public body, authority, or agency issuing any general obligation, revenue, improvements, industrial revenue, special assessment, or other bonds of any type shall file with the Secretary of State a bond information statement concerning each issue of bonds.

1. Name of issuer: Town of Buffalo Gap
2. Designation of issue: Drinking Water Project Revenue Borrower Bond.
3. Date of issue: June 23, 2023
4. Purpose of issue: Cast iron and 4-inch PVC replacement
5. Type of bond: Tax Exempt.
6. Principal amount and denomination of bond: \$1,147,000
7. Paying dates of principal and interest: *See attached Schedule.*
8. Amortization schedule: *See attached Schedule.*
9. Interest rate or rates, including total aggregate interest cost: *See attached Schedule.*

This is to certify that the above information pertaining to the Drinking Water Project Revenue Borrower Bond is true and correct on this 23<sup>rd</sup> day of June 2023.

  
By: Heather Besco-Clyde  
Its: Finance Officer

**ATTACHMENT TO BOND INFORMATION STATEMENT**

Upon meeting the conditions set forth in the Loan Agreement, this loan is 100% forgivable.  
There will be no payments made.