**RESOLUTION NO. 2011-3**

**RESOLUTION GIVING APPROVAL TO finance improvements to the WATER sUPPLY AND DISTRIBUTION sYSTEM cONSTRUCTION; GIVING APPROVAL TO THE ISSUANCE AND SALE OF NOT TO EXCEED $617,000 GENERAL OBLIGATION BOND, SERIES 2011; PLEDGING GENERAL TAXING POWER FOR THE PAYMENT OF THE BOND; AND CREATING SPECIAL FUNDS AND ACCOUNTS.**

Whereas, SDCL Chapter 6-8B and 9-25 (the “Act”) requires that 60% of the electors of the Town of Piedmont, South Dakota (the “Town”) to approve the issuance of general obligation bonds; and

Whereas, more than 60% of the electors approved the issuance of general obligation bonds; and

Whereas, the Board of Trustee does hereby determine that it is advisable and in the best interests of the Town to borrow for the purpose of paying the costs to finance improvements to the Town Water Supply and Distribution System Project, and, to issue one or more series of general obligation bond (the *“Bonds”*) of the Town as hereinafter authorized, provided that at any given time the aggregate principal amount of the Bonds outstanding shall not exceed the amount of $617,000.

**Now Therefore Be It Resolved** by the Board of Trustee of the Town of Piedmont, South Dakota, as follows:

## **Section 1. Definitions.**

The following words and terms used in this Resolution shall have the following meanings unless the context or use indicates another or different meaning:

“Act” means SDCL Chapter 6-8B and 9-25 as amended.

 “Bond Date” means a date in 2011.

“Bond Fund” means the account of that name established and further described in Section 12 of this Resolution.

“Bond Register” means the books for the registration and transfer of the Bonds to be kept by the Bond Registrar on behalf of the Town.

“Bond Registrar” means the Town of Piedmont Finance Officer or its successor or successors hereafter appointed in the manner provided in Article VI hereof.

“Bond” means the not to exceed $617,000 aggregate principal amount of General Obligation Bond, Series 2011, authorized under this Resolution and to be issued in one or more series.

“Closing Date” means the date the Bonds are exchanged for value.

“Board of Trustee” means the Board of Trustee of Town of Piedmont, South Dakota.

“Town” means Town of Piedmont, South Dakota.

“Costs of Issuance” means all costs, fees, charges and expenses incurred in connection with the issuance of the Bonds.

 “Finance Officer” means the Town of Piedmont Finance Officer

 “Designated Officer” means the President, Finance Officer or any other officer of employee of the Town so designated by a written instrument signed by the President or the Finance Officer and filed with the Bond Registrar.

“Interest Payment Dates” means the dates that the interest is paid.

“Letter of Conditions” means the Letter of Conditions issued by the United States Department of Agriculture to the Town concerning the conditional purchase of the purchase of the Bonds.

“Improvements to the Town Water Supply and Distribution System” means the construction of improvements to the Town Water Supply and Distribution System.

“Pledged Taxes” means the unlimited ad valorem taxes or such amount as is necessary to pay principal, interest and premium, if any, when due which is pledged hereunder by the Town as security for the Bonds and any accrued interest received upon the sale of the Bonds and deposited into the Bond Fund.

“Principal and Interest Payment Date” means the date each year that the principal and interest payments are due.

“Registration Agent” means the Finance Officer or any Registration Agent appointed by the Finance Officer its successor or successors hereafter appointed in the manner provided in Article VI hereof.

“Resolution” means this Resolution as originally introduced and adopted and as the same may from time to time be amended or supplemented in accordance with the terms hereof.

 “Stated Maturity” means with respect to any Bond or any interest thereon the date specified in such Bond as the fixed date on which the principal of such Bond or such interest is due and payable, whether by maturity or otherwise.

## **Section 2. Findings.**

The Board of Trustee hereby finds that it is necessary and in the best interests of the Town that the Town provide for the improvements to the Town Water Supply and Distribution System and that the Bonds be issued to enable the Town to pay the costs of improvements to the Town improvements to the Town Water Supply and Distribution System.

## **Section 3. Bond Details.**

The Bonds are issuable only as fully registered Bonds. All Bonds issued under the Resolution shall be substantially in the form set forth in Exhibit A attached hereto, and by this reference incorporated herein as fully as though copied.

The Bonds shall be executed in such manner as may be prescribed by applicable law in the name and on behalf of the Town with the manual or facsimile signature of the President of the Board of Trustee, attested by the manual or facsimile signature of the Finance Officer, and approved as to form and countersigned by a Resident Attorney by his manual or facsimile signature.

In the event any officer whose manual or facsimile signature shall appear on any Bond shall cease to be such officer before the delivery of such Bond, such manual or such facsimile signature shall nevertheless be valid and sufficient for all purposes as if he or she had remained in office until such delivery. Any Bond may bear the facsimile signature of, or may be manually signed by, such individuals who, at the actual time of the execution of such Bond, were the proper officers of the Town to sign such Bond, although on the date of the adoption by the Town of this Resolution, such individuals may not have been such officers.

The term of the Bonds may not be greater than 40 years and bear interest at a rate not greater than 5.00%.

The Bonds shall be designated "General Obligation Bond, Series 2011," or such other designation as shall be determined by the Board of Trustee. The Bonds shall bear interest from their date or from the most recent interest payment date to which interest has been paid or duly provided for, until the principal amount of the Bonds is paid, such interest (computed upon the basis of a 360-day year of twelve 30-day months) being payable on Interest Payment Dates. Interest on each Bond shall be paid by wire transfer, check or draft of the Paying Agent, payable in lawful money of the United States of America, to the person in whose name such Bond is registered at the close of business on the Record Date. The principal of the Bond shall be payable in lawful money of the United States of America at the principal office of the Paying Agent on the Bond Payment Date. Each Bond shall state that it is issued pursuant to the Act.

The Registration Agent shall make all interest payments with respect to the Bonds on each interest payment date directly to the registered owners as shown on the Bond registration records maintained by the Registration Agent as of the close of business on the Record Date by wire transfer, check or draft mailed to such owners at their addresses shown on said Bond registration records, without, except for final payment, the presentation or surrender of such registered Bonds, and all such payments shall discharge the obligations of the Town in respect of such Bonds to the extent of the payments so made. Payment of principal of and premium, if any, on the Bonds shall be made upon presentation and surrender of such Bonds to the Registration Agent as the same shall become due and payable.

## **Section 4. Redemption of Bonds Prior to Maturity**

The Bonds are subject to redemption prior to maturity.

## **Section 5. Registration of Bonds; Persons Treated as Owners.**

The Town shall cause the Bond Register to be kept at the principal corporate office of the Bond Registrar, which is hereby constituted and appointed the Registrar of the Town.

Upon surrender for transfer of any Bond at the principal corporate office of the Bond Registrar, duly endorsed by, or accompanied by a written instrument or instruments of transfer in form satisfactory to the Bond Registrar and duly executed by, the registered owner or his or her attorney duly authorized in writing, the Town shall execute and the Bond Registrar shall authenticate, date and deliver in the name of the transferee or transferees a new fully registered Bond or Bonds of the same series and of the same Stated Maturity of Authorized Denominations.

## **Section 6. Form of Bonds.**

The Bonds shall be in substantially the form attached as Exhibit A. All exhibits attached to this resolution are on file with the Finance Officer and open to inspection by the public during normal business hours.

## **Section 7. Security.**

The full faith and credit of the Town are hereby irrevocably pledged to the punctual payment of the principal of, interest on and Premium, if any, of the Bonds. The Bonds shall be direct and general obligations of the Town and the Town shall be obligated to levy ad valorem taxes upon all the taxable property in the Town for the payment of the Bonds and the interest thereon, without limitation as to rate or amount.

The Town intends to deposit into the Bond Fund, hereafter defined, revenues of the Water Supply and Distribution system financed by the Bonds money sufficient to pay principal and interest when due. When credit of the Town is supplied the levy may not be spread in accordance with South Dakota law.

## **Section 8. General Obligations; Payment of Principal, Premium and Interest; Tax Levy.**

For the purpose of providing the funds required to pay the principal of and interest on, or Premium (if any) of the Bonds promptly as the same become due, there is hereby levied upon all taxable property in the Town, in each of the years the Bonds are outstanding, a direct annual tax, taking into consideration delinquencies and nonpayment, sufficient for those purposes in addition to all other taxes, to produce collected taxes in the amount indicated on the Bond Amortization Schedule, to be attached hereto and made a part of this resolution. The Finance Officer is directed to attach the Bond Amortization Schedule to this resolution when it is finalized.

The Pledged Taxes and other moneys on deposit in the Bond Fund shall be applied to pay principal of and interest on, or Premium (if any) of the Bonds.

Interest or principal coming due at any time when there are insufficient funds on Piedmont from the Pledged Taxes to pay the same shall be paid promptly when due from current funds on Piedmont in advance of the collection of the Pledged Taxes herein levied; and when the Pledged

Taxes shall have been collected, reimbursement shall be made to said funds in the amount so advanced.

The Town covenants and agrees with the purchasers and registered owners of the Bonds that so long as any of the Bonds remain outstanding, the Town will take no action or fail to take any action which in any way would adversely affect the ability of the Town to levy and collect the Pledged Taxes. The Town and its officers will comply with all present and future applicable laws in order to assure that the Pledged Taxes may be levied, extended and collected as provided herein and deposited into the Bond Fund.

A copy of this Resolution, duly certified by the Finance Officer, shall be filed in the office of the Finance Officer, and such filing shall constitute the authority for and it shall be the duty of said Finance Officer, in each year as aforesaid, to extend the taxes levied pursuant to this Section for collection, such taxes to be in addition to and in excess of all other taxes heretofore or hereafter authorized to be levied by the Town on its behalf.

All receipts of the Pledged Taxes received by the Town Finance Officer shall be deposited in the Bond Fund. The Finance Officer is hereby expressly authorized and directed to do, or cause to be done, all things necessary to provide for the prompt deposit with the Bond Registrar, in accordance with this Resolution, of all Pledged Taxes.

## **Section 9. Powers as to Bonds and Pledge.**

The Town is duly authorized to pledge the Pledged Taxes and other moneys, securities and funds purported to be pledged by this Resolution in the manner and to the extent provided in this Resolution. The Pledged Taxes and other moneys, securities and funds so pledged are and will be free and clear of any pledge, lien, charge or encumbrance thereon or with respect thereto prior to, or of equal rank with, the pledge created by this Resolution. The Town shall at all times, to the extent permitted by law, defend, preserve and protect the pledge of the Pledged Taxes and other moneys, securities and funds pledged under this Resolution and all the rights thereto of the Bondholders under this Resolution against all claims and demands of all persons whomsoever.

## **Section 10. Sale of the Bonds; Forms of Documents Approved.**

The Finance Officer is hereby authorized to sell all or any portion of the Bonds from time to time on such terms as he or she may deem to be in the best interests of the Town; *provided* that (a) the Purchase Price shall be not less than 100 percent of the proceeds of the Bonds,plus accrued interest on the Bonds from their dated date to the date of their issuance,and Original Issue Discount, if any, as permitted by law and this Resolution and (b) the debt service on the Bonds in any year shall not exceed the aggregate amount levied therefore as specified in Section 9 hereof. The Bonds may be sold from time to time as the Finance Officer shall determine that the proceeds of such sales are needed. Nothing contained in this Resolution shall limit the sale of the Bonds or any maturity or maturities thereof at a price or prices in excess of the principal amount thereof.

Any Designated Officer and such other officers of the Town as may be necessary are hereby authorized to execute such other documents, as may be necessary to implement the improvements to the Town Water Supply and Distribution System Project, and to effect the issuance and delivery of the Bonds and execution thereof by such officers is hereby deemed conclusive evidence of approval thereof with such changes, additions, insertions, omissions or deletions as such officers may determine, with no further official action of or direction by the Board of Trustee.

## **Section 11. Creation Of Funds And Appropriations.**

There is hereby created the *“General Obligation Bond, Series 2011, Bond Fund”* (the *“Bond Fund”*), which shall be the fund for the payment of principal of and interest on the Bonds. The Bond Fund shall be held and maintained as a separate and segregated account by the Finance Officer. Accrued interest, capitalized interest and premium, if any, received upon delivery of the Bonds shall be deposited into the Bond Fund and be applied to pay first interest coming due on the Bonds.

The Pledged Taxes shall either be deposited into the Bond Fund and used solely and only for paying the principal of and interest on, or Premium (if any) of the Bonds or be used to reimburse a fund or account from which advances to the Bond Fund may have been made to pay principal of or interest on, or Premium (if any) of the Bonds prior to receipt of Pledged Taxes. Interest income or investment profit earned in the Bond Fund shall be retained in the Bond Fund for payment of the principal of and interest on Bonds on the interest payment date next after such interest or profit is received or, to the extent lawful and as determined by the Board of Trustee, transferred to such other funds as may be determined.

The proceeds of the Bonds shall be set aside in one or more separate funds of the Town, hereby created, and designated as the *“Improvements to the Town Water Supply and Distribution System”* (the *“Project Fund”*). The Project Fund may further be divided into accounts and designated the *“Series 2011 Bonds Project Account”* (an *“Account”*). The Project Fund shall be held and maintained as separate and segregated accounts by the Finance Officer. Moneys in the Project Fund may be withdrawn by the Town to pay the costs of the improvements to the Town Water Supply and Distribution System Project.

The sum necessary, as determined by the Finance Officer, of the principal proceeds of the Bonds shall be deposited into a separate and segregated fund, hereby created, to be known as the *“Expense Fund”* (the *“Expense Fund”*) and shall be used by the Town to pay costs of issuance of the Bonds in accordance with normal Town disbursement procedures. Any funds remaining to the credit of the Expense Fund on the date which is six months following the date of delivery of the Bonds shall be transferred to the Town for deposit into such fund or account of the Town as the Finance Officer may direct.

## **Section 12. Financing Team Approved.**

The selection of the following party or parties in the capacities as indicated is hereby ratified and approved:

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| --- | --- |
| **Capacity** | **Party or Parties** |
| Purchaser | United States of America by and throughRural DevelopmentHuron State Office200 4th Street SWFederal Building Room 210 Huron, SD 57350 |
| Bond Counsel | Meierhenry Sargent LLP315 S. Phillips AvenueSioux Falls, SD 57104 |
|  |  |
| Paying Agent and Registrar | Town of Piedmont PO Box 101Piedmont, SD 57769 |

## **Section 13. This Resolution a Contract.**

The provisions of this Resolution shall constitute a contract between the Town and the registered owners of the Bonds, and no changes, additions or alterations of any kind shall be made hereto, except as herein provided.

## **Section 14. Rights and Duties of Bond Registrar.**

If requested by the Bond Registrar, the President and Finance Officer of the Town are authorized to execute the Bond Registrar’s standard form of agreement between the Town and the Bond Registrar with respect to the obligations and duties of the Bond Registrar as Bond Registrar hereunder which may include the following:

to act as bond registrar, authenticating agent, paying agent and transfer agent as provided herein;

to give notice of redemption of Bonds as provided herein;

The Finance Officer of the Town is hereby directed to file a certified copy of this Resolution with the Bond Registrar.

## **Section 15. Letter of Conditions.**

The United States of America Letter of Conditions is incorporated herein as if stated in full.

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|  | Philip C. Anderson |
| ATTEST: | President |
|  |  |
| Diana L. Evans |  |
| Finance Officer |  |

Adopted: February 1, 2011

Published: February 9, 2011