**RESOLUTION NO. 2012-07**

**RESOLUTION GIVING APPROVAL TO CERTAIN DRINKING WATER FACILITIES IMPROVEMENTS; GIVING APPROVAL TO THE ISSUANCE AND SALE OF A GENERAL OBLIGATION BOND IN TWO SERIES TO FINANCE, DIRECTLY OR INDIRECTLY, THE IMPROVEMENTS TO THE FACILITIES; APPROVING THE FORM OF THE LOAN AGREEMENTS AND THE GENERAL OBLIGATION BONDS AND LEVEEING TAXES; AND CREATING SPECIAL FUNDS AND ACCOUNTS FOR THE ADMINISTRATION OF FUNDS FOR OPERATION OF THE SYSTEM AND RETIREMENT OF THE GENERAL OBLIGATION BOND.**

**WHEREAS**, the City elector’s approved the issuance of general obligation bonds, in one or more series, in a principal amount of not to exceed $1,000,000; and

WHEREAS, the City issued $617,000 of general obligation bonds purchased by the United States of America acting through Rural Utilities Services; and

**WHEREAS**, a municipality is authorized to issue general obligation bonds to fund improvements, extensions and additions to its drinking water system by SDCL § 9-26-1 and is required to levy a tax sufficient to pay the principal and interest on such bonds when due; and,

**WHEREAS**, the City of Piedmont (the "City") 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 voters of the City have authorized the City to issue its General Obligation 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;

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

1. Declaration of Necessity and Determination of Facilities Financed. The City desires and hereby determines it is necessary to construct improvements to its drinking water facilities within its System, as described in Exhibit A hereto (the "Project"). The City hereby expressly finds that if the Project is not undertaken, the System will pose a health hazard to the City and its inhabitants, and will make the City unable to comply with state and federal law
2. Approval of Loan. The City hereby determines to finance up to $1,404,000 of the costs of the Project, less principal forgiveness of up to 57.3%, not to exceed $804,000, through the issuance of General Obligation Bonds (collectively the "General Obligation Bond") in two series, and other funds secured by the City. The City authorizes the issuance of a bond in an amount not to exceed $896,955, less principal forgiveness of up to 57.3% not to exceed $513,955, or $383,000 to be designated Series A. The City authorizes the issuance of a bond for the remainder as Series B, to be issued upon approval of the voters of the City.
3. Approval of Loan Agreement. The execution and delivery of the General Obligation Loan Agreements (the "Loan Agreement"), the form of which is attached hereto, between the City 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 City deems appropriate and approves, for and on behalf of the City. The President and Finance Officer are hereby further authorized and directed to implement and perform the covenants and obligations of the City 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.
4. Approval of General Obligation Bond. The issuance of a General Obligation Bond in two series in a principal amount not to exceed $1,404,000 less principal forgiveness of up to 57.3%, not to exceed $804,000, as determined according to the Loan Agreement in the form and content set forth in Appendix B attached to the form of Loan Agreement 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 General Obligation Bond and deliver the General Obligation Bond to the District, for and on behalf of the City, 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 General Obligation Bond and their execution and delivery thereof shall evidence that approval. The General Obligation Bond shall be issued under the authority of SDCL Chapter 9-26 and SDCL Chapter 6-8B, and the provisions of the Act are hereby expressly incorporated herein.
5. Paying Agent/Registrar. The General Obligation Bond shall be payable at the office of The First National Bank in Sioux Falls, Sioux Falls, South Dakota, hereby designated as paying agent and registrar.
6. Bond Counsel. Meierhenry Sargent LLP is hereby retained as Bond Counsel with respect to the General Obligation Bond.
7. Debt Service Fund. The City does hereby create a debt service fund, a segregated asset account, into which all taxes levied for the payment of principal , interest and Administrative Surcharge on the Bonds shall be deposited and used solely for the purpose of paying the same when due. No moneys in the debt service fund may be transferred to any other fund until the Bonds are either paid in full or legally defeased in accordance with law.
8. Pledge of Full Faith and Taxing Powers. The City covenants and agrees with the holders of said General Obligation Bond that in each fiscal year in which any of the General Obligation Bond shall be outstanding there shall be levied, spread and collected at the same time, and in the same manner as other ad valorem taxes in said City are levied and collected, ad valorem taxes upon all taxable property within the City sufficient to pay interest on and the principal of said General Obligation Bond as they respectively become due and mature, and also an amount sufficient to pay the interest on and the principal of all other General Obligation Bond of the City heretofore or hereafter issued as the same shall become due and mature. The City does hereby levy, collectable in the ensuing years, assuming a 10% delinquency rate on collection of taxes levied to pay amounts due hereunder, to pay (unless and to the extent the City furnishes funds from any other source), when due principal, interest, and administrative surcharge due on the General Obligation Bond. The proceeds of said levies are hereby appropriated to, and shall be held debt service fund and used for no purpose other than for payment of principal of and interest on said General Obligation Bond; provided that, if any payment of interest or principal falls due when moneys in said sinking fund are insufficient, the City shall request and the auditor shall spread additional levies sufficient for payment of principal and interest when due or the same shall be advanced from any funds of the City to said sinking fund as provided by South Dakota Law.
9. Additional Bonds. The City shall have the right to issue additional bonds secured taxes subject to the limitations of law and the constitution.
10. Tax Matters.
    1. General Covenant. The City covenants and agrees with the registered owners from time to time of the General Obligation Bond that it will not take or permit to be taken by any of its officers, employees or agents any action which would cause the interest on the General Obligation Bond to become includable in gross income for federal income tax purposes under the Code and applicable Treasury Regulations (the "Regulations"), and covenants to take any and all actions within its powers to ensure that the basic interest on the General Obligation Bond will not become includable in gross income for federal income tax purposes under the Code and the Regulations.
    2. Certification. The President and the Finance Officer, being the officers of the City charged with the responsibility for issuing the General Obligation Bond pursuant to this Resolution are hereby authorized and directed to execute and deliver to the District a certificate in accordance with the provisions of Section 148 of the Code, and Section 1.148-2(b) of the Regulations, stating that on the basis of facts, estimates and circumstances in existence on the date of issue and delivery of the General Obligation Bond, it is reasonably expected that the proceeds of the General Obligation Bond will be used in a manner that would not cause the General Obligation Bond to be "arbitrage bonds" within the meaning of Section 148 of the Code and the Regulations.
    3. Information Reporting. The City shall file with the Secretary of the Treasury a statement concerning the General Obligation Bond containing the information required by Section 149(e) of the Code.
    4. Qualified Tax-Exempt Obligations. Pursuant to Section 265(b)(3)(B)(ii) of the Code, the City hereby designates the General Obligation Bond as "qualified tax-exempt obligations" for purposes of Section 265(b)(3) of the Code. The City hereby represents that it does not anticipate that obligations bearing interest not includable in gross income for purposes of federal income taxation under Section 103 of the Code (including refunding obligations as provided in Section 265 (b) (3) of the Code and including "qualified 501 (c) (3) bonds" but excluding other "private activity bonds," as defined in Sections 141(a) and 145(a) of the Code) will be issued by or on behalf of the City and all "subordinate entities" of the City in 2012 in an amount greater than $5,000,000.
11. General Covenants.
    1. The City hereby covenants and agrees with the District and other owners of the General Obligation Bond that it will punctually perform all duties with reference to the Project, the System and the General Obligation Bond required by the constitution and laws of the State of South Dakota and by this Resolution.
    2. The City agrees and covenants that it will promptly construct the improvements included in the Project.
    3. The City covenants and agrees with the District and other owners of the General Obligation 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 General Obligation Bond remains outstanding; that it will maintain insurance on the System for the benefit of the holders of the General Obligation 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.
    4. 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 City, 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 City’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.
12. Severability. If any section, paragraph, clause or provision of this Resolution, the Loan Agreement, the General Obligation 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, General Obligation Bond, or any other Loan Document.
13. Authorization of City Officials. The President, Finance Officer, City Attorney and City officials shall be and they are hereby authorized to execute and deliver for and on behalf of the City 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.
14. Definitions. 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.

Adopted at Piedmont, South Dakota, this 1st day of May 2012.

APPROVED:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

President

(Seal)

Attest: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

City Finance Officer

EXHIBIT A

(DESCRIPTION OF THE PROJECT)

City of Piedmont – Water Supply and Distribution Improvements System Phase 2 Project

as outlined in the Facilities Plan