

## RESOLUTION NO. 2013-7

### **A RESOLUTION AUTHORIZING THE ISSUANCE, PRESCRIBING THE FORM AND DETAILS AND PROVIDING FOR THE PAYMENT OF WATER REVENUE BOND AND THE SECURITY THEREFOR AND APPROVING THE FORM OF LOAN AGREEMENT**

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF MADISON, SOUTH DAKOTA (the "Issuer"):

#### SECTION 1. RECITALS, AUTHORIZATION AND FINDINGS.

1.01. The Issuer currently operates a water distribution system (the "Utility") to supply municipal, industrial and domestic water to its inhabitants.

1.02. The Issuer has determined it necessary to construct improvements to the Utility, consisting of improvements to the existing water purification plant (the "Project"), and to issue its revenue bonds under South Dakota Codified Laws, Chapter 9-40 (the "Act"), in order to finance a portion of the cost of the Project.

1.03. The Issuer is authorized to acquire and construct the Project, to issue its revenue obligations in order to defray the cost thereof, and to make all pledges, covenants and agreements authorized by law for the protection of the owners of the obligations, including, without limitation, those covenants set forth in SDCL, Sections 9-40-16 and 9-40-17. The obligations are payable from the Net Revenues of the Project, as defined in Section 2.03 hereof.

1.04. The Issuer has heretofore entered into a Revenue Obligation Loan Agreement, dated July 5, 2012 (the "Loan Agreement"), with the South Dakota Conservancy District (the "District"), and pledged the loan payments thereunder for the security of the State Revolving Fund Revenue Bond of the Issuer (the "SRF Bond"), the proceeds of which were intended to finance construction of the Project (the "SRF Transaction"). To date, the Issuer has not received any proceeds from the SRF Bond and the Issuer and the District have agreed to cancel the SRF Transaction.

1.05. The Issuer has determined it to be in its best interests to issue its water revenue bond in an aggregate principal amount not exceeding \$3,500,000 (the "Bond") to finance construction of the Project and has received a proposal from First Bank & Trust [in Madison, South Dakota] (the "Purchaser") to purchase the Bond, plus accrued interest to the date of delivery and payment, if any, upon the terms and conditions set forth in a letter of commitment, dated April 4, 2013, and upon further terms and conditions set form in this resolution (the "Resolution").

1.06. The execution and delivery of the Revenue Obligation Loan Agreement between First Bank & Trust [in Madison, South Dakota] (the "Purchaser") and the Issuer (the "Loan Agreement"), the form of which has been submitted to this Commission, and the pledging of the loan payments thereunder for the security of the State Revolving Fund Revenue Bond of the Issuer (the "SRF Bond") and the interest thereon shall be, and they are, in all respects, hereby

authorized, approved and confirmed, and the Mayor and Finance Officer are hereby authorized and directed to execute and deliver the Loan Agreement in the form and content submitted to this Commission, with such changes that are not substantive as the Attorney for the Issuer deems appropriate and approves, for and on behalf of the Issuer. The Mayor and Finance Officer are hereby further authorized and directed to implement and perform the covenants and obligations of the Issuer as set forth in or required by the Loan Agreement.

1.07. The issuance of the Bond, in the principal amount not exceeding \$3,500,000 and its sale to the Purchaser is hereby authorized, approved and confirmed and the Mayor, Finance Officer and other appropriate officials of the Issuer shall be authorized to execute and deliver the Bond to the Purchaser, for and on behalf of the Issuer and to deposit the proceeds thereof in the manner provided for in the Loan Agreement.

**SECTION 2. FUNDS AND ACCOUNTS.** For the purpose of application and proper allocation of the income of the Project and to secure the payment of principal of and interest on the Bond, the following funds and accounts shall be used solely for the following respective purposes until payment in full of the principal of and interest on the Bond:

2.01. Water Utility Fund; Bond Proceeds and Revenues Pledged and Appropriated. A fund designated as the Water Utility Fund (the Fund) has been established and shall be maintained as a separate and special bookkeeping account on the official books of the Issuer until the Bond and any additional bonds (together referred to as the Bonds) payable from the Net Revenues of the Project, as provided in Sections 2.02 through 2.04 hereof and interest, and redemption premiums due thereon have been fully paid, or the Issuer's obligation with reference to the Bond has been discharged as provided in this Resolution. All proceeds of the Bond and all other funds hereafter received or appropriated for purposes of the Project are appropriated to the Fund. All gross revenues derived from the operation of the Project are irrevocably pledged and appropriated and shall be credited to the Fund as received. As described in Section 2.04 hereof, the Issuer shall impose a separate surcharge for the availability, benefit and use of the Project as part of the Utility and shall aggregate the gross revenues derived from such surcharge, together with the expenses of operation and maintenance of the Project and shall account for them as provided in this Resolution; except as expressly stated in this Resolution, the pledges, appropriations, covenants and agreements of the Issuer and the Accounts established within the Fund by the Resolution apply only to the Project, its operations, revenues and expenses. The Issuer finds that acquisition and construction of the Project will benefit all present and future users of the Utility, therefore the surcharge described in Section 2.04 shall be imposed on all current and future users of the Utility. Such gross revenues shall include all gross income and receipts from rates and charges imposed for the availability, benefit and use of the Project as now constituted and of all replacements and improvements thereof and additions thereto, and from penalties and interest thereon, and from any sales of property acquired for the Project and all income received from the investment of such gross revenues; but not any taxes levied or amounts borrowed or received as grants for construction of any part of the Project. The Fund shall be subdivided into separate accounts as designated and described in Sections 2.02 to 2.06, to segregate income and expenses received, paid and accrued for the respective purposes described in those sections. The gross revenues received in the Fund shall be apportioned monthly or as soon as possible after the first day of each month, commencing the first calendar month

following the delivery of the Bond, which apportionment is hereinafter referred to as the “monthly apportionment.”

2.02. Construction Account. The Construction Account shall be used only to pay as incurred and allowed costs which under generally accepted accounting principles are capital costs of the Project, and of such future reconstructions, improvements, betterments or extensions of the Project as may be authorized in accordance with law; including but not limited to payments due for work and materials performed and delivered under construction contracts, architectural, engineering, inspection, supervision, fiscal and legal expenses, the cost of lands and easements, interest accruing on the Bond during the first year following the date of its delivery, if and to the extent that the Revenue Bond Account is not sufficient for payment of such interest, reimbursement of any advances made from other Issuer funds, and all other expenses incurred in connection with the construction and financing of any such undertaking. To the Construction Account shall be credited as received all proceeds of the Bond, all other funds appropriated by the Issuer for the Project, and all income received from the investment of the Construction Account.

2.03. Operating Account. On each monthly apportionment there shall first be set aside and credited to the Operating Account, as a first charge on the gross revenues, such amount as may be required over and above the balance then held in the Operating Account to pay the reasonable and necessary operating expenses of the Project which are then due and payable, or are to be paid prior to the next monthly apportionment. The term “operating expenses” shall mean the current expenses, paid or accrued, of operation, maintenance and current repair of the Project, calculated in accordance with generally accepted accounting principles, and shall include, without limitation, administrative expenses of the Issuer relating solely to the Project, premiums for insurance on the properties thereof, labor and the cost of materials and supplies used for current operation and for maintenance, and charges for the accumulation of appropriate reserves for current expenses which are not recurrent monthly but may reasonably be expected to be incurred in accordance with generally accepted accounting principles. Such operating expenses shall not include any allowance for depreciation or renewals or replacements of capital assets of the Project and shall not include any portion of the salaries or wages paid to any officer or employee of the Issuer, except such portion as shall represent reasonable compensation for the performance of duties necessary to the operation of the Project, nor any amount properly payable from any other account of the Fund. The Net Revenues of the Project, as referred to in this Resolution, are hereby defined to include the entire amount of such gross revenues remaining after each such monthly apportionment, after crediting to the Operating Account the amount required hereby, including sums required to maintain an operating reserve equal to one month’s estimated operating expenses.

2.04. Revenue Bond Account. Upon each monthly apportionment there shall be set aside and credited to the Revenue Bond Account, out of the Net Revenues of the Project, an amount equal to one-sixth of the interest to become due on the Bond on the next succeeding interest payment date and one-twelfth of the principal to become due on the Bond on the next succeeding principal payment date. Moneys from time to time held in the Revenue Bond Account shall be disbursed only to meet payments of principal and interest on the Bond as such payments become due; provided, that on any date when the outstanding Bond are due or prepayable by its terms, if the amount then on hand in the Revenue Bond Account is sufficient,

with other moneys available for the purpose, to pay the Bond and the interest accrued thereon in full, it may be used for that purpose. If any payment of principal or interest becomes due when moneys in the Revenue Bond Account are temporarily insufficient, such payment shall be advanced out of any Net Revenues theretofore segregated and then on hand in the Replacement and Depreciation Account or the Surplus Account. In the event that sufficient moneys are not available from the aforementioned sources the Issuer, to the extent it may, at the time legally do so, may, but shall not be required to, temporarily advance moneys to the Revenue Bond Account from other revenues of the Project or from other funds of the Issuer on hand and legally available for the purpose, but any such advance shall be repaid from Net Revenues of the Project within 24 months.

2.05. Replacement and Depreciation Account. There shall next be set aside and credited, upon each monthly apportionment, to the Replacement and Depreciation Account such portion of the Net Revenues, in excess of the current requirements of the Revenue Bond Account (which portion of the Net Revenues is referred to herein as Surplus Net Revenues), as the City Commission shall determine to be required for the accumulation of a reasonable reserve for renewal of worn out, obsolete or damaged properties and equipment of the Project. Moneys in this account shall be used only for the purposes above stated or, if so directed by the City Commission, to redeem principal of the Bond, to pay principal or interest when due thereon as required in Section 2.04 hereof, or to pay the cost of improvements to the Project; provided, that in the event that the Issuer shall hereafter issue bonds for the purpose of financing the construction and installation of additional improvements or additions to the Project, but which additional bonds cannot, upon the terms and conditions provided in Section 3, be made payable from the Revenue Bond Account, Surplus Net Revenues from time to time received may be segregated and paid into one or more separate and additional accounts for the payment of such bonds and interest thereon, in advance of payments required to be made into the Replacement and Depreciation Account.

2.06. Surplus Account. Any amount of the Surplus Net Revenues from time to time remaining after the above required applications thereof shall be credited to the Surplus Account, and the moneys from time to time in that account, when not required to restore a current deficiency in the Revenue Bond Account as provided in Section 2.04 hereof, may be used for any of the following purposes and not otherwise:

(a) to redeem and prepay principal of the Bond;

(b) if the balances in the Revenue Bond Account and the Replacement and Depreciation Account are sufficient to meet all payments required or reasonably anticipated to be made therefrom prior to the end of the current fiscal year, then;

(i) to pay for repairs or for the construction and installation of improvements or additions to the Project; and

(ii) with the written consent of the Purchaser, transferred to one or more specified funds of the Issuer.

No moneys shall at any time be transferred from the Surplus Account or any other account of the Fund to any other fund of the Issuer, nor shall such moneys at any time be invested in warrants, special improvement bonds or other obligations payable from other funds, except as provided in this section.

2.07. Deposit and Investment of Funds. The Finance Officer shall cause all moneys pertaining to the Fund to be deposited as received with one or more banks which are duly qualified public depositories under the provisions of Chapter 4-6A, South Dakota Codified Laws, in a deposit account or accounts, which shall be maintained so long as the Bond and the interest thereon shall remain unpaid. The deposit and investment of all moneys pertaining to the Fund must, on the books and records of the Issuer, be maintained separate and apart from all other funds of the Issuer. Any of such moneys not necessary for immediate use may be deposited with such depository banks in savings or time deposits. No moneys shall at any time be withdrawn from such deposit accounts except for the purposes of the Fund as authorized in this Resolution; except that moneys from time to time on hand in the Fund may at any time, in the discretion of the City Commission, be invested in securities permitted by the provisions of South Dakota Codified Laws, Section 4-5-6; provided, that the Replacement and Depreciation Account 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 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 in that account. The investment of the moneys on deposit in the Revenue Bond Account is further restricted by the provisions of Section 5.01 hereof. Deposits and securities described in this Section shall constitute "Qualified Investments."

2.08. Additional Revenues or Collateral. The Issuer reserves the right at any time to pledge additional moneys, revenues or collateral as security for the Bond and any additional bonds. Such pledge shall not be effective unless and until the Issuer receives, and provides to the bond registrar an opinion of, nationally recognized bond counsel stating that such pledge will not adversely affect the validity or tax exemption of the Bond and any additional bonds then outstanding.

2.09. Appropriation of Other Moneys. The Issuer reserves the right in any year while the Bond is outstanding to appropriate from moneys on hand and legally available for such purpose in its cash reserve accounts such amounts as this Commission may specify and direct that such amounts be used to pay principal and interest on the Bond. Any such appropriation shall reduce the obligation of the Issuer to impose rates and charges under Section 2.04 hereof.

2.10. Statutory Mortgage. The Issuer covenants and agrees that pursuant to SDCL 9-40-28 and SDCL 9-40-29, the lawful holder of the 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 and interest on the Bond, and the Issuer agrees not sell or otherwise dispose of the Utility, 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 Issuer.

### SECTION 3. PRIORITIES, ADDITIONAL BONDS AND RATES AND CHARGES.

3.01. Priority of Bond Payments. If at any time the Net Revenues of the Project are insufficient to pay principal and interest then due on the Bond, any and all moneys then on hand shall be first used to pay the interest accrued on the Bond, and the balance shall be applied toward payment of the maturing principal of the Bond in order of their maturities, the earliest maturing principal to be paid first, and pro rata in payment of principal maturing on the same date.

3.02. Additional Bonds. The Issuer shall not incur any obligations which are a lien on or constitutes a right to payment from the Net Revenues of the Project which is superior to that of the Bond. The Issuer reserves the right to issue additional bonds, payable from the Revenue Bond Account of the Fund, on a parity as to both principal and interest with the Bond in the manner and upon satisfaction of the conditions and subject to the limitations set forth in the Loan Agreement.

3.03. Compliance with Loan Agreement. The Issuer will comply, so long as the Bond is outstanding, and unpaid, with all of the provisions of the Loan Agreement, to the same extent as though such provisions were set forth in this Resolution.

3.04. Rates and Charges. The Issuer will maintain, revise, charge and collect rates and other charges for all service furnished and made available by the Project, according to schedules such that the gross revenues derived therefrom will be sufficient, when combined with other available funds, to pay when due all expenses of the operation and maintenance of the Project, and all principal of and interest on the Bond, to provide for the establishment and maintenance of adequate reserves, to provide an allowance adequate for recurring renewals and replacements of the Project, to satisfy the rate covenant provided in Section 6.4 of the Loan Agreement and to fulfill the terms of all other agreements with holders of the Issuer's bonds. The rates and charges with respect to the Project shall be in the form of a separately stated surcharge on the municipal utilities rate schedule; in calculating the surcharge the City Commission shall allocate to the Project its share of the expenses of operation and maintenance and allowances for renewal and replacement as well as the requirements to pay principal of and interest on the Bond and to repay the Utility or any other funds of the Issuer for moneys advanced in accordance with Section 2.04 hereof.

### SECTION 4. AMENDMENTS.

4.01. Amendments Without Bondholder Consent. The Issuer reserves the right to amend this Resolution from time to time and at any time, for the purpose of curing any ambiguity or of curing, correcting or supplementing any defective provision contained herein, or of making such provisions with regard to matters or questions arising hereunder as this Commission may deem necessary or desirable and not inconsistent with this Resolution, and which shall not adversely affect the interest of the holder of the Bond, or for the purpose of adding to the covenants and agreements herein contained, or to the gross revenues herein pledged, other covenants and agreements thereafter to be observed and additional gross revenues thereafter appropriated to the Fund, for the purpose of surrendering any right or power herein reserved to or conferred upon the Issuer, or for the purpose of authorizing the issuance of additional bonds in the manner and

subject to the terms and conditions prescribed in Section 4. Any such amendment may be adopted by resolution, without the consent of the holders of the Bond.

4.02. Amendments With Bondholder Consent. With the consent of the holder of the Bond as provided in Section 4.03, the Issuer may from time to time and at any time amend this Resolution by adding any provisions hereto or changing in any manner or eliminating any of the provisions hereof, or of any amending resolution, except that no amendment shall be adopted at any time without the consent of the holders of the Bond which are then outstanding, if it would extend the maturities of any Bond, would reduce the rate or extend the time of payment of interest thereon, would reduce the amount or extend the time of payment of the principal or redemption premium thereof, would give to any Bond any privileges over any other Bond, would reduce the sources of gross revenues appropriated to the Fund, would authorize the creation of a pledge of gross revenues prior to or on a parity with the Bond (except as is authorized by Section 3), or would reduce the percentage in principal amount of the Bond required to authorize or consent to any such amendment.

4.03. Notice and Consent. Any amendment adopted pursuant to Section 4.02 shall be made by resolution, mailed to each holder of a Bond affected thereby, and shall become effective only upon the filing of written consents with the Finance Officer, signed by the holders of not less than two-thirds in principal amount of the Bond which are then outstanding or, in the case of an amendment not equally affecting all outstanding Bond, by the holders of not less than two-thirds in principal amount of the Bond adversely affected by such amendment. Any written consent to an amendment may be embodied in and evidenced by one or any number of concurrent written instruments of substantially similar tenor signed by bondholders in person or by agent duly appointed in writing, and shall become effective when delivered to the Finance Officer. Any consent by the holder of any Bond shall bind the holder and every future holder of the same Bond with respect to any amendment adopted by the Issuer pursuant to such consent, provided that any bondholder may revoke his consent with reference to any Bond by written notice received by the Finance Officer before the amendment has become effective. In the event that unrevoked consents of the holders of the required amount of Bond have not been received by the Finance Officer within one year after the mailing of any amendment, the amendment and all consents theretofore received shall be of no further force and effect.

4.04. Proof. Proof of the execution of any consent, or of a writing appointing any agent to execute the same, or of the ownership by any person of a Bond, shall be sufficient for any purpose of this Resolution and shall be conclusive in favor of the Issuer if made in the manner provided in this section. The fact and date of the execution by any person of any such consent or appointment may be proved by the affidavit of a witness of such execution or by the certificate of any notary public or other officer authorized by law to take acknowledgements that the person signing such writing acknowledged to him the execution thereof. The amount of Bond held by any person by or for whom consent is given, and the distinguishing numbers of such Bond, and the date of holding the same, shall be proved by the bond register. The fact and date of execution of any such consent may also be proved in any other manner which this Commission may deem sufficient; but this Commission may nevertheless, in its discretion, require further proof in cases where it deems further proof desirable.

## SECTION 5. PAYMENT OF BOND.

5.01. General. When the liability of the Issuer on the Bond has been discharged as provided in this section, all pledges, covenants and other rights granted by this Resolution to the holders of the Bond shall cease.

5.02. Payment. The Issuer may discharge its liability with reference to any Bond which is due on any date by depositing with the holder or holders thereof, or the paying agent or agents, if any, for such Bond on or before that date a sum sufficient for the payment thereof in full; or if any Bond shall not be paid when due, the Issuer may nevertheless discharge its liability with reference thereto by depositing with the holder or holders thereof, or the paying agent or agents, if any, a sum sufficient for the payment thereof in full with interest accrued to the date of such deposit.

## SECTION 6. TAX MATTERS.

### 6.01. Tax Matters.

(a) Covenant. The Issuer covenants and agrees with the holders from time to time of the 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 Bond to become subject to taxation under the Internal Revenue Code of 1986, as amended (the Code), and applicable Treasury Regulations (the Regulations).

(b) Use of Project. The Issuer covenants and agrees that it will not, nor will it permit any of its officers, employees or agents, to enter into any lease, use or other agreement with any person other than a state or political subdivision or agency or instrumentality of a state, relating to the use of the Project or the security for the Bond which might cause the Bond to be considered a "private activity bond" within the meaning of Section 141 of the Code.

(c) Investment of Moneys on Deposit in Revenue Bond Account. The Finance Officer shall ascertain monthly the amount on deposit in the Revenue Bond Account. If the amount on deposit therein ever exceeds by more than \$100,000 the aggregate amount of principal and interest due and payable from the Revenue Bond Account within 13 months thereafter, such excess shall either (1) not be invested except at a yield equal to or less than the yield borne by the Bond, or (2) be used to prepay and redeem principal installments of the Bond.

(d) Certification. The Mayor and Finance Officer, being the officers of the Issuer charged with the responsibility for issuing the obligations pursuant to this resolution, are authorized and directed to execute and deliver to the purchaser a certification in order to satisfy the provisions of Section 1.148-2(b) of the Regulations. Such certification shall state that on the basis of the facts, estimates and circumstances in existence on the date of issue and delivery of the Bond as therein set forth, it is not expected that the proceeds of the Bond will be used in such a manner that would cause the Bond to be an arbitrage bond, and the certification shall further state that to the best of the knowledge and belief of the officers there are no other facts, estimates or circumstances that would materially change such expectation.

6.02. Qualified Tax-Exempt Obligations. The City Commission hereby designates the Bond as a “qualified tax-exempt obligation” for purposes of Section 265(b)(3) of the Code relating to the disallowance of interest expense for financial institutions, and hereby finds that the reasonable anticipated amount of qualified tax-exempt obligations (within the meaning of Section 265(b)(3) of the Code) which will be issued by the Issuer and all subordinate entities thereof during calendar year 2013 does not exceed \$10,000,000.

6.03. Tax-Exempt Status of the Bond and Rebate. The Issuer shall comply with requirements necessary under the Code to establish and maintain the exclusion from gross income under Section 103 of the Code of the interest on the Bond, including without limitation (1) requirements relating to temporary periods for investments, (2) limitations on amounts invested at a yield greater than the yield on the Bond, and (3) the rebate of excess investment earnings to the United States.

6.04. Repeal. All provisions of all other ordinances, resolutions and other actions and proceedings of the Issuer and of this Commission which are in any way inconsistent with the terms and provisions of this Resolution are repealed, amended and rescinded to the full extent necessary to give full force and effect to the provisions of this Resolution.

Dated this 15<sup>th</sup> day of April, 2013.

CITY OF MADISON

/s/Gene Hexom  
Mayor

ATTEST: /s/Jennifer Eimers  
Finance Officer

#### EXHIBIT A

#### Description of the Project

The Project consists of the improvements to the Issuer’s existing water purification plant as outlined in the Issuer’s Facilities Plan dated December, 2011.

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