

**THE CITY OF PHILIPPI**  
**WATER REVENUE BONDS, SERIES 2009 B**  
**(UNITED STATES DEPARTMENT OF AGRICULTURE)**

**DATE OF CLOSING: APRIL 16, 2009**

**BONDS TRANSCRIPT**

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**THE CITY OF PHILIPPI**  
**Water Revenue Bonds, Series 2009 B**  
**(United States Department of Agriculture)**

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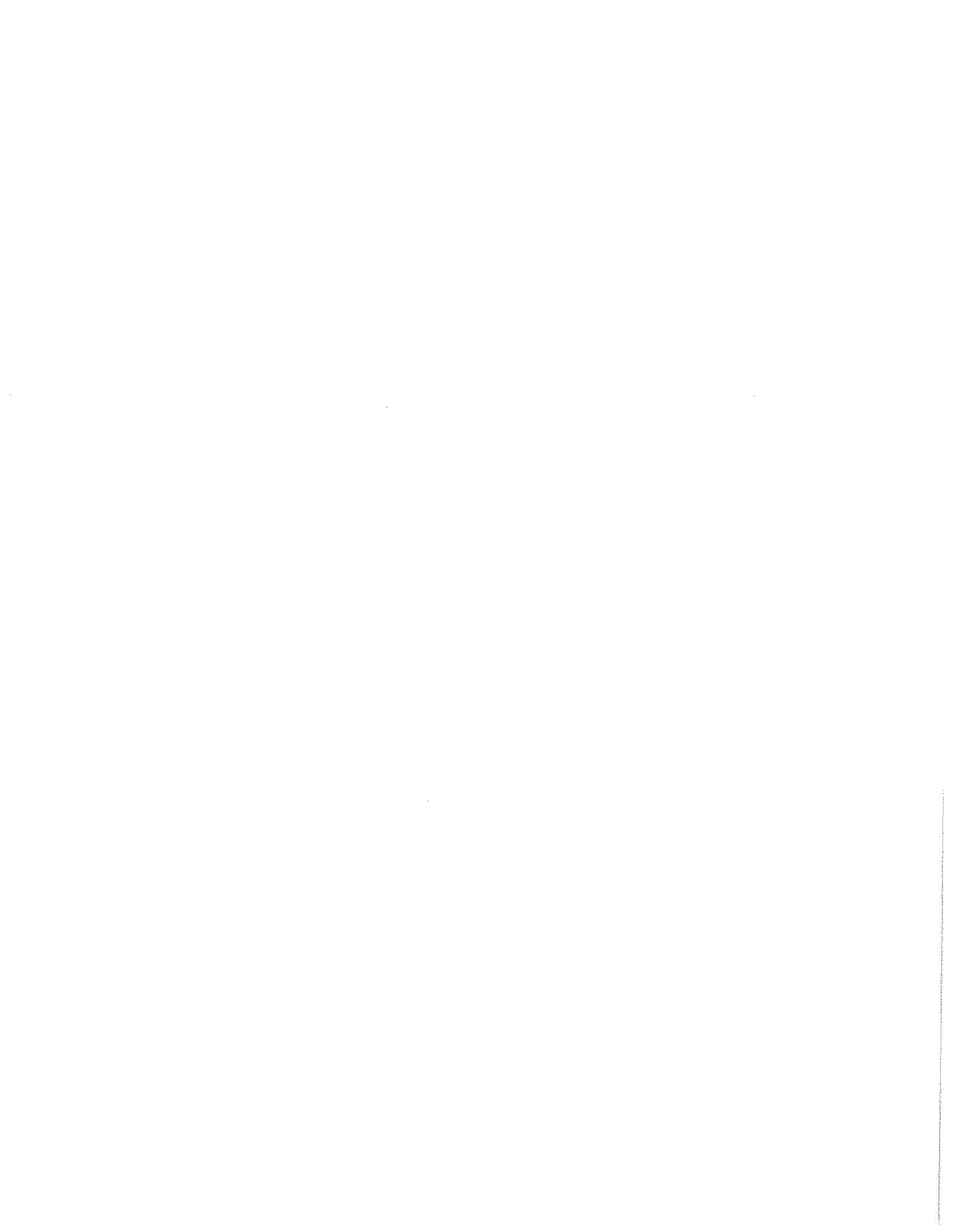
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**THE CITY OF PHILIPPI**  
**Water Revenue Bonds, Series 2009 B**  
**(United States Department of Agriculture)**

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THE CITY OF PHILIPPI

ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING PUBLIC WATERWORKS FACILITIES OF THE CITY OF PHILIPPI, AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED THEREOF, THROUGH THE ISSUANCE BY THE CITY OF PHILIPPI OF NOT MORE THAN \$2,000,000 IN AGGREGATE PRINCIPAL AMOUNT OF WATER REVENUE BONDS, SERIES 2009 B (UNITED STATES DEPARTMENT OF AGRICULTURE) IN ONE OR MORE SERIES; DEFINING AND PRESCRIBING THE TERMS AND PROVISIONS OF THE BONDS; PROVIDING GENERALLY FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE HOLDER OF THE BONDS; AND PROVIDING WHEN THIS ORDINANCE SHALL TAKE EFFECT.

BE IT ORDAINED AND ENACTED BY THE COUNCIL OF THE CITY OF PHILIPPI:

ARTICLE I

**STATUTORY AUTHORITY, FINDINGS  
AND DEFINITIONS**

Section 1.01 Authority for this Ordinance. This Ordinance is adopted and enacted pursuant to the provisions of Chapter 8, Article 19 of the West Virginia Code of 1931, as amended (the "Act"), and other applicable provisions of law. The City of Philippi (the "Issuer") is a duly created and validly existing municipal corporation and political subdivision of the State of West Virginia in Barbour County of said State.

Section 1.02 Findings and Determinations. It is hereby found, determined and declared as follows:

A. The Issuer currently owns and operates a public waterworks system and desires to acquire, construct and operate certain additional public waterworks facilities consisting of additions, betterments and improvements to such existing waterworks facilities, with all appurtenant facilities.

B. It is deemed essential, convenient and desirable for the health, welfare, safety, advantage and convenience of the inhabitants of the Issuer and, accordingly, it is hereby ordered, that there be acquired and constructed certain additions, betterments and improvements to the existing

waterworks system of the Issuer, consisting of construction of two new storage tanks to replace the existing Mansfield and to serve the Cherry Hill area together with all necessary appurtenances (the "Project"), particularly described in and according to the plans and specifications prepared by the Consulting Engineer and heretofore filed in the office of the Clerk of the Issuer. The existing waterworks facilities of the Issuer, together with the Project and any further additions, betterments and improvements, are herein called the "System". The acquisition and construction of the Project and the financing hereby authorized and provided for are public purposes of the Issuer and are ordered for the purpose of meeting and serving public convenience and necessity.

C. The estimated revenues to be derived in each year from the operation of the System after completion of the Project will be sufficient to pay all costs of operation and maintenance of the System, the principal of and interest on the Series 2009 B Bonds and the Prior Bonds (as hereinafter defined) and all debt service, reserve fund and other payments provided for herein and in the Prior Ordinance,

D. The estimated maximum cost of the acquisition and construction of the Project is \$2,000,000 which will be obtained from the proceeds of sale of the Series 2009 B Bonds herein authorized.

E. It is necessary for the Issuer to issue its Water Revenue Bonds Series 2009 B (United States Department of Agriculture) in one or more series, in the aggregate principal amount not to exceed \$2,000,000 (collectively, the "Series 2009 B Bonds"), to finance a portion of the cost of acquisition and construction of the Project. The cost of such acquisition and construction shall be deemed to include, without being limited to, the acquisition and construction of the Project; the acquisition of all property rights, easements and franchises deemed necessary or convenient therefor and for the improvements and extensions thereto; interest on the Series 2009 B Bonds prior to and during acquisition and construction, and for a period not exceeding six months after completion of such acquisition or construction, of the Project; engineering, fiscal agents and legal expenses; expenses for estimates of costs and revenues; expenses for plans, specifications and surveys; other expenses necessary or incident to determining the feasibility or practicability of the Project, administrative expense, and such other expenses as may be necessary or incidental to the acquisition and construction of the Project and the financing authorized hereby; provided that, reimbursement to the Issuer for any amounts expended by it for allowable costs prior to the issuance of the Series 2009 B Bonds or the repayment of indebtedness incurred by the Issuer for such purposes shall be deemed Costs of the Project.

F. The period of usefulness of the System, as herein defined, after completion of the Project is not less than twenty-two (22) years.

G. On the Closing Date, the Issuer has outstanding its Waterworks System Design Revenue Bonds, Series 2009 A (West Virginia Water Development Authority), (the "Series 2009 A Bonds" or the "Prior Bonds"). The Series 2009 A Bonds are payable from and secured by a first lien on the Gross Revenues (as hereinafter defined) of the System.

The Series 2009 B Bonds shall be issued on a parity with the Series 2009 A Bonds with respect to liens, pledge and source of and security for payment and in all other respects.

Prior to the issuance of the Series 2009 B Bonds, the Issuer will obtain (i) a certificate of an Independent Certified Public Accountant stating that the coverage and parity tests of the Series 2009 A Bonds are met; and (ii) the written consent of the Holders of the Series 2009 A Bonds to the issuance of the Series 2009 B Bonds on a parity with the Series 2009 A Bonds. Other than the Prior Bonds, there are no other outstanding bonds or obligations of the Issuer which are secured by revenues or assets of the System.

H. It is in the best interest of the Issuer that the Series 2009 B Bonds be sold to the Purchaser, pursuant to the terms and provisions of the Letter of Conditions dated July 30, 2001, and any amendments, thereto (collectively, the "Letter of Conditions").

I. The Issuer has complied with all requirements of law relating to the authorization of the acquisition and construction of the Project, the operation of the System, including, without limitation, the imposition of rates and charges, and the issuance of the Series 2009 B Bonds, or will have so complied prior to issuance of the Series 2009 B Bonds, including, among other things and without limitation, obtaining a certificate of convenience and necessity and approval of the financing and necessary user rates and charges from the Public Service Commission of West Virginia by final order, the time for rehearing and appeal of which have expired or shall have been duly waived or otherwise provided for.

Section 1.03 Bond Legislation Constitutes Contract. In consideration of the acceptance of the Series 2009 B Bonds by those who shall be the Registered Owner of the same from time to time, this Ordinance (the "Bond Legislation") shall be deemed to be and shall constitute a contract between the Issuer and such Registered Owner, and the covenants and agreements set forth herein to be performed by the Issuer shall be for the benefit, protection and security of the Registered Owner of the Series 2009 B Bonds.

Section 1.04 Definitions. The following terms shall have the following meanings herein unless the text otherwise expressly requires:

"Act" means Chapter 8, Article 19 of the West Virginia Code of 1931, as amended.

"Bond Legislation" or "Ordinance" means this Ordinance and all ordinances, orders and resolutions supplemental hereto or amendatory hereof.

"Bond Registrar" or "Registrar" means the Issuer, which shall usually so act by its Clerk.

"Bonds" means collectively, the Series 2009 B Bonds, the Prior Bonds and where appropriate, any bonds on a parity herewith subsequently authorized to be issued hereunder or by another ordinance of the Issuer.

“Clerk” means the Clerk of the Issuer.

“Closing Date” means the date upon which there is an exchange of the Series 2009 B Bonds for the proceeds, or at least a de minimus portion, thereof representing the purchase price of the Series 2009 B Bonds from the Purchaser.

“Commission” means the West Virginia Municipal Bond Commission or any other agency of the State of West Virginia that succeeds to the functions of the Commission.

“Consulting Engineer” means Potesta Engineering, Charleston, West Virginia, or any qualified engineer or firm of engineers which shall at any time hereafter be retained by the Issuer as Consulting Engineer for the System.

“Depository Bank” means the bank designated as such in the Supplemental Resolution and its successors and assigns, which is a member of FDIC (herein defined).

“Facilities” or “waterworks facilities” means all the tangible properties of the System and also any tangible properties which may hereafter be added to the System by additions, betterments, extensions and improvements thereto and properties, furniture, fixtures or equipment therefor, hereafter at any time constructed or acquired.

“FDIC” means the Federal Deposit Insurance Corporation.

“Fiscal Year” means each 12-month period beginning on July 1 and ending on the succeeding June 30.

“Governing Body” or “Council” means the Council of the Issuer.

“Government Obligations” means direct obligations of, or obligations the payment of the principal of and interest on which are guaranteed by, the United States of America.

“Herein” or “herein” means in this Bond Legislation.

“Issuer” or “Borrower” means The City of Philippi, a municipal corporation and political subdivision of the State of West Virginia, in Barbour County, West Virginia, and includes the Governing Body.

“Letter of Conditions” means, collectively, the Letter of Conditions of the Purchaser dated July 30, 2001, and all amendments thereto, if any.

“Mayor” means the Mayor of the Issuer.

“Minimum Reserve” means, as of any date of calculation, the maximum amount of principal and interest which will become due on the Series 2009 B Bonds in the then current or any succeeding year.

“Net Revenues” means the balance of the Gross Revenues, as defined below, remaining after deduction only of Operating Expenses, as defined below.

“Operating Expenses” means the current expenses, paid or accrued, of operation and maintenance of the Project and the System and its facilities, and includes, without limiting the generality of the foregoing, insurance premiums, materials and supplies, pumping costs, salaries, wages and administrative expenses of the Issuer relating and chargeable solely to the Project and the System, the accumulation of appropriate reserves for charges not annually recurrent but which are such as may reasonably be expected to be incurred, and such other reasonable operating costs as are normally and regularly included under recognized accounting principles and retention of a sum not to exceed one-sixth of the budgeted Operating Expenses stated above for the current year as working capital, and language herein requiring payment of Operating Expenses means also retention of not to exceed such sum as working capital, provided that all monthly amortization payments upon the Series 2009 B Bonds and into the respective reserve accounts and the Renewal and Replacement Fund have been made to the last monthly date prior to the date of such retention.

“Prior Bonds” means the Series 2009 A Bonds.

“Prior Ordinance” means the Ordinance of the Issuer authorizing the Prior Bonds.

“Project” shall have the meaning stated in Section 1.02B above.

“Project Construction Account” means the Project Construction Account established pursuant to section 4.01 hereof.

“Purchaser” or “Government” means United States Department of Agriculture, Rural Utilities Service, and any successor thereof, acting for and on behalf of the United States of America.

“Qualified Investments” means and includes any of the following, to the extent such investments are permitted by law:

- (a) Government Obligations;
- (b) Government Obligations which have been stripped of their unmaturing interest coupons, interest coupons stripped from Government Obligations, and receipts or certificates evidencing payments from Government Obligations or interest coupons stripped from Government Obligations;

(c) Bonds, debentures, notes or other evidences of indebtedness issued by any of the following agencies: Banks for Cooperatives; Federal Intermediate Credit Banks; Federal Home Loan Bank System; Export-Import Bank of the United States; Federal Land Banks; Government National Mortgage Association; Tennessee Valley Authority; or Washington Metropolitan Area Transit Authority;

(d) Any bond, debenture, note, participation certificate or other similar obligations issued by the Federal National Mortgage Association to the extent such obligation is guaranteed by the Government National Mortgage Association or issued by any other federal agency and backed by the full faith and credit of the United States of America;

(e) Time accounts (including accounts evidenced by time certificates of deposit, time deposits or other similar banking arrangements) which, to the extent not insured by the FDIC (hereinbefore defined) or Federal Savings and Loan Insurance Corporation, shall be secured by a pledge of Government Obligations, provided, that said Government Obligations pledged either must mature as nearly as practicable coincident with the maturity of said time accounts or must be replaced or increased so that the market value thereof is always at least equal to the principal amount of said time accounts;

(f) Money market funds or similar funds whose only assets are investments of the type described in paragraphs (a) through (e) above;

(g) Repurchase agreements, fully secured by investments of the types described in paragraphs (a) through (e) above, with banks or national banking associations which are members of FDIC or with government bond dealers recognized as primary dealers by the Federal Reserve Bank of New York, provided, that said investments securing said repurchase agreements either must mature as nearly as practicable coincident with the maturity of said repurchase agreements or must be replaced or increased so that the market value thereof is always at least equal to the principal amount of said repurchase agreements, and provided further that the holder of such repurchase agreement shall have a prior perfected security interest in the collateral therefor, must have (or its agent must have) possession of such collateral, and such collateral must be free of all claims by third parties;

(h) The West Virginia "consolidated fund" managed by the West Virginia Board of Treasury Investments pursuant to Chapter 12, Article 6C of the West Virginia Code of 1931, as amended; and

(i) Obligations of States or political subdivisions or agencies thereof, the interest on which is excluded from gross income for federal income tax purposes, and which are rated at least "A" by Moody's Investors Service or Standard & Poor's Corporation.

"Registered Owner," "Bondholder," "Holder of the Bond" or any similar term means any person who shall be the registered owner of the Series 2009 B Bonds.

"Renewal and Replacement Fund" means the renewal and replacement Fund established by Prior Ordinance.

"Reserve Accounts" means, the respective reserve accounts for the Series 2009 B Bonds and the Prior Bonds.

"Revenue Fund" means the Revenue Fund established by Prior Ordinance.

"Revenues" or "Gross Revenues" means all rates, rents, fees, charges or other income received by the Issuer, or accrued to the Issuer, or any department, board, agency or instrumentality thereof in control of the management and operation of the System, from the operation of the System, and all parts thereof, all as calculated in accordance with sound accounting practices.

"Series 2009 A Bonds" means the Issuer's Waterworks System Design Revenue Bonds, Series 2009 A (West Virginia Water Development Authority).

"Series 2009 B Bonds" means the Water Revenue Bonds, Series 2009 B,(United States Department of Agriculture) issued in one or more series authorized by this Ordinance.

"Series 2009 B Bonds Reserve Account" means the Series 2009 B Bonds Reserve Account established by Section 4.02 hereof.

"Series 2009 B Bonds Reserve Requirement" means, as of any date of calculation, the maximum amount of principal and interest which will become due on the Series 2009 B Bonds in the then current or any succeeding year.

"State" means the State of West Virginia.

"Supplemental Resolution" means any resolution, ordinance or order of the Issuer supplementing or amending this Ordinance and, when preceded by the article "the," refers specifically

to the supplemental resolution authorizing the sale of the Series 2009 B Bonds; provided, that any matter intended by this Ordinance to be included in the Supplemental Resolution with respect to the Series 2009 B Bonds, and not so included may be included in another Supplemental Resolution.

“System” means the complete waterworks system of the Issuer and all waterworks facilities owned by the Issuer and all facilities and other property of every nature, real or personal, now or hereafter owned, held or used in connection with the waterworks systems, including the Project, and any and all additions, betterments, improvements, properties or other facilities at any time acquired or constructed for the Waterworks system from any source whatsoever.

“Tap Fees” means the fees, if any, paid by prospective customers of the System in order to connect thereto.

Words importing singular number shall include the plural number in each case and vice versa; words importing persons shall include firms and corporations; and words importing the masculine feminine or neutral gender shall include any other gender; and any requirement for execution or attestation of the Series 2009 B Bonds or any certificate or other document by the Mayor or the Clerk shall mean that such Series 2009 B Bonds, certificate or other documents may be executed or attested by an Acting Mayor or Acting Clerk.

## **ARTICLE II**

### **AUTHORIZATION OF ACQUISITION AND CONSTRUCTION OF THE PROJECT**

Section 2.01. Authorization of Acquisition and Construction of the Project. There is hereby authorized and ordered the acquisition and construction of the Project, at an estimated cost not to exceed \$2,000,000, in accordance with the plans and specifications which have been prepared by the Consulting Engineers, heretofore filed in the office of the Governing Body. The proceeds of the Series 2009 B Bonds hereby authorized shall be applied as provided in Article IV hereof.

### ARTICLE III

#### **AUTHORIZATION, TERMS, EXECUTION, REGISTRATION AND ISSUE OF BONDS**

Section 3.01. Authorization of Bonds. Subject and pursuant to the provisions of this Bond Legislation, the Series 2009 B Bonds of the Issuer, to be known as “Water Revenue Bonds, Series 2009 B (United States Department of Agriculture)”, are hereby authorized to be issued in the principal amount of not to exceed \$2,000,000 with such terms as set forth hereinafter and in the Supplemental Resolution for the purpose of permanently financing a portion of the cost of the acquisition and construction of the Project.

Section 3.02. Description of Bonds. The Series 2009 B Bonds shall be issued in one or more series, only as a fully registered Bond, and shall be dated on the date of delivery thereof. The Series 2009 B Bonds shall bear interest from date of delivery, payable monthly at the rate not to exceed 4.5% per annum, with such terms as set forth hereinafter and in the Supplemental Resolution, and shall be sold for the par value thereof.

The Series 2009 B Bonds shall be subject to prepayment of scheduled monthly installments, or any portion thereof, at the option of the Issuer, and shall be payable as provided in the Bond form hereinafter set forth.

Section 3.03. Negotiability, Registration, Transfer and Exchange of Bonds. The Series 2009 B Bonds shall be and have all the qualities and incidents of a negotiable instrument under the Uniform Commercial Code of the State of West Virginia, but the Series 2009 B Bonds, and the right to the principal of and stated interest on the Series 2009 B Bonds, may only be transferred by transfer of the registration thereof upon the books required to be kept pursuant to Section 3.04 hereof, by the party in whose name it is registered, in person or by attorney duly authorized in writing, upon surrender of the Series 2009 B Bonds for cancellation, accompanied by delivery of a written instrument of transfer, duly executed in a form acceptable to the Bond Registrar.

Whenever the Series 2009 B Bonds shall be surrendered for registration of transfer, the Issuer shall execute and deliver a new Bond or Bonds in authorized denominations, for a like aggregate principal amount. The Bond Registrar shall require the payment by the new owner requesting such transfer of any tax or other governmental charge required to be paid with respect to such transfer, but the Issuer shall pay any other expenses incurred by the Bond Registrar with respect to such transfer.

No registration of transfer of the Series 2009 B Bonds shall be permitted to be made after the 15th day next preceding any installment payment date on the Series 2009 B Bonds.

Section 3.04 Bond Registrar. The Issuer shall be the Bond Registrar and will keep or cause to be kept at its office by its agent, sufficient books for the registration and transfer of the Series 2009 B Bonds, and, upon presentation for such purpose, the Bond Registrar shall, under such reasonable regulations as it may prescribe, register the Series 2009 B Bonds initially issued pursuant hereto and register the transfer, or cause to be registered by its agent, on such books, the transfer of the Series 2009 B Bonds as hereinbefore provided.

The Bond Registrar shall accept the Series 2009 B Bonds for registration of transfer only if ownership thereof is to be registered in the name of the Purchaser, an individual (including joint ownership), a corporation, a partnership or a trust, and only upon receipt of the social security number of each individual, the federal employer identification number of each corporation or partnership or the social security numbers of the settlor and beneficiaries of each trust and the federal employer identification number and date of each trust and the name of the trustee of each trust, and/or such other identifying number and information as may be required by law. The Series 2009 B Bonds shall initially be fully registered as to both principal and interest in the name of the United States of America. So long as the Series 2009 B Bonds shall be registered in the name of the United States of America, the address of the United States of America for registration purposes shall be National Finance Office, St. Louis, Missouri 63103, or such other address as shall be stated in writing to the Issuer by the United States of America.

Section 3.05. Execution of Bonds. The Series 2009 B Bonds shall be executed in the name of the Issuer by the Mayor and the seal of the Issuer shall be affixed thereto and attested by the Clerk. In case any one or more of the officers who shall have signed or sealed the Series 2009 B Bonds shall cease to be such officer of the Issuer before the Series 2009 B Bonds so signed and sealed has been actually sold and delivered, such Bond may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Series 2009 B Bonds had not ceased to hold such office. The Series 2009 B Bonds may be signed and sealed on behalf of the Issuer by such person as at the actual time of the execution of such Series 2009 B Bonds shall hold the proper office in the Issuer, although at the date of such Bond such person may not have held such office or may not have been so authorized.

Section 3.06. Bonds Mutilated, Destroyed, Stolen or Lost. In case the Series 2009 B Bonds shall become mutilated or be destroyed, stolen or lost, the Issuer may, in its discretion, issue and deliver a new Bond of like tenor as the Bond so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Bond or in lieu of and substitution for the Bond destroyed, stolen or lost, and upon the holder's furnishing the Issuer proof of his ownership thereof and complying with such other reasonable regulations and conditions as the Issuer may require. The Series 2009 B Bonds so surrendered shall be canceled and held for the account of the Issuer. If the Series 2009 B Bonds shall have matured or be about to mature, instead of issuing a substitute Series 2009 B Bonds the Issuer may pay the same, and, if such Series 2009 B Bonds be destroyed, stolen or lost, without surrender thereof.

Section 3.07. Bonds Secured by Pledge of Gross Revenues. The payment of the debt service of the Series 2009 B Bonds shall be secured forthwith by a first lien on the Gross Revenues derived from the System, in addition to the statutory mortgage lien on the System hereinafter provided for as to the Series 2009 B Bonds on a parity with the Prior Bonds. The Gross Revenues derived from the System, in an amount sufficient to pay the principal of and interest on the Series 2009 B Bonds and the Prior Bonds and to make the payments as hereinafter provided and in the Prior Ordinance, are hereby irrevocably pledged to the payment of the principal of and interest on the Series 2009 B Bonds as the same becomes due.

Section 3.08. Form of Bonds. Subject to the provisions hereof, the text of the Series 2009 B Bonds and the other details thereof shall be of substantially the following tenor, with such omissions, insertions and variations as may be authorized or permitted hereby or by any ordinance enacted after the date of enactment hereof and prior to the issuance thereof:

(FORM OF SERIES 2009 B Bond)

THE CITY OF PHILIPPI

WATER REVENUE BONDS, SERIES 2009 B  
(UNITED STATES DEPARTMENT OF AGRICULTURE)

\$ \_\_\_\_\_

No. BR-1

Date: \_\_\_\_\_, 2009

FOR VALUE RECEIVED, THE CITY OF PHILIPPI (herein called "Borrower") promises to pay to the order of the United States of America (the "Government"), or its registered assigns, at its National Finance Office, St. Louis, Missouri 63103, or at such other place as the Government may hereafter designate in writing, the principal sum of \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_), plus interest on the unpaid principal balance at the rate of \_\_\_\_\_% per annum. The said principal and interest shall be paid in the following installments on the following dates: Monthly installments of interest only, commencing 30 days following delivery of this Bond and continuing on the corresponding day of each month for the first twenty-four months after the date hereof, and \$ \_\_\_\_\_, covering principal and interest, thereafter on said corresponding day of each month, except that the final installment shall be paid at the end of twenty (20) years from the date of this Bond, in the sum of the unpaid principal and interest due on the date thereof, and except that prepayments may be made as provided herein below. The consideration herefor shall support any agreement modifying the foregoing schedule of payments.

If the total amount of the loan is not advanced at the time of loan closing, the loan shall be advanced to Borrower as requested by Borrower and approved by the Government and interest shall accrue on the amount of each advance from its actual date as shown on the Record of Advances attached hereto as a part hereof.

Every payment made on any indebtedness evidenced by this Bond shall be applied first to interest computed to the effective date of the payment and then to principal.

Prepayments of scheduled installments, or any portion thereof, may be made at any time at the option of Borrower. Refunds and extra payments, as defined in the regulations of the Government according to the source of funds involved, shall, after payment of interest, be applied to the installments last to become due under this Bond and shall not affect the obligation of Borrower to pay the remaining installments as scheduled herein.

If the Government at any time assigns this Bond and insures the payment thereof, Borrower shall continue to make payments to the Government as collection agent for the holder.

While this Bond is held by an insured lender, prepayments as above authorized made by Borrower may, at the option of the Government, be remitted by the Government to the holder promptly or, except for final payment, be retained by the Government and remitted to the holder on either a calendar quarter basis or an annual installment due date basis. The effective date of every payment made by Borrower, except payments retained and remitted by the Government on an annual installment due date basis, shall be the date of the United States Treasury check by which the Government remits the payment to the holder. The effective date of any prepayment retained and remitted by the Government to the holder on an annual installment due date basis shall be the date of the prepayment by Borrower and the Government will pay the interest to which the holder is entitled accruing between the effective date of any such prepayment and the date of the Treasury check to the holder.

Any amount advanced or expended by the Government for the collection hereof or to preserve or protect any security herefor, or otherwise under the terms of any security or other instrument executed in connection with the loan evidenced hereby, at the option of the Government shall become a part of and bear interest at the same rate as the principal of the debt evidenced hereby and be immediately due and payable by Borrower to the Government without demand. Borrower agrees to use the loan evidenced hereby solely for purposes authorized by the Government.

Borrower hereby certifies that it is unable to obtain sufficient credit elsewhere to finance its actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in or near its community for loans for similar purposes and periods of time.

This Bond, together with any additional bonds ranking on a parity herewith which may be issued and outstanding for the purpose of providing funds for financing costs of acquisition and construction of additions, betterments and improvements to the waterworks system (the "System") of Borrower, is payable solely from and secured by the revenues to be derived from the operation of the System. This Bond does not in any manner constitute an indebtedness of the Borrower within the meaning of any constitutional or statutory provision or limitation, nor shall the Borrower be obligated to pay the same or the interest thereon except from the special fund so provided.

Registration of this Bond is transferable by the registered owner hereof in person or by his, her or its attorney duly authorized in writing, at the office of Borrower, as Bond Registrar, but only in the manner, subject to the limitations and upon payment of the charges, if any, provided in the herein defined Ordinance, and upon surrender and cancellation of this Bond. Upon such transfer a new Bond or Bonds, of authorized denomination or denominations, for the like principal amount, will be issued to the transferee in exchange herefor.

This Bond, under the provisions of the Act, is and has all the qualities and incidents of a negotiable instrument under the Uniform Commercial Code of the State of West Virginia, but may only be transferred by transfer of registration hereof with the Bond Registrar.

This Bond has been issued under and in full compliance with the Constitution and statutes of the State of West Virginia, including, among others, Chapter 8, Article 19 of the West Virginia Code of 1931, as amended (herein called the "Act"), and an Ordinance of Borrower duly enacted on \_\_\_\_\_, 2009 and a Supplemental Resolution duly adopted by the Issuer on \_\_\_\_\_, 2009, authorizing issuance of this Bond (collectively, the "Ordinance").

If at any time it shall appear to the Government that Borrower may be able to obtain a loan from a responsible cooperative or private credit source at reasonable rates and terms for loans for similar purposes and periods of time, Borrower will, at the Government's request, apply for and accept such loan in sufficient amount to repay the Government.

This Bond is given as evidence of a loan to Borrower made or insured by the Government pursuant to the Consolidated Farm and Rural Development Act of 1965, as amended. This Bond shall be subject to the present regulations of the Government and to its future regulations not inconsistent with the express provisions hereof.

THIS BOND IS ISSUED ON A PARITY WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS, WITH THE ISSUER'S WATERWORKS SYSTEM DESIGN REVENUE BONDS, SERIES 2009 A, DATED FEBRUARY 24, 2009 (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY), ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$491,200 (THE "SERIES 2009 A BONDS" OR THE "PRIOR BONDS").

In accordance with the requirements of the United States Department of Agriculture, the Bonds will be in default should any proceeds of the Bonds be used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity.

IN WITNESS WHEREOF, THE CITY OF PHILIPPI has caused this Bond to be executed by its Mayor and its corporate seal to be hereunto affixed or imprinted hereon and attested by its Clerk, all as of the date hereinabove written.

THE CITY OF PHILIPPI

[CORPORATE SEAL]

\_\_\_\_\_  
Mayor

P.O. Box 460  
Philippi, West Virginia 26416

ATTEST:

\_\_\_\_\_  
Clerk

EXHIBIT A

RECORD OF ADVANCES

| <u>AMOUNT</u> | <u>DATE</u> | <u>AMOUNT</u> | <u>DATE</u> |
|---------------|-------------|---------------|-------------|
| (1) \$        |             | (19)          |             |
| (2)           |             | (20)          |             |
| (3)           |             | (21)          |             |
| (4)           |             | (22)          |             |
| (5)           |             | (23)          |             |
| (6)           |             | (24)          |             |
| (7)           |             | (25)          |             |
| (8)           |             | (26)          |             |
| (9)           |             | (27)          |             |
| (10)          |             | (28)          |             |
| (11)          |             | (29)          |             |
| (12)          |             | (30)          |             |
| (13)          |             | (31)          |             |
| (14)          |             | (32)          |             |
| (15)          |             | (33)          |             |
| (16)          |             | (34)          |             |
| (17)          |             | (35)          |             |
| (18)          |             | (36)          |             |

TOTAL \$ \_\_\_\_\_

(Form of Assignment)

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned sells, assigns and transfers to \_\_\_\_\_  
the within Bond and does hereby irrevocably constitute and appoint \_\_\_\_\_,  
Attorney to transfer the said Bond on the books kept for registration of the within Bond of the said  
Borrower with full power of substitution in the premises.

Dated: \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

In presence of:

\_\_\_\_\_

## ARTICLE IV

### SYSTEM REVENUES AND APPLICATION THEREOF; DISPOSITION OF BOND PROCEEDS; FUNDS AND ACCOUNTS

Section 4.01 Establishment of Funds and Accounts with Depository Bank. The following special funds or accounts are created (or continued if previously established by Prior Ordinance) and established with, and shall be held by, the Depository Bank separate and apart from all other funds or accounts of the Depository Bank and from each other:

- (1) Revenue Fund (established by Prior Ordinance and continued hereby);
- (2) Renewal and Replacement Fund (established by Prior Ordinance and continued hereby); and
- (3) Project Construction Account.

Section 4.02. Establishment of Funds and Accounts with Commission. The following special funds or accounts are hereby created (or continued if previously established by Prior Ordinance) with and shall be held by, the Commission separate and apart from all other funds or accounts of the Commission and the Issuer and from each other:

- (1) Series 2009 A Bonds Sinking Fund (established by Prior Ordinance and continued hereby);
- (2) Series 2009 A Bonds Reserve Account (established by Prior Ordinance and continued hereby);
- (3) Series 2009 B Bonds Reserve Account.

Section 4.03. Bond Proceeds; Project Construction Account. The proceeds of sale of the Series 2009 B Bonds shall be deposited upon receipt by the Issuer in the Project Construction Account. The monies in the Account in excess of the amount insured by FDIC shall be secured at all times by the Depository Bank by securities or in a manner lawful for the securing of deposits of State and municipal funds under West Virginia law. Monies in the Project Construction Account shall be expended by the Issuer solely for the purposes provided herein.

Monies in the Project Construction Account shall be used solely to pay the cost of acquisition and construction of the Project upon vouchers and other documentation approved by the Purchaser.

Until completion of acquisition and construction of the Project, the Issuer will additionally transfer from the Project Construction Account and pay to the Purchaser on or before the

due date, such sums as shall be from time to time required to make the monthly installment payments on the Series 2009 B Bonds if there are not sufficient Gross Revenues to make such monthly payment.

Pending application as provided in this Section 4.03, money and funds in the Project Construction Account shall be invested and reinvested at the direction of the Issuer, to the extent possible in accordance with applicable law, in Qualified Investments.

When acquisition and construction of the Project has been completed and all costs thereof have been paid or provision for such payment has been made, any balance remaining in the Project Construction Account shall be disposed of in accordance with the regulations of the Purchaser.

Section 4.04. Covenants of the Issuer as to Revenues and Funds. So long as any of the Series 2009 B Bonds shall be outstanding and unpaid, or until there shall have been set apart in the Series 2009 B Bonds Reserve Account, sums sufficient to pay, when due or at the earliest practical prepayment date, the entire principal of the Series 2009 B Bonds remaining unpaid, together with interest accrued to the date of such payment, the Issuer further covenants with the holder of the Series 2009 B Bonds as follows:

A. REVENUE FUND. The entire Gross Revenues derived from the operation of the System, and all parts thereof, and all Tap Fees received, shall be deposited as collected by the Issuer in the Revenue Fund. The Revenue Fund shall constitute a trust fund for the purposes provided in the Prior Ordinance and this Bond Legislation and shall be kept separate and distinct from all other funds of the Issuer and the Depository Bank and used only for the purposes and in the manner provided in the Prior Ordinance and this Bond Legislation.

B. DISPOSITION OF REVENUES. All Revenues at any time on deposit in the Revenue Fund shall be disposed of only in the following order and priority, subject to the provisions of the Prior Ordinance not otherwise modified herein:

(1) The Issuer shall first, each month, on or before the due date thereof, transfer from the Revenue Fund and simultaneously remit (i) to the Commission for deposit in the Series 2009 A Sinking Fund Bonds the amount required by the Prior Ordinance to pay the interest on the Series 2009 A Bonds; and (ii) to the National Finance Office the amounts required to pay interest on the Series 2009 B Bonds.

(2) The Issuer shall next, each month, transfer from the Revenue Fund and simultaneously (i) on or before the due date thereof, remit to the Commission the amount required by the Prior Ordinance to pay the principal of the Series 2009 A Bonds; and (ii) on or before the due date thereof, remit to the National Finance Office, commencing 24 months following the date of delivery of the Series 2009 B Bonds, the amount required to amortize the principal of the Series 2009 B Bonds over the life of the bond issue.

(3) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and (i) remit to the Commission, the amount required by the Prior Ordinance to be deposited in the Series 2009 A Bonds Reserve Account; and (ii) beginning on the date specified by the Purchaser, but in any event not later than the 24th monthly anniversary of the Closing Date, thereafter, transfer from the Revenue Fund and remit to the Commission for deposit in the Series 2009 B Bonds Reserve Account, an amount equal to 10% of the monthly payment amount each month, until the amount in the Series 2009 B Bonds Reserve Account equals the Series 2009 B Bonds Reserve Requirement; provided that, no further payments shall be made into the Series 2009 B Bonds Reserve Account when there shall have been deposited therein, and as long as there shall remain on deposit therein, an amount equal to the Series 2009 B Bonds Reserve Requirement.

(4) The Issuer shall next, each month, pay from the Revenue Fund the Operating Expenses of the System.

(5) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and remit to the Depository Bank for deposit in the Renewal and Replacement Fund, an amount equal to 2 ½ % of the Gross Revenues each month, exclusive of any payments for account of any Reserve Account. All funds in the Renewal and Replacement Fund shall be kept apart from all other funds of the Issuer or of the Depository Bank and shall be invested and reinvested in accordance with Article VIII hereof. Withdrawals and disbursements may be made from the Renewal and Replacement Fund for replacements, repairs, improvements or extensions to the System; provided that, any deficiencies in any Reserve Accounts (except to the extent such deficiency exists because the required payments into such account have not, as of the date of determination of a deficiency, funded such account to the maximum extent required hereof) shall be promptly eliminated with monies from the Renewal and Replacement Fund.

(6) After all the foregoing provisions for use of monies in the Revenue Fund have been fully complied with, any monies remaining therein and not permitted to be retained therein may be used to prepay installments of the Bonds, pro rata, or for any lawful purpose of the System.

Whenever the monies in the Series 2009 B Bonds Reserve Account shall be sufficient to prepay the Series 2009 B Bonds in full, it shall be the mandatory duty of the Issuer, anything to the contrary herein notwithstanding, to prepay the Series 2009 B Bonds, at the earliest practical date and in accordance with applicable provisions hereof.

The Depository Bank is hereby designated as the Fiscal Agent for the administration of the Renewal and Replacement Fund as herein provided, and all amounts required for the Renewal and Replacement Fund will be deposited therein by the Issuer upon transfers of funds from the

Revenue Fund at the times provided herein, together with written directions stating the amount remitted for deposit into each such fund.

The Commission is hereby designated as the Fiscal Agent for the administration of the Series 2009 B Bonds Reserve Account as herein provided, and all amounts required for said account shall be remitted to the Commission from the Revenue Fund by the Issuer at the times provided herein. If required by the Purchaser at anytime, the Issuer shall make the necessary arrangements whereby required payments into said account shall be automatically debited from the Revenue Fund and Electronically transferred to the Commission on the dates required hereunder.

The Issuer shall, on the first day of each month (if the first day is not a business day, then the first business day if each month), deposit with the Commission the required reserve account payments with respect to the Bonds and all such payments shall be remitted to the Commission with appropriate instructions as to the custody, use and application thereof consistent with the provisions of this Bond Legislation.

The Revenue Fund and the Renewal and Replacement Fund shall constitute trust funds and shall be used only for the purposes and in the order provided herein, and until so used, the Purchaser shall have a lien thereon for further securing payment of the Series 2009 B Bonds and the interest thereon, but the Depository Bank shall not be a trustee as to such funds.

If on any payment date the Revenues are insufficient to make the payments and transfers as hereinabove provided, the deficiency shall be made up in the subsequent payments and transfers in addition to those which would otherwise be required to be made on the subsequent payment dates on a parity and pro rata with respect to the Prior Bonds.

The Commission and the Depository Bank, at the direction of the Issuer, shall keep the monies in the Series 2009 B Bonds Reserve Account and the Renewal and Replacement Fund invested and reinvested to the fullest extent possible, in accordance with applicable law, and to the extent practicable, in Qualified Investments having maturities consonant with the required use thereof. Investments in any fund or account under this Bond Legislation shall, unless otherwise required by law, be valued at the lower of cost or the then current market value, or at the redemption price thereof if then redeemable at the option of the holder, including value of accrued interest and giving effect to the amortization of discount, or at par if such investment is held by the "consolidated fund" managed by the West Virginia Board of Treasury Investments. Any investment shall be held in and at all times deemed a part of the fund or account in which such monies were originally held, and interest accruing thereon and any profit or loss realized from such investment shall be credited or charged to the appropriate fund or account. Earnings from monies in the Series 2009 B Bonds Reserve Account so long as the Minimum Reserve is on deposit and maintained therein, shall be returned not less than once each year, by the Commission to the Issuer to be deposited in the Revenue Fund.

C. CHANGE OF DEPOSITORY BANK AND FISCAL AGENT. The Issuer may designate another bank or trust company insured by FDIC as Depository Bank and Fiscal Agent if the Depository Bank should cease for any reason to serve or if the Governing Body determines by

resolution that the Depository Bank or its successor should no longer serve as Depository Bank. Upon any such change, the Governing Body will cause notice of the change to be sent by registered or certified mail to the Purchaser.

D. USER CONTRACTS. The Issuer shall, prior to delivery of the Series 2009 B Bonds, provide evidence that there will be at least 1,668 bona fide users upon the System on completion of the Project, in full compliance with the requirements and conditions of the Purchaser.

E. CHARGES AND FEES. The Issuer shall remit from the Revenue Fund to the Commission or the Depository Bank such additional sums as shall be necessary to pay the charges and fees of the Commission or the Depository Bank then due.

F. INVESTMENT OF EXCESS BALANCES. The monies in excess of the sum insured by FDIC in any of such funds or accounts shall at all times be secured, to the full extent thereof in excess of such insured sum, in lawful manner for securing deposits of State and municipal funds under the laws of the State of West Virginia.

G. REMITTANCES. All remittances made by the Issuer to the Commission or the Depository Bank shall clearly identify the fund or account into which each amount is to be deposited.

H. GROSS REVENUES. The Gross Revenues of the System shall only be used for purposes of the System.

Section 4.05. Interim Construction Financing. In order to pay certain costs of the Project pending receipt of proceeds of the grants and advances of principal of the Series 2009 B Bonds, the Issuer may issue and sell its interim construction notes in an aggregate principal amount not to exceed \$2,000,000 (the "Notes"). The Notes shall be in the form of a line of credit from a commercial bank or other lender, and the Issuer is hereby authorized to enter into a credit agreement with such bank or other lender. The Notes shall bear interest from the date or dates, at such rate or rates, payable on such dates and shall mature on such date or dates and be subject to such prepayment or redemption, all as provided in the credit agreement.

The Notes shall be special obligations of the Issuer payable as to principal and interest solely from proceeds of the Series 2009 B Bonds. The Notes do not and shall not constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provisions. The general funds of the Issuer are not liable, and neither the full faith and credit nor the taxing power of the Issuer, if any, is pledged for the payment of the Notes. The Holders of the Notes shall never have the right to compel the forfeiture of any property of the Issuer. The Notes shall not be a debt of the Issuer, nor a legal or equitable pledge, charge, lien or encumbrance upon any property of the Issuer or upon any of its income, receipts or revenues except as set forth herein.

## ARTICLE V

### GENERAL COVENANTS

Section 5.01. General Statement. So long as the Series 2009 B Bonds shall be outstanding and unpaid, or until there shall have been set apart in the Series 2009 B Bonds Reserve Account a sum sufficient to prepay the entire principal of the Series 2009 B Bonds remaining unpaid, together with interest accrued and to accrue thereon to the date of prepayment, the covenants and agreements contained herein shall be and constitute valid and legally binding covenants between the Issuer and the Holder of the Series 2009 B Bonds.

Section 5.02. Rates. Prior to the issuance of the Series 2009 B Bonds, the Issuer will, in the manner provided in the Act, fix and collect such rates, fees or other charges for the services and facilities of the System, and revise the same from time to time whenever necessary, as (i) will always provide Revenues in each Fiscal Year sufficient to produce Net Revenues equal to not less than 110% of the maximum annual debt service on the Series 2009 B Bonds and sufficient to make the payments required herein into all funds and accounts and all the necessary expenses of operating and maintaining the System during such Fiscal Year and such rates, fees and other charges shall not be reduced so as to be insufficient to provide adequate Revenues for such purposes; and (ii) so long as the Prior Bonds are Outstanding to provide for all reasonable expenses of operation, repair, maintenance of the System and to leave a balance each Fiscal Year equal to at least 115% of the maximum amount required in any Fiscal Year for the payment of principal of and interest on the Bonds and all other obligations secured by or payable from such revenues; provided that, in the event that an amount equal to or in excess of the reserve requirements for the Bonds prior to or on a parity with the Bonds are funded at least at the requirement therefor, such balance each Fiscal Year need only equal at least 110% of the maximum amount required in any Fiscal year for the payment of principal of and interest on the Bonds and all other obligations secured by or payable from such revenues.

Section 5.03. Sale of the System. So long as the Prior Bonds are Outstanding, the Issuer shall not sell, mortgage, lease or otherwise dispose of or encumber the System, or any part thereof, except as provided in the Prior Ordinance. Additionally, the System will not be sold without the prior written consent of the Purchaser so long as the Series 2009 B Bonds are outstanding.

Section 5.04. Issuance of Additional Parity Bonds or Obligations. So long as the Prior Bonds are outstanding, the limitations on the issuance of parity obligations set forth in the Prior Ordinance shall be applicable. In addition, no additional Parity Bonds or obligations payable out of the Revenues of the System shall be issued, except with the prior written consent of the Purchaser.

So long as the Series 2009 B Bonds are outstanding, no Parity Bonds shall be issued at any time, however, unless there has been procured and filed with the Clerk a written statement by the Independent Certified Public Accountants, reciting the conclusion that the Net Revenues for the Fiscal Year following the year in which such Parity Bonds are to be issued shall be at least 120% of the average annual debt service requirements on the following:

- (1) The Bonds then Outstanding;
- (2) Any Parity Bonds theretofore issued pursuant to the provisions contained in this Bond Legislation then Outstanding;
- (3) The Parity Bonds then proposed to be issued.

The foregoing limitation may be waived or modified by the written consent of the Holders of the Series 2009 B Bonds, representing 75% of the then-outstanding principal indebtedness.

So long as the Prior Bonds are Outstanding, no Parity Bonds shall be issued at any time, unless there has been procured and filed with the Clerk a written statement by the Independent Certified Public Accountants, reciting the conclusion that the Net Revenues actually derived, subject to the adjustments hereinafter provided for, from the System during any 12 consecutive months, within the 18 months immediately preceding the date of the actual issuance of such Parity Bonds, plus the estimated average increased annual Net Revenues expected to be received in each of the 3 succeeding years after the completion of the improvements to be financed by such Parity Bonds, if any, shall not be less than 115% of the largest aggregate amount that will mature and become due in any succeeding Fiscal Year for principal of and interest, if any, on the following:

- (1) The Bonds then Outstanding;
- (2) Any Parity Bonds theretofore issued pursuant to the provisions contained in this Ordinance then Outstanding; and
- (3) The Parity Bonds then proposed to be issued.

The "estimated average increased annual Net Revenues expected to be received in each of the 3 succeeding years," as that term is used in the computation provided in the above paragraph, shall refer only to the increased Net Revenues estimated to be derived from the improvements to be financed by such Parity Bonds and any increase in rates enacted by the Issuer, the time for appeal of which shall have expired prior to the issuance of such Parity Bonds, and shall not exceed the amount to be stated in a certificate of the Independent Certified Public Accountants, which shall be filed in the office of the Clerk prior to the issuance of such Parity Bonds.

The Net Revenues actually derived from the System during the 12-consecutive-month period herein above referred to may be adjusted by adding to such Net Revenues such additional Net Revenues which would have been received, in the opinion of the Independent Certified Public Accountants, on account of increased rates, rentals, fees and charges for the System adopted by the Issuer, the time for appeal of which shall have expired prior to issuance of such Parity Bonds.

No Parity Bonds shall be issued any time, however, unless all the payments into the respective funds and accounts provided for in this Bond Legislation and the Prior Ordinance with

respect to the Series 2009 B Bonds and Prior Bonds then Outstanding, and any other payments provided for in this Bond Legislation, shall have been made in full as required to the date of delivery of such Parity Bonds, and the Issuer shall then be in full compliance with all the covenants, agreements and terms of this Bond Legislation and the Prior Ordinance.

Section 5.05. Insurance and Bonds. The Issuer hereby covenants and agrees that it will, as an expense of construction, operation and maintenance of the System, procure, carry and maintain, so long as the Series 2009 B Bonds remain outstanding, insurance with a reputable insurance carrier or carriers covering the following risks and in the following amounts:

A. FIRE, LIGHTNING, VANDALISM, MALICIOUS MISCHIEF AND EXTENDED COVERAGE INSURANCE, to be procured upon acceptance of any part of the Project from the contractor, and immediately upon any portion of the System now in use, on all above-ground structures of the System and mechanical and electrical equipment in place or stored on the site in an amount equal to the actual cost thereof. In the event of any damage to or destruction of any portion of the System, the Issuer will promptly arrange for the application of the insurance proceeds for the repair or reconstruction of such damaged or destroyed portion. The Issuer will itself, or will require each contractor and subcontractor to, obtain and maintain builder's risk insurance to protect the interests of the Issuer during construction of the Project in the full insurable value thereof.

B. PUBLIC LIABILITY INSURANCE, with limits of not less than \$500,000 for one or more persons injured or killed in one accident to protect the Issuer from claims for bodily injury and/or death, and not less than \$200,000 to protect the Issuer from claims for damage to property of others which may arise from the operation of the System, such insurance to be procured not later than the date of delivery of the Series 2009 B Bonds.

C. VEHICULAR PUBLIC LIABILITY INSURANCE, in the event the Issuer owns or operates any vehicle in the operation of the System, or in the event that any vehicle not owned by the Issuer is operated at any time or times for the benefit of the Issuer, with limits of not less than \$500,000 for one or more persons injured or killed in one accident to protect the Issuer from claims for bodily injury and/or death, and not less than \$200,000 to protect the Issuer from claims for damage to property of others which may arise from such operation of vehicles, such insurance to be procured prior to acquisition or commencement of operation of any such vehicle for the Issuer.

D. WORKERS' COMPENSATION COVERAGE FOR ALL EMPLOYEES OF THE ISSUER ELIGIBLE THEREFOR AND PERFORMANCE AND PAYMENT BONDS, such bonds to be in the amounts of 100% of the construction contract, will be required of each prime contractor, and such payment bonds will be filed with the Clerk of the County Commission of said County prior to

commencement of construction of the Project in compliance with West Virginia Code Section 38-2-39. Workers' Compensation coverage will be maintained as provided by law.

E. FLOOD INSURANCE to be procured, to the extent available at reasonable cost to the Issuer; provided, however, if the System is located in a community which has been notified as having special flood or mudslide prone areas, flood insurance must be obtained.

F. FIDELITY BONDS will be provided as to every member of the Governing Body and as to every officer and employee of the Issuer having custody of the Revenue Fund or of any Revenues or other funds of the Issuer in such amount as may be requested by the Purchaser from time to time.

G. Provided, however, and in lieu of and notwithstanding the foregoing provisions of this Section, during construction of the Project and so long as the Series 2009 B Bonds are outstanding, the Issuer will carry insurance and bonds or cause insurance and bonds to be carried for the protection of the Issuer, and during such construction will require each contractor and subcontractor to carry insurance, of such types and in such amounts as the Purchaser may specify, with insurance carriers or bonding companies acceptable to the Purchaser.

Section 5.06. Statutory Mortgage Lien. For the further protection of the Holder of the Series 2009 B Bonds, a statutory mortgage lien upon the System is granted and created by the Act, which statutory mortgage lien is hereby recognized and declared to be valid and binding and shall take effect immediately upon the delivery of the Series 2009 B Bonds and shall be for the equal benefit of the Series 2009 B Bonds on a parity with the Prior Bonds.

Section 5.07. Events of Default. Each of the following events is hereby declared an "Event of Default":

A. Failure to make payment of any monthly amortization installment upon the Series 2009 B Bonds at the date specified for payment thereof;

B. Failure to duly and punctually to observe or perform any of the covenants, conditions and agreements on the part of the Issuer contained in the Series 2009 B Bonds or herein, or violation of or failure to observe any provision of any pertinent law, or

C. If default occurs with respect to the Prior Bonds or the Prior Ordinance.

Section 5.08. Enforcement. Upon the happening and continuance of any Event of Default, any Registered Owner of a Bond may exercise any available remedy and bring any appropriate action, suit or proceeding to enforce his or her rights and, in particular, (i) bring suit for any unpaid principal or interest then due, (ii) by mandamus or other appropriate proceeding enforce all rights of such Registered Owners including the right to require the Issuer to perform its duties under the Act and the Bond Legislation relating thereto, including but not limited to the making and collection of sufficient rates or charges for services rendered by the System, (iii) bring suit upon the Series 2009 B Bonds, (iv) by action at law or bill in equity require the Issuer to account as if it were the trustee of an express trust for the Registered Owners of the Series 2009 B Bonds, and (v) by action or bill in equity enjoin any acts in violation of the Bond Legislation with respect to the Series 2009 B Bonds, or the rights of such Registered Owners; provided that, all rights and remedies of the Holders of the Series 2009 B Bonds shall be on a parity with each other and with those of the Holders of the Prior Bonds. Any Registered Owner of the Bonds, by proper legal action, compel the performance of the duties of the Issuer under this Bond Legislation and the Act, including, the completion of the Project and after commencement of operation of the System, the making and collection of sufficient rates and charges for services rendered by the System and segregation of the revenues therefrom and the application thereof. If there be any Event of Default with respect to such Bonds, any Registered Owner of the Bonds shall, in addition to all other remedies or rights, have the right by appropriate legal proceedings to obtain the appointment of a receiver to administer the System or to complete the acquisition and construction of the Project on behalf of the Issuer, with power to charge rates, rentals, fees and other charges sufficient to provide for the payment of Operating Expenses of the System, the payment of the Bonds and interest and the deposits into the funds and accounts hereby established, and to apply such rates, rentals, fees, charges or other revenues in conformity with the provisions of this Bond Legislation and the Act.

The receiver so appointed shall forthwith, directly or by his or her or its agents and attorneys, enter into and upon and take possession of all facilities of said System and shall hold, operate and maintain, manage and control such facilities, and each and every part thereof, and in the name of the Issuer exercise all the rights and powers of the Issuer with respect to said facilities as the Issuer itself might exercise.

Whenever all that is due upon the Bonds and interest thereon and under any covenants of this Bond Legislation for reserve, sinking or other funds and upon any other obligations and interest thereon having a charge, lien or encumbrance upon the revenues of the System shall have been paid and made good, and all defaults under the provisions of this Bond Legislation shall have been cured and made good, possession of the System shall be surrendered to the Issuer upon the entry of an order of the court to that effect. Upon any subsequent default, any Registered Owner of any Bonds shall have the same right to secure the further appointment of a receiver upon any such subsequent default.

Such receiver, in the performance of the powers hereinabove conferred upon him or her or it, shall be under the direction and supervision of the court making such appointment, shall at all times be subject to the orders and decrees of such court and may be removed thereby, and a successor receiver may be appointed in the discretion of such court. Nothing herein contained shall limit or restrict the jurisdiction of such court to enter such other and further orders and decrees as such court

may deem necessary or appropriate for the exercise by the receiver of any function not specifically set forth herein.

Any receiver appointed as provided herein shall hold and operate the System in the name of the Issuer and for the joint protection and benefit of the Issuer and Registered Owners of the Bonds. Such receiver shall have no power to sell, assign, mortgage or otherwise dispose of any assets of any kind or character belonging or pertaining to the System, but the authority of such receiver shall be limited to the completion of the Project and the possession, operation and maintenance of the System for the sole purpose of the protection of both the Issuer and Registered Owners of such Bonds and the curing and making good of any Event of Default with respect thereto under the provisions of this Bond Legislation, and the title to and ownership of the System shall remain in the Issuer, and no court shall have any jurisdiction to enter any order or decree permitting or requiring such receiver to sell, assign, mortgage or otherwise dispose of any assets of the System.

Section 5.09. Fiscal Year; Budget. While the Series 2009 B Bonds are outstanding and unpaid and to the extent not now prohibited by law, the System shall be operated and maintained on a Fiscal Year basis commencing on July 1 of each year and ending on the following June 30, which period shall also constitute the budget year for the operation and maintenance of the System. Not later than thirty days prior to the beginning of each Fiscal Year, the Issuer agrees to adopt the Annual Budget for the ensuing year, and no expenditures for operation and maintenance expenses of the System in excess of the Annual Budget shall be made during such Fiscal Year unless unanimously authorized and directed by the Governing Body. Copies of each Annual Budget shall be delivered to the Purchaser by the beginning of each Fiscal Year.

If for any reason the Issuer shall not have adopted the Annual Budget before the first day of any Fiscal Year, it shall adopt a Budget of Current Expenses from month to month until the adoption of the Annual Budget; provided, however, that no such monthly budget shall exceed the budget for the corresponding month in the year next preceding by more than 10%; and provided further, that adoption of a Budget of Current Expenses shall not constitute compliance with the covenant to adopt an Annual Budget unless failure to adopt an Annual Budget be for a reason beyond the control of the Issuer. Each such Budget of Current Expenses shall be mailed immediately to the Purchaser.

Section 5.10. Covenant to Proceed and Complete. The Issuer hereby covenants to proceed as promptly as possible with the acquisition and construction of the Project to completion thereof in accordance with the plans and specifications prepared by the Consulting Engineer and on file with the Clerk on the date of adoption hereof, subject to permitted changes.

Section 5.11. Books and Records; Audits. The Issuer will keep books and records of the System, which shall be separate and apart from all other books, records and accounts of the Issuer, in which complete and correct entries shall be made of all transactions relating to the System, and the Purchaser shall have the right at all reasonable times to inspect the System and all records, accounts and data of the Issuer relating thereto.

The Issuer shall, at least once a year, cause said books, records and accounts of the System to be properly audited by an independent competent firm of certified public accountants and shall mail a copy of such audit report to the Purchaser. The Issuer shall further comply with the Act with respect to such books, records and accounts.

Section 5.12. Maintenance of System. The Issuer covenants that it will continuously operate, in an economical and efficient manner, and maintain the System as a revenue-producing utility as herein provided so long as the Series 2009 B Bonds are outstanding.

Section 5.13. No Competition. To the extent legally allowable, the Issuer will not permit competition with the System within its boundaries or within the territory served by it and will not grant or cause, consent to or allow the granting of any franchise, permit or other authorization for any person, firm, corporation, public or private body, agency or instrumentality whatsoever to provide any of the services supplied by the System within the boundaries of the Issuer or within the territory served by the System.

## ARTICLE VI

### **RATES, ETC.**

#### Section 6.01. Initial Schedule of Rates and Charges; Rules.

A. The initial schedule of rates and charges for the services and facilities of the System shall be as set forth in the rate ordinance of the Issuer enacted on June 21, 2000, which rate ordinance is incorporated herein by reference as a part hereof.

B. There shall not be any discrimination or differential in rates between customers in similar circumstances.

C. All delinquent fees, rates and charges for services or facilities of the System shall be a lien on the premises served if not paid when due. The Issuer shall have all remedies and powers provided under the Act and other applicable provisions of law with regard to the collection and enforcement of such fees, rates and charges, including, without limitation, any right and power of foreclosure under the Act and/or such other applicable provisions of law.

D. The Issuer will not render or cause to be rendered any free services of any nature by the System nor any of the facilities; and in the event that the Issuer or any department, agency, officer or employee thereof should avail itself or themselves of the services or facilities of the System, the same fees, rates and charges applicable to other customers receiving like services under similar circumstances shall be charged, such charges shall be paid as they accrue, and revenues so received shall be deposited and accounted for in the same manner as other revenues of the System.

E. The Issuer may require any applicant for any service by the System to deposit a reasonable and equitable amount to insure payment of all charges for the services rendered by the System, which deposit shall be handled and disposed of under the applicable rules and regulations of the Public Service Commission of West Virginia.

F. The Issuer shall not be liable to any customer for any damage resulting from bursting or breakage of any pipe, line, main, valve, equipment or part or from discontinuance of the operation of any part of the System or from failure of any part thereof for any cause whatever.

G. In case of emergency, the Issuer shall have the right to restrict the use of any part of the System in any reasonable manner for the protection of the System and the inhabitants of the Issuer.

H. The fees, rates and charges above provided will be increased whenever such increase is necessary in order to comply fully with all provisions hereof, and the Issuer shall always be obligated to and shall fix, establish and collect fees, rates and charges for the services and facilities of the System which shall at all times be sufficient to provide revenues to meet its payments and

obligations provided hereunder, but in any event, not less than 110% of the annual debt service on the Bonds Outstanding after the Prior Bonds are paid in full.

## ARTICLE VII

### MISCELLANEOUS

Section 7.01. Payment of Bonds. If the Issuer shall pay or there shall otherwise be paid to the Holder of the Series 2009 B Bonds, the principal of and interest due or to become due thereon, at the times and in the manner stipulated therein and in this Bond Legislation, then with respect to the Series 2009 B Bonds, the pledge of Revenues and other monies and securities pledged under this Bond Legislation and all covenants, agreements and other obligations of the Issuer to the Registered Owner of the Series 2009 B Bonds, shall thereupon cease, terminate and become void and be discharged and satisfied.

Except through such direct payment to the Holder of the Series 2009 B Bonds, the Issuer may not defease the Series 2009 B Bonds or otherwise provide for payment thereof by escrow or like manner.

Section 7.02. Modification or Amendment. Prior to issuance of the Series 2009 B Bonds, this Ordinance may be amended or supplemented in any way by ordinance or resolution. Following issuance of the Series 2009 B Bonds, no modification or amendment of this Ordinance, or any ordinance or resolution amendatory hereof or supplemental hereto, shall be made without the prior written consent of the Purchaser.

Section 7.03. Delivery of Bonds. The Mayor is hereby authorized and directed to cause the Series 2009 B Bonds, hereby awarded to the Purchaser pursuant to prior agreement, to be delivered to the Purchaser as soon as the Purchaser will accept such delivery.

Section 7.04. Severability of Invalid Provisions. If any one or more of the covenants, agreements or provisions hereof should be held contrary to any express provision of law or contrary to the policy of express law, although not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed severable from the remaining covenants, agreements or provisions hereof, and shall in no way affect the validity of all the other provisions hereof or the Series 2009 B Bonds.

Section 7.05. Conflicting Provisions Repealed. Except for the Prior Ordinance, all ordinances, resolutions and orders, or parts thereof, in conflict with the provisions hereof are, to the extent of such conflicts, hereby repealed; provided that this section shall not be applicable to the Loan Resolution (Form FmHA 442-47).

Section 7.06. Table of Contents and Headings. The Table of Contents and headings of the articles, sections and subsections hereof are for convenience only and shall neither control nor affect in any way the meaning or construction of any of the provisions hereof.

Section 7.07. Covenant of Due Procedure, Etc. The Issuer covenants that all acts, conditions, things and procedures required to exist, to happen, to be performed or to be taken precedent to and in the adoption and enactment of this Ordinance do exist, have happened, have been performed and have been taken in regular and due time, form and manner as required by and in full compliance with the laws and Constitution of the State of West Virginia applicable thereto; and that the Mayor, Clerk and members of the Governing Body were at all times when any actions in connection with this Ordinance occurred and are duly in office and duly qualified for such office.

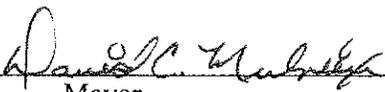
Section 7.08. Effective Time. This Bond Legislation shall take effect following public hearing hereon in accordance with the Act.

Section 7.09. Statutory Notice and Public Hearing. Upon adoption hereof, an abstract of this Bond Legislation, determined by the Council to contain sufficient information as to give notice of the contents hereof, shall be published once a week for two successive weeks within a period of fourteen consecutive days, with at least six full days intervening between each publication, in the *Barbour Democrat*, being qualified newspapers of general circulation in The City of Philippi, no newspaper being published therein, together with a notice stating that this Ordinance has been adopted, and that the Issuer contemplates the issuance of the Bond, and that any person interested may appear before the Council upon a date certain, not less than ten days subsequent to the date of the first publication of the said abstract and notice and not prior to the last date of such publication, and present protests, and that a certified copy of the Ordinance is on file in the office of the Clerk of the Issuer for review by interested parties during regular office hours. At such hearing, all objections and suggestions shall be heard and the Council shall take such action as it shall deem proper in the premises.

Passed on First Reading: January 20, 2009

Passed on Second Reading: February 3, 2009

Passed on Final Reading  
Following Public Hearing: February 17, 2009

  
\_\_\_\_\_  
Mayor

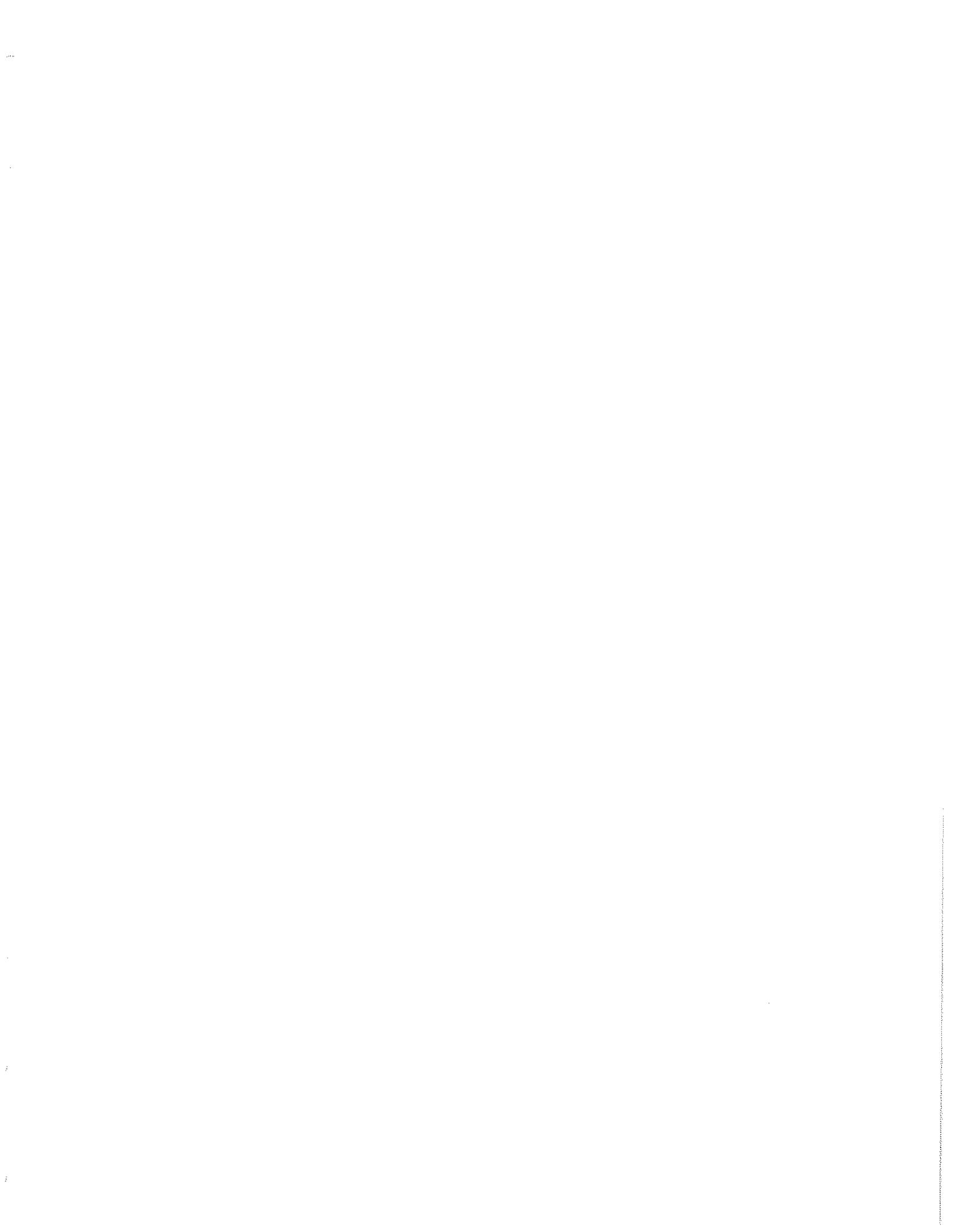
CERTIFICATION

Certified a true copy of an Ordinance duly enacted by the Council of The City of Philippi on the 17th day of February, 2009, which Ordinance has not been repealed, rescinded, modified, amended or revoked, as witness my hand and the seal of The City of Philippi on this 16th day of April, 2009.

[SEAL]

Jammy R. Stemple  
Clerk

04.02.09  
700470.00001



THE CITY OF PHILIPPI

Water Revenue Bonds, Series 2009 B  
(United States Department of Agriculture)

SUPPLEMENTAL RESOLUTION

SUPPLEMENTAL RESOLUTION MAKING PROVISIONS AS TO PRINCIPAL AMOUNT, DATE, MATURITY DATE, REDEMPTION PROVISION, INTEREST RATE, INTEREST AND PRINCIPAL PAYMENT DATES, SALE PRICE AND OTHER TERMS OF THE WATER REVENUE BONDS, SERIES 2009 B OF THE CITY OF PHILIPPI, AND MAKING OTHER PROVISIONS AS TO THE BONDS.

WHEREAS, the council (the "Governing Body") of The City of Philippi (the "Issuer") has duly and officially adopted and enacted a bond ordinance, February 17, 2009 (the "Bond Ordinance"), entitled:

ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING PUBLIC WATERWORKS FACILITIES OF THE CITY OF PHILIPPI, AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED THEREOF, THROUGH THE ISSUANCE BY THE CITY OF PHILIPPI OF NOT MORE THAN \$2,000,000 IN AGGREGATE PRINCIPAL AMOUNT OF WATER REVENUE BONDS, SERIES 2009 B (UNITED STATES DEPARTMENT OF AGRICULTURE) IN ONE OR MORE SERIES; DEFINING AND PRESCRIBING THE TERMS AND PROVISIONS OF THE BONDS; PROVIDING GENERALLY FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE HOLDER OF THE BONDS; AND PROVIDING WHEN THIS ORDINANCE SHALL TAKE EFFECT.

WHEREAS, capitalized terms used herein and not otherwise defined herein shall have the same meaning set forth in the Bond Ordinance when used herein;

WHEREAS, the Bond Ordinance provides for the issuance of Water Revenue Bonds, Series 2009 B, of the Issuer (the "Series 2009 B Bonds"), in an aggregate principal amount not to exceed \$2,000,000, and has authorized the execution and delivery of the documents relating to the Bonds, all in accordance with Chapter 8, Article 19 of the West Virginia Code of 1931, as amended (collectively, the "Act");

WHEREAS, the Governing Body deems it essential and desirable that this supplemental resolution (the "Supplemental Resolution") be adopted;

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF PHILIPPI:

Section 1. Pursuant to the Bond Ordinance and the Act, this Supplemental Resolution is adopted and there are hereby authorized and ordered to be issued the following bonds of the Issuer:

A. Water Revenue Bonds, Series 2009 B (United States Department of Agriculture), of the Issuer, originally represented by a single Bond, numbered BR-1 in the principal amount of \$1,651,000. The Series 2009 B Bonds shall be dated the date of delivery thereof, shall bear interest at the rate of 4.5% per annum, interest only payable in monthly installments for the first 12 months commencing 30 days following delivery of the Series 2009 B Bonds and continuing on the corresponding day of each month and, thereafter, principal and interest are payable in monthly installments of \$10,451 on the corresponding day of each month, except that the final installment shall be paid at the end of twenty-two (22) years from the date of the Series 2009 B Bonds, in the sum of the unpaid principal and interest due on the date thereof, except that prepayments may be made as hereinafter provided and as provided in the Series 2009 B Bonds, all such payments to be made at the National Finance Office, St. Louis, Missouri 63103, or at such other place as the Purchaser may designate after issuance of the Series 2009 B Bonds. Prepayments of scheduled installments, or any portion thereof, may be made at any time at the option of the Issuer.

Section 2. The Mayor and the Clerk are hereby authorized and directed to execute and deliver such other documents and certificates required or desirable in connection with the Bonds hereby and by the Bond Ordinance approved and provided for, to the end that the Bonds may be delivered on or about April 16, 2009, to the Purchaser.

Section 3. The Issuer does hereby appoint and designate First Central Bank, Philippi, West Virginia, to serve as Depository Bank under the Bond Ordinance.

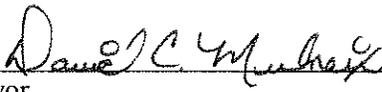
Section 4. The Issuer hereby approves and accepts all contracts relating to the financing, acquisition and construction of the Project.

Section 5. The cost of the Project is estimated not to exceed \$1,651,000, which will be obtained from proceeds of the Series 2009 B Bonds.

Section 6. This Supplemental Resolution shall be effective immediately following adoption hereof.

[Remainder of Page Intentionally Blank]

Adopted this 7th day of April, 2009.

  
\_\_\_\_\_  
Mayor

CERTIFICATION

Certified a true copy of a Supplemental Resolution duly adopted by the Council of The City of Philippi on the 7th day of April, 2009.

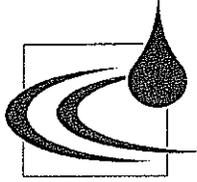
Dated: April 16, 2009.

[SEAL]

Jammy R. Stemple  
Clerk

04.02.09  
700470.00001





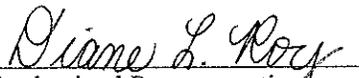
WEST VIRGINIA  
**Water Development Authority**  
Celebrating 34 Years of Service 1974 - 2008

April 16, 2009

The City of Philippi  
Water Revenue Bonds, Series 2009 B  
(United States Department of Agriculture)

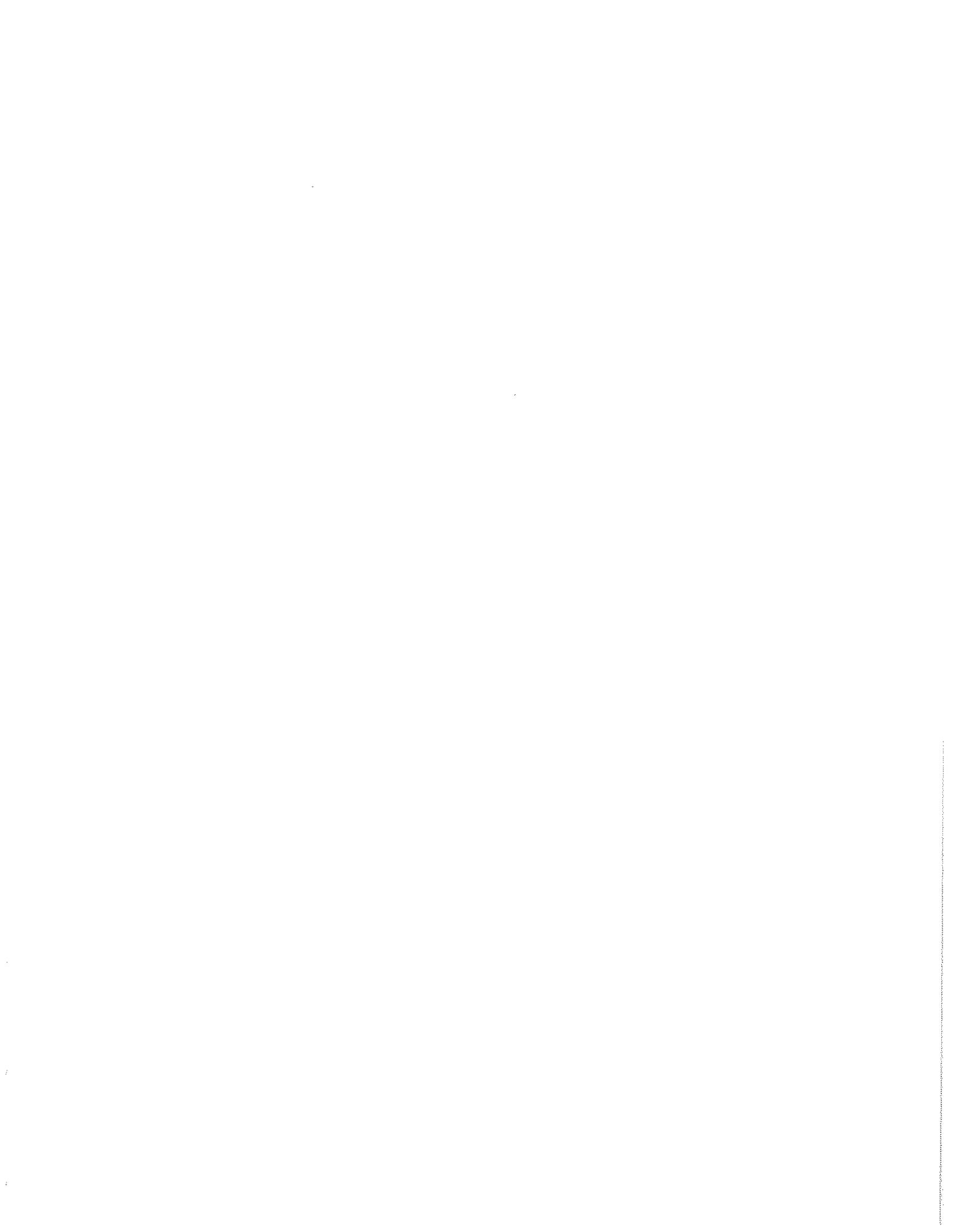
TO WHOM IT MAY CONCERN:

In reliance upon the certificate of Griffith & Associates, an independent certified public accountant, and an opinion of Steptoe & Johnson, PLLC, as bond counsel, stating that the coverage and parity requirements have been met, the undersigned duly authorized representative for the West Virginia Water Development Authority, the registered owner of the entire outstanding aggregate principal amount of the Prior Bonds, hereinafter defined and described, hereby consents to the issuance of the Water Revenue Bonds, Series 2009 B (United States Department of Agriculture), in the original aggregate principal amount of \$1,651,000 (the "Series 2009 B Bonds") by The City of Philippi (the "Issuer"), under the terms of the bond ordinance authorizing the Series 2009 B Bonds, on a parity, with respect to liens, pledge and source of and security for payment, with the Issuer's outstanding Waterworks System Design Revenue Bonds, Series 2009 A, dated February 24, 2009, issued in the original aggregate principal amount of \$491,200 (the "Prior Bonds").

  
Authorized Representative

04.02.09  
700470.00001

180 Association Drive, Charleston, WV 25311-1217  
phone (304) 558-3612 / fax (304) 558-0299  
[www.wvwda.org](http://www.wvwda.org)



PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON

03 02-III

ORIGINAL

Entered: December 18, 2002

CASE NO. 02-1020-W-CN

CITY OF PHILIPPI

Application for a certificate of convenience and necessity to construct upgraded water distribution lines, tanks and pumps in Cherry Hill, Mansfield and U.S. Route 250 south areas in Barbour County.

**FINAL**  
1-7-03

RECOMMENDED DECISION

On July 17, 2002, the City of Philippi (Applicant or City), a municipal utility, filed an application, duly verified, for a certificate to construct certain additions and improvements to its water system in Barbour County. The Applicant estimates that construction will cost approximately \$1,651,000.00. The project is to be financed by a U.S. Department of Agriculture Rural Utilities Service Loan in the amount of \$1,651,000.00. The Applicant provided a copy of its anticipated rates for the project and noted that the project will not result in an increase in rates and charges.

By Order entered July 17, 2002, the Applicant was directed to give notice of the filing of the application, by publishing a copy of the July 17, 2002 Order once in a newspaper, duly qualified by the Secretary of State, published and of general circulation in Barbour County, making due return to the Commission of proper certification of publication immediately after publication. The Notice provided that anyone desiring to protest or intervene should file a written protest or notice of intervention within 30 days following the date of this publication unless otherwise modified by Commission Order. The Notice provided that failure to timely protest or intervene can affect one's right to protest aspects of this certificate case, including any associated rate increases, or to participate in future proceedings in this case. All protests or requests to intervene were directed to briefly state the reason for the protest or intervention and to comply with the Commission's Rules of Practice and Procedure. All protests and interventions were to be addressed to the Executive Secretary's Office, P. O. Box 812, Charleston, West Virginia. The Order provided that, if no protests are received within the thirty-day protest period, the Commission could waive formal hearing and grant the application based upon the evidence submitted and its review of said application.

On August 28, 2002, Staff filed its Initial Joint Staff Memorandum encouraging the Applicant to immediately submit additional information as outlined in the Memorandum. Staff recommended that the case be referred

MSM

to the Division of Administrative Law Judges for resolution. Attached to the Initial Joint Staff Memorandum was an Initial Internal Memorandum from Jonathan Fowler, P.E., Staff Engineer, Engineering Division, and Jim Boggess, Utilities Analyst II, Water and Wastewater Division, requesting additional information in order to review the application. On August 28, 2002, Staff filed a formal request for information.

By Order entered September 5, 2002, this matter was referred to the Division of Administrative Law Judges for a decision to be rendered on or before February 13, 2003.

On September 17, 2002, the Applicant filed additional information regarding several permits it was in the process of obtaining and an engineering report.

On October 17, 2002, Staff filed a Further Joint Staff Memorandum indicating that its final recommendation in this matter could not be made until additional information is received from the Applicant. Staff indicated that, if the information is requested immediately, it could make its decision regarding the merits of the certificate. If the information is not received, Staff would have no choice but to recommend that the case be dismissed. Staff recommended that the Applicant file the information immediately. Staff indicated that the Engineering Division was still awaiting the final construction documents and all necessary permits as well as the list of necessary documents required by the Engineering Division in Staff's August 7, 2002 Initial Internal Memorandum. Staff requested that the information be filed within ten days.

On October 21, 2002, additional information was filed on behalf of the Applicant regarding the Nationwide Permit Program for its Municipal Water System Improvement Project.

By Order issued October 31, 2002, the City of Philippi was directed to file, no later than November 12, 2002, an affidavit of publication indicating that the July 17, 2002 Notice of Filing was published in Barbour County, pursuant to the Commission's Order. The Applicant was directed to file any and all additional information requested by Staff pursuant to its Data Request filed August 28, 2002, and Memorandum filed August 17, 2002, no later than November 12, 2002. Staff was directed to file its Final Joint Staff Memorandum outlining its substantive recommendation in this matter no later than November 22, 2002. The Applicant was directed to file any responses to Staff's substantive recommendation no later than December 2, 2002.

On November 8, 2002, the Commission received a copy of an affidavit of publication indicating that the Notice of Filing was published in The Barbour Democrat, a newspaper of general circulation in Barbour County, duly qualified by the Secretary of State, on September 4, 2002, in Barbour County. No protests were received to the application as a result of the publication of the Notice of Filing.

On November 12, 2002, the Applicant filed contract documents and drawings; a West Virginia Bureau of Public Health permit application information; West Virginia Division of Highway permit application form

MM-109; site registration application form, West Virginia/NPDES general permit; and an estimate of probable construction costs pursuant to Commission Staff's request for additional information.

On November 27, 2002, Staff filed its Final Joint Staff Memorandum advising that it has determined that the proposed project is convenient and necessary. Staff recommended that the City's application for a certificate of convenience and necessity to construct the project outlined in the July 17, 2002 application be granted. Staff indicated that the Applicant's existing system suffers from various operational difficulties and that failure to complete the proposed project will result in steadily worsening problems, shortage of water and, ultimately, a loss of service within portions of the City's distribution system. Staff believes the project will reduce or alleviate the potential failures and provide the first step toward a planned, controlled program of distribution system enhancements. Staff agrees that "the implementation of a series of semi-continuous, relatively small improvement projects are an efficient and cost-effective means of increasing system capacities and improving reliability while simultaneously minimizing the impact of increasing rates". Staff noted that no customers will be added as a result of the project and no rate increase will be needed as a result of the proposed project. The proposed project will cost approximately \$1,651,000, which would include the cost of refinancing two outstanding water revenue bonds. The proposed water system improvements include the construction of two new water storage tanks, including a 388,000 tank to replace the existing Mansfield tank and a new 13,200 gallon tank to serve the Cherry Hill area. Two new water booster stations will be installed, and the renovations to the Route 250 booster station will include the installation of new pumps, valves and controls and approximately 4,020 feet of various sizes of water lines. Appurtenances will be replaced in order to connect the new facilities with the City's existing distribution system; a new bypass line and valves will be constructed near the existing booster station of the Century Volga Public Service District; and new telemetry equipment will be installed at the proposed tanks and booster stations to provide control and remote monitoring of those facilities.

Staff believes the cost estimates associated with the construction of the project are reasonable but notes that the project has not been bid and the construction costs may vary, depending on construction bids. Financing for the proposed project is provided exclusively by a loan not to exceed \$1,651,000 from the U.S. Department of Agriculture, Rural Utilities Service (RUS), for a period of twenty (20) years at an interest rate not to exceed 4.5%. The RUS required the City to fund monthly a Debt Service Reserve Account and a Depreciation Reserve Account, which, together, equal 10% of the debt service payment. The City proposes to retire its outstanding debt under a Series 1998 Water Revenue Bonds. The City also proposes to retire the Series 1992 Water Revenue Bonds. The bond retirement will result in a substantial decrease in annual debt service. Staff recommended that the certificate be granted subject to the receipt of the following: a permit to construct from the West Virginia Bureau for Public Health, Environmental Engineer Division; a DEP erosion and sedimentation control permit; a West Virginia Division of Highways permit for entry upon right-of-way for any ingress/egress; a

West Virginia Department of Natural Resources Public Land Corporation permit; and, if applicable, a U.S. Army-Corps of Engineers Permit for all proposed stream crossings.

On December 9, 2002, the Commission received Permit No. 15,467 from the West Virginia Office of Environmental Health Services for the facilities to serve the City of Philippi and the three public service districts that purchase water from the City of Philippi regarding this project.

#### FINDINGS OF FACT

1. On July 17, 2002, the City of Philippi, a municipal utility, filed an application, duly verified, for a certificate to construct certain additions and improvements to its water system. The project is designed to mitigate some longstanding problems with the City's water distribution system by eliminating chronic low pressure problems in the Cherry Hill area; increase the system's capacity to accommodate growth on U.S. Route 250, south and east of the City (including to the Chestnut Ridge Public Service District); provide water protection to a portion of Anglin's Run; and provide improved service to the system adjacent to a new hospital along U.S. Route 16, south of the City. The project will not provide service to any additional customers at this time. (See, Application).

2. The Applicant estimates construction of the project to cost approximately \$1,651,000. (See, Application; Final Joint Staff Memorandum received November 27, 2002).

3. The project is to be financed through a Rural Utilities Service loan not to exceed \$1,651,000 for a period not to exceed twenty (20) years, at an interest rate not to exceed 4.5%. (See, Application; Final Joint Staff Memorandum received November 27, 2002).

4. The project will not result in a rate increase and Commission Staff agreed that one would not be necessary at this time. (See, Application; Final Joint Staff Memorandum received November 27, 2002).

5. The Applicant filed an Affidavit of Publication indicating that the Notice of Filing was published on September 4, 2002, in The Barbour Democrat, a newspaper of general circulation in Barbour County, with no protests being received to the application. (See, Affidavit of Publication received November 8, 2002, case file generally).

6. The City of Philippi received a State of West Virginia Office of Environmental Health Service Permit No. 15,467 approving the plans and specifications of this project. (See, Permit received December 9, 2002).

7. Commission Staff believes the project is both convenient and necessary to prevent steadily worsening problems, including shortages of water and, ultimately, a loss of service within portions of the distribution system, and to reduce or alleviate the potential failures and to provide a planned, controlled program of distribution system

enhancements to this system to improve reliability of service. (See, Application; Final Joint Staff Memorandum received November 27, 2002).

8. Commission Staff recommended approval of the application subject to bids being received within the estimated construction cost and the receipt of any and all necessary permits and easements for the project. (See, case file generally).

#### CONCLUSIONS OF LAW

1. The public convenience and necessity require the issuance of a certificate of public convenience and necessity to the City of Philippi to construct certain additions and improvements to its water system in Barbour County, including the construction of two new water storage tanks, being a 388,000 gallon tank to replace the existing Mansfield tank and a new 13,200 gallon tank to serve the Cherry Hill area; the installation of two new water booster stations; the renovation of the Route 250 booster station; the installation of approximately 4,020 feet of 6-inch and 8-inch waterlines and appurtenances necessary in order to connect the new facilities in the City's existing distribution system; the installation of a new bypass line and valve to be constructed near the existing booster station of the Century/Volga Public Service District; and the installation of telemetry equipment at the proposed tanks and booster stations.

2. The project is adequately financed and economically feasible with the Applicant's current rates.

3. It is reasonable to approve the financing for this project, being a Rural Utilities Service loan in the amount not to exceed \$1,651,000 for a period not to exceed twenty (20) years at an interest rate not to exceed 4.5%.

#### ORDER

IT IS, THEREFORE, ORDERED that the application filed by the City of Philippi for a certificate of convenience and necessity to construct certain additions and improvements to its water system, in Barbour County, to include the installation of approximately 2,361 linear feet of 6-inch and 1,660 linear feet of 8-inch waterline; replacement of the existing Mansfield water booster station with a new 350 g.p.m. duplex station; replacement of the existing Cherry Hill booster station with a new 54 g.p.m. duplex water booster station; replacement of the existing pumps in the U.S. Route 250 water booster station with two 285 g.p.m. pumps; replacement of the existing Mansfield water storage tank with a new 388,000 gallon tank and the construction of a new 13,200 gallon storage tank to serve the Cherry Hill area; the upgrade of the water line serving the Anglin's Run area to an 8-inch water line to provide fire service; and the installation of telemetry systems for booster stations and storage tanks, along with all necessary valves, controls and appurtenances, be, and hereby is, approved, subject to bids being

received within the estimated construction cost of the project and the City receiving all necessary permits and right-of-ways.

IT IS FURTHER ORDERED that the financing of the project, consisting of a Rural Utilities Service loan in an amount not to exceed \$1,651,000 for a period not to exceed twenty (20) years, at an interest rate not to exceed 4.5%, be, and hereby is, approved.

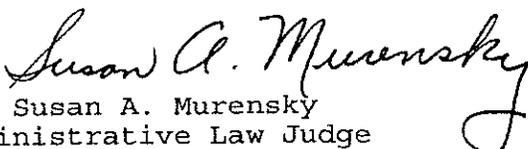
IT IS FURTHER ORDERED that, if there is a change in the cost, scope or financing for the proposed project, the City of Philippi shall notify the Public Service Commission and file for Commission approval of the revised project or financing prior to commencing construction.

The Executive Secretary is hereby ordered to serve a copy of this order upon the Commission by hand delivery, and upon all parties of record by United States Certified Mail, return receipt requested.

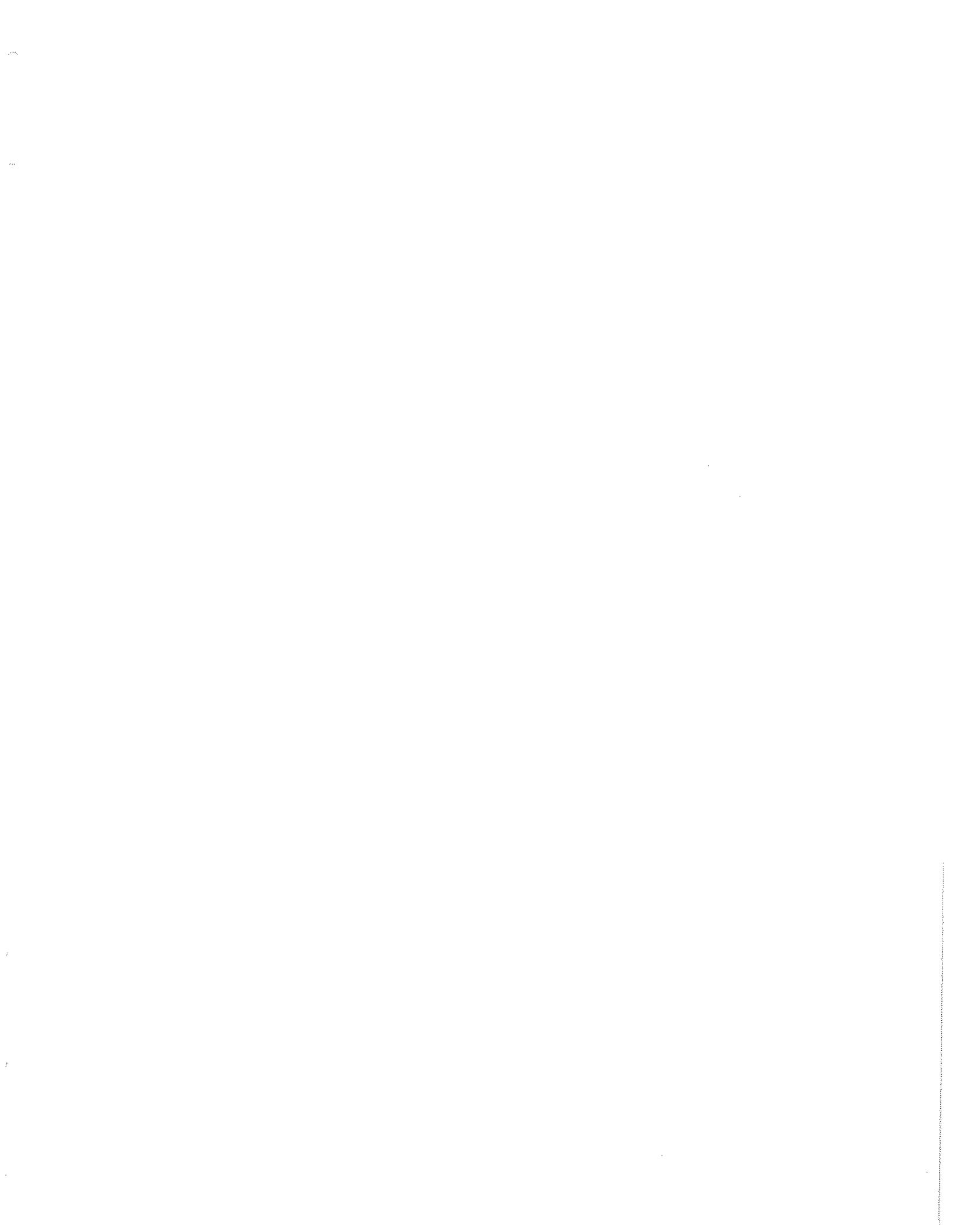
Leave is hereby granted to the parties to file written exceptions supported by a brief with the Executive Secretary of the Commission within fifteen (15) days of the date this order is mailed. If exceptions are filed, the parties filing exceptions shall certify to the Executive Secretary that all parties of record have been served said exceptions.

If no exceptions are so filed this order shall become the order of the Commission, without further action or order, five (5) days following the expiration of the aforesaid fifteen (15) day time period, unless it is ordered stayed or postponed by the Commission.

Any party may request waiver of the right to file exceptions to an Administrative Law Judge's Order by filing an appropriate petition in writing with the Secretary. No such waiver will be effective until approved by order of the Commission, nor shall any such waiver operate to make any Administrative Law Judge's Order or Decision the order of the Commission sooner than five (5) days after approval of such waiver by the Commission.

  
Susan A. Murensky  
Administrative Law Judge

SAM:jas  
021020aa.wpd



**LOAN RESOLUTION**  
(Public Bodies)A RESOLUTION OF THE Town CouncilOF THE City of PhilippiAUTHORIZING AND PROVIDING FOR THE INCURRENCE OF INDEBTEDNESS FOR THE PURPOSE OF PROVIDING A  
PORTION OF THE COST OF ACQUIRING, CONSTRUCTING, ENLARGING, IMPROVING, AND/OR EXTENDING ITS  
Water System

FACILITY TO SERVE AN AREA LAWFULLY WITHIN ITS JURISDICTION TO SERVE.

WHEREAS, it is necessary for the City of Philippi*(Public Body)*

(herein after called Association) to raise a portion of the cost of such undertaking by issuance of its bonds in the principal amount of

**ONE MILLION SIX HUNDRED FIFTY-ONE THOUSAND AND XX / 100**pursuant to the provisions of Chapter 8, Article 19 West Virginia Code; and**WHEREAS**, the Association intends to obtain assistance from the United States Department of Agriculture, (herein called the Government) acting under the provisions of the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.) in the planning, financing, and supervision of such undertaking and the purchasing of bonds lawfully issued, in the event that no other acceptable purchaser for such bonds is found by the Association:**NOW THEREFORE**, in consideration of the premises the Association hereby resolves:

1. To have prepared on its behalf and to adopt an ordinance or resolution for the issuance of its bonds containing such items and in such forms as are required by State statutes and as are agreeable and acceptable to the Government.
2. To refinance the unpaid balance, in whole or in part, of its bonds upon the request of the Government if at any time it shall appear to the Government that the Association is able to refinance its bonds by obtaining a loan for such purposes from responsible cooperative or private sources at reasonable rates and terms for loans for similar purposes and periods of time as required by section 333(c) of said Consolidated Farm and Rural Development Act (7 U.S.C. 1983(c)).
3. To provide for, execute, and comply with Form RD 400-4, "Assurance Agreement," and Form RD 400-1, "Equal Opportunity Agreement," including an "Equal Opportunity Clause," which clause is to be incorporated in, or attached as a rider to, each construction contract and subcontract involving in excess of \$10,000.
4. To indemnify the Government for any payments made or losses suffered by the Government on behalf of the Association. Such indemnification shall be payable from the same source of funds pledged to pay the bonds or any other legally permissible source.
5. That upon default in the payments of any principal and accrued interest on the bonds or in the performance of any covenant or agreement contained herein or in the instruments incident to making or insuring the loan, the Government at its option may (a) declare the entire principal amount then outstanding and accrued interest immediately due and payable, (b) for the account of the Association (payable from the source of funds pledged to pay the bonds or any other legally permissible source), incur and pay reasonable expenses for repair, maintenance, and operation of the facility and such other reasonable expenses as may be necessary to cure the cause of default, and/or (c) take possession of the facility, repair, maintain, and operate or rent it. Default under the provisions of this resolution or any instrument incident to the making or insuring of the loan may be construed by the Government to constitute default under any other instrument held by the Government and executed or assumed by the Association, and default under any such instrument may be construed by the Government to constitute default hereunder.
6. Not to sell, transfer, lease, or otherwise encumber the facility or any portion thereof, or interest therein, or permit others to do so, without the prior written consent of the Government.
7. Not to defease the bonds, or to borrow money, enter into any contractor agreement, or otherwise incur any liabilities for any purpose in connection with the facility (exclusive of normal maintenance) without the prior written consent of the Government if such undertaking would involve the source of funds pledged to pay the bonds.
8. To place the proceeds of the bonds on deposit in an account and in a manner approved by the Government. Funds may be deposited in institutions insured by the State or Federal Government or invested in readily marketable securities backed by the full faith and credit of the United States. Any income from these accounts will be considered as revenues of the system.
9. To comply with all applicable State and Federal laws and regulations and to continually operate and maintain the facility in good condition.
10. To provide for the receipt of adequate revenues to meet the requirements of debt service, operation and maintenance, and the establishment of adequate reserves. Revenue accumulated over and above that needed to pay operating and maintenance, debt service and reserves may only be retained or used to make prepayments on the loan. Revenue cannot be used to pay any expenses which are not directly incurred for the facility financed by USDA. No free service or use of the facility will be permitted.



**CERTIFICATION TO BE EXECUTED AT LOAN CLOSING**

I, the undersigned, as Mayor of the PHILIPPI, CITY OF

hereby certify that the City Council of such Association is composed of

5 members, of whom 5 constituting a quorum, were present at a meeting thereof duly called and

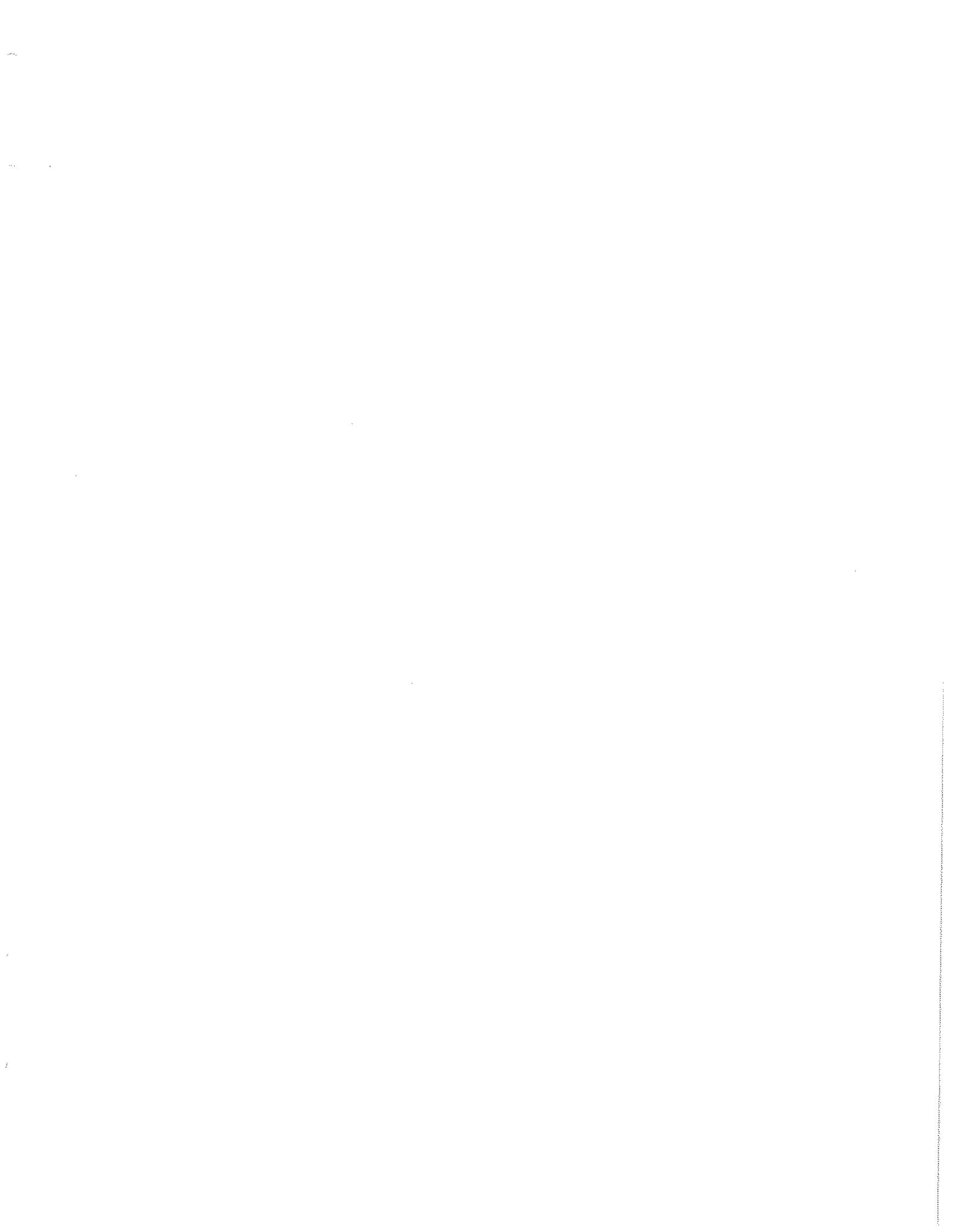
held on the 4th day of Oct., 2001; and that the foregoing resolution was adopted at such meeting

by the vote shown above, I further certify that as of April 16, 2009, the date of closing of the loan from the United States Department of Agriculture, said resolution remains in effect and has not been rescinded or amended in any way.

Dated, this 16th day of April, 2009

David C. Meeker

Title Mayor



THE CITY OF PHILIPPI

Water Revenue Bonds, Series 2009 B  
(United States Department of Agriculture)

RECEIPT FOR BOND

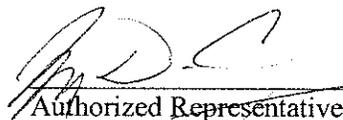
The undersigned, authorized representative of the United States Department of Agriculture, Rural Utilities Service, for and on behalf of the United States of America (the "Purchaser"), hereby certifies as follows:

1. On the 16th day of April, 2009, at Philippi, West Virginia, the undersigned received for the Purchaser the single, fully registered The City of Philippi Water Revenue Bonds, Series 2009 B (United States Department Agriculture), No. BR-1 (the "Series 2009 B Bonds"), in the principal amount of \$1,651,000, dated as of the date hereof, bearing interest at the rate of 4.5% per annum, and payable in monthly installments as stated in the Bond.

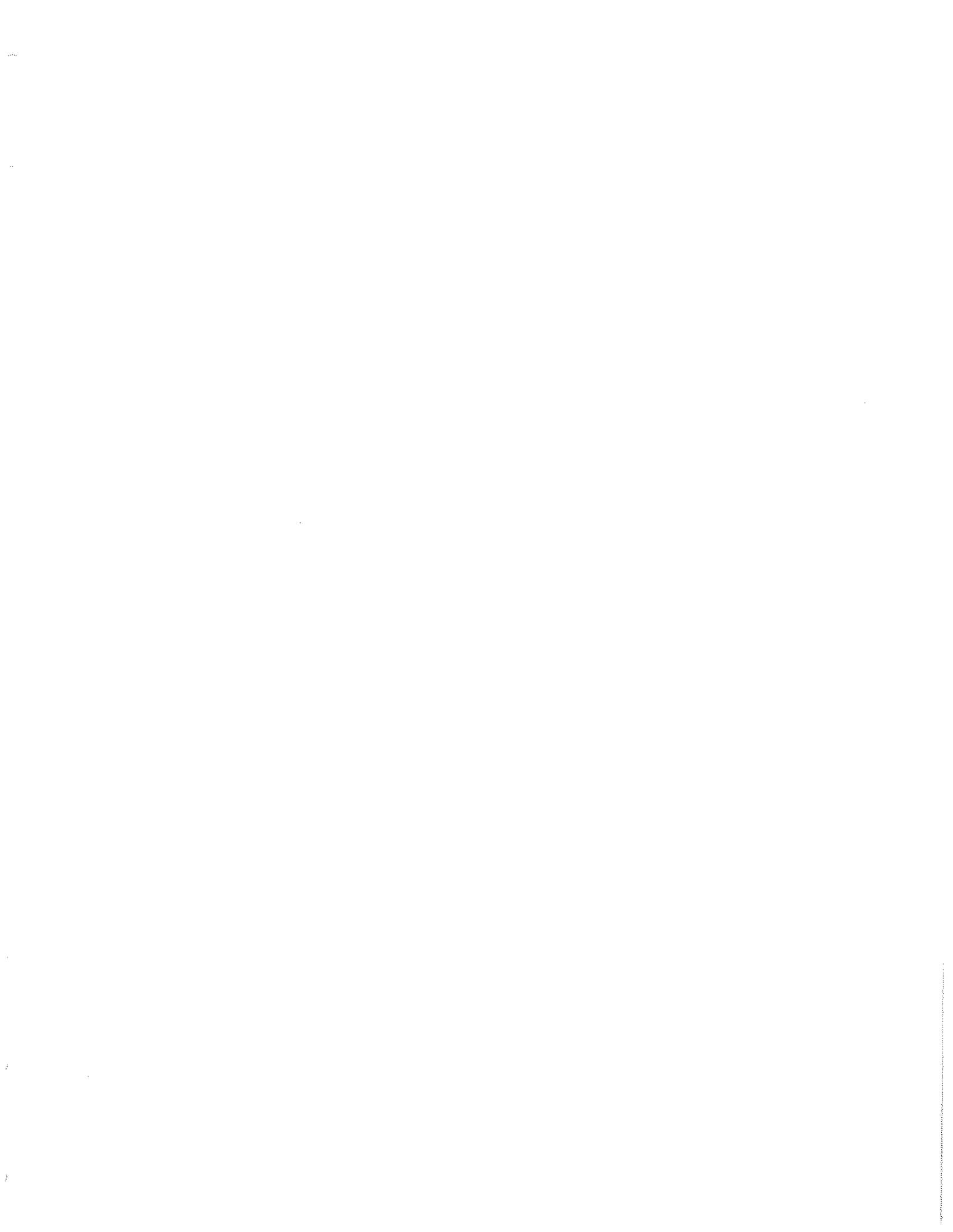
2. At the time of such receipt, the Series 2009 B Bonds had been executed and sealed by the designated officials of The City of Philippi (the "Issuer").

3. At the time of such receipt, there was paid to the Issuer the sum of \$170,700, being a portion of the principal amount of the Series 2009 B Bonds. The balance of the principal amount of the Series 2009 B Bonds, will be paid to the Issuer as acquisition and construction of the Project progresses.

WITNESS my signature on this 16th day of April, 2009.

  
Authorized Representative

04.02.09  
700470.00001



SPECIMEN

THE CITY OF PHILIPPI

WATER REVENUE BONDS, SERIES 2009 B  
(UNITED STATES DEPARTMENT OF AGRICULTURE)

\$1,651,000

No. BR-1

Date: April 16, 2009

FOR VALUE RECEIVED, THE CITY OF PHILIPPI (herein called "Borrower") promises to pay to the order of the United States of America (the "Government"), or its registered assigns, at its National Finance Office, St. Louis, Missouri 63103, or at such other place as the Government may hereafter designate in writing, the principal sum of ONE MILLION SIX HUNDRED FIFTY-ONE THOUSAND DOLLARS (\$1,651,000), plus interest on the unpaid principal balance at the rate of 4.5% per annum. The said principal and interest shall be paid in the following installments on the following dates: Monthly installments of interest only, commencing 30 days following delivery of this Bond and continuing on the corresponding day of each month for the first twenty-four months after the date hereof, and \$10,451, covering principal and interest, thereafter on said corresponding day of each month, except that the final installment shall be paid at the end of twenty-two (22) years from the date of this Bond, in the sum of the unpaid principal and interest due on the date thereof, and except that prepayments may be made as provided herein below. The consideration herefor shall support any agreement modifying the foregoing schedule of payments.

If the total amount of the loan is not advanced at the time of loan closing, the loan shall be advanced to Borrower as requested by Borrower and approved by the Government and interest shall accrue on the amount of each advance from its actual date as shown on the Record of Advances attached hereto as a part hereof.

Every payment made on any indebtedness evidenced by this Bond shall be applied first to interest computed to the effective date of the payment and then to principal.

Prepayments of scheduled installments, or any portion thereof, may be made at any time at the option of Borrower. Refunds and extra payments, as defined in the regulations of the Government according to the source of funds involved, shall, after payment of interest, be applied to the installments last to become due under this Bond and shall not affect the obligation of Borrower to pay the remaining installments as scheduled herein.

If the Government at any time assigns this Bond and insures the payment thereof, Borrower shall continue to make payments to the Government as collection agent for the holder.

While this Bond is held by an insured lender, prepayments as above authorized made by Borrower may, at the option of the Government, be remitted by the Government to the holder promptly or, except for final payment, be retained by the Government and remitted to the holder on either a

calendar quarter basis or an annual installment due date basis. The effective date of every payment made by Borrower, except payments retained and remitted by the Government on an annual installment due date basis, shall be the date of the United States Treasury check by which the Government remits the payment to the holder. The effective date of any prepayment retained and remitted by the Government to the holder on an annual installment due date basis shall be the date of the prepayment by Borrower and the Government will pay the interest to which the holder is entitled accruing between the effective date of any such prepayment and the date of the Treasury check to the holder.

Any amount advanced or expended by the Government for the collection hereof or to preserve or protect any security herefor, or otherwise under the terms of any security or other instrument executed in connection with the loan evidenced hereby, at the option of the Government shall become a part of and bear interest at the same rate as the principal of the debt evidenced hereby and be immediately due and payable by Borrower to the Government without demand. Borrower agrees to use the loan evidenced hereby solely for purposes authorized by the Government.

Borrower hereby certifies that it is unable to obtain sufficient credit elsewhere to finance its actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in or near its community for loans for similar purposes and periods of time.

This Bond, together with any additional bonds ranking on a parity herewith which may be issued and outstanding for the purpose of providing funds for financing costs of acquisition and construction of additions, betterments and improvements to the waterworks system (the "System") of Borrower, is payable solely from and secured by the revenues to be derived from the operation of the System. This Bond does not in any manner constitute an indebtedness of the Borrower within the meaning of any constitutional or statutory provision or limitation, nor shall the Borrower be obligated to pay the same or the interest thereon except from the special fund so provided.

Registration of this Bond is transferable by the registered owner hereof in person or by his, her or its attorney duly authorized in writing, at the office of Borrower, as Bond Registrar, but only in the manner, subject to the limitations and upon payment of the charges, if any, provided in the herein defined Ordinance, and upon surrender and cancellation of this Bond. Upon such transfer a new Bond or Bonds, of authorized denomination or denominations, for the like principal amount, will be issued to the transferee in exchange herefor.

This Bond, under the provisions of the Act, is and has all the qualities and incidents of a negotiable instrument under the Uniform Commercial Code of the State of West Virginia, but may only be transferred by transfer of registration hereof with the Bond Registrar.

This Bond has been issued under and in full compliance with the Constitution and statutes of the State of West Virginia, including, among others, Chapter 8, Article 19 of the West Virginia Code of 1931, as amended (herein called the "Act"), and an Ordinance of Borrower duly enacted on February 17, 2009 and a Supplemental Resolution duly adopted by the Issuer on April 7, 2009, authorizing issuance of this Bond (collectively, the "Ordinance").

If at any time it shall appear to the Government that Borrower may be able to obtain a loan from a responsible cooperative or private credit source at reasonable rates and terms for loans for similar purposes and periods of time, Borrower will, at the Government's request, apply for and accept such loan in sufficient amount to repay the Government.

This Bond is given as evidence of a loan to Borrower made or insured by the Government pursuant to the Consolidated Farm and Rural Development Act of 1965, as amended. This Bond shall be subject to the present regulations of the Government and to its future regulations not inconsistent with the express provisions hereof.

THIS BOND IS ISSUED ON A PARITY WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS, WITH THE ISSUER'S WATERWORKS SYSTEM DESIGN REVENUE BONDS, SERIES 2009 A, DATED FEBRUARY 24, 2009 (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY), ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF \$491,200 (THE "SERIES 2009 A BONDS" OR THE "PRIOR BONDS").

In accordance with the requirements of the United States Department of Agriculture, the Bonds will be in default should any proceeds of the Bonds be used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity.

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, THE CITY OF PHILIPPI has caused this Bond to be executed by its Mayor and its corporate seal to be hereunto affixed or imprinted hereon and attested by its Clerk, all as of the date hereinabove written.

THE CITY OF PHILIPPI

[CORPORATE SEAL]

David Pulberry  
Mayor

P.O. Box 460  
Philippi, West Virginia 26416

ATTEST:

Jammy Sample  
Clerk

EXHIBIT A

RECORD OF ADVANCES

| <u>AMOUNT</u> | <u>DATE</u>    | <u>AMOUNT</u> | <u>DATE</u> |
|---------------|----------------|---------------|-------------|
| (1) \$170,700 | April 16, 2009 | (19)          |             |
| (2)           |                | (20)          |             |
| (3)           |                | (21)          |             |
| (4)           |                | (22)          |             |
| (5)           |                | (23)          |             |
| (6)           |                | (24)          |             |
| (7)           |                | (25)          |             |
| (8)           |                | (26)          |             |
| (9)           |                | (27)          |             |
| (10)          |                | (28)          |             |
| (11)          |                | (29)          |             |
| (12)          |                | (30)          |             |
| (13)          |                | (31)          |             |
| (14)          |                | (32)          |             |
| (15)          |                | (33)          |             |
| (16)          |                | (34)          |             |
| (17)          |                | (35)          |             |
| (18)          |                | (36)          |             |

TOTAL \$ \_\_\_\_\_

(Form of Assignment)

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned sells, assigns and transfers to \_\_\_\_\_  
the within Bond and does hereby irrevocably constitute and appoint \_\_\_\_\_, Attorney  
to transfer the said Bond on the books kept for registration of the within Bond of the said Borrower with  
full power of substitution in the premises.

Dated: \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

In presence of:

\_\_\_\_\_



THE CITY OF PHILIPPI  
WATER REVENUE BONDS, SERIES 2009 B  
(UNITED STATES DEPARTMENT OF AGRICULTURE)

\$1,651,000

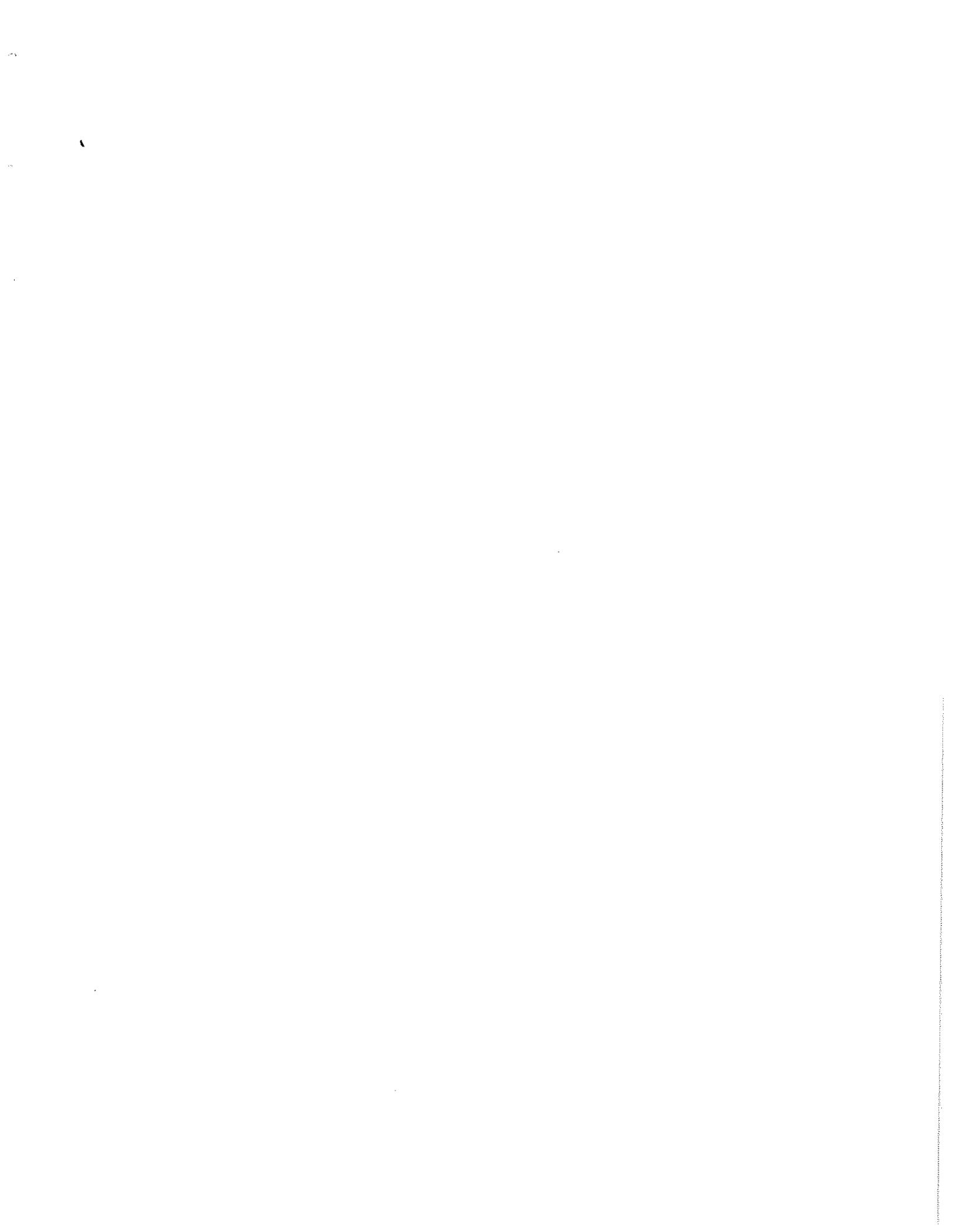
REGISTRATION BOOKS

(No writing on these Books except by the Issuer as Registrar)

| Bond No. | Date of Registration | In Whose Name Registered                | Signature of Secretary of Registrar |
|----------|----------------------|---|-------------------------------------|
| BR-1     | April 16, 2009       | United States Department of Agriculture | <i>Jammy R. Stenslie</i>            |
|          |                      |   |                                     |
|          |                      |   |                                     |
|          |                      |   |                                     |
|          |                      |   |                                     |
|          |                      |   |                                     |
|          |                      |   |                                     |
|          |                      |   |                                     |

04.02.09  
700470.00001

CH5062280.1





Chase Tower, Eighth Floor  
P.O. Box 1588  
Charleston, WV 25326-1588  
(304) 353-8000 (304) 353-8180 Fax  
www.steptoe-johnson.com

Writer's Contact Information

April 16, 2009

The City of Philippi  
Water Revenue Bonds, Series 2009 B  
(United States Department of Agriculture)

The City of Philippi  
Philippi, West Virginia

United States Department of Agriculture  
Elkins, West Virginia

West Virginia Water Development Authority  
Charleston, West Virginia

Ladies and Gentlemen:

We have served as bond counsel in connection with the issuance by The City of Philippi, in Barbour County, West Virginia (the "Issuer"), of its \$1,651,000 Water Revenue Bonds, Series 2009 B (United States Department of Agriculture), dated the date hereof (the "Series 2009 B Bonds"), pursuant to Chapter 8, Article 19 of the West Virginia Code of 1931, as amended (the "Act"), and a bond ordinance of the Issuer duly enacted on February 17, 2009, as supplemented by Supplemental Resolution duly adopted on April 7, 2009 (collectively, the "Bond Legislation"). We have examined the law and such certified proceedings and other papers as we deem necessary to render this opinion.

As to questions of fact material to our opinion, we have relied upon the representations of the Issuer contained in the Bond Legislation and in 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, under existing law, as follows:

1. The Issuer is duly created and validly existing as a municipal corporation and political subdivision of the State of West Virginia with full power and authority to adopt and enact the Bond Legislation, perform the agreements on its part contained therein and issue and sell the Series 2009 B Bonds, pursuant to the provisions of the Act and other applicable provisions of law.

2. The Bond Legislation has been duly adopted and enacted by the Issuer and constitutes a valid and binding obligation of the Issuer enforceable upon the Issuer.

3. Pursuant to the Act, the Bond Legislation creates a valid lien on the Gross Revenues of the System for the security of the Series 2009 B Bonds on a parity with the Issuer's Waterworks system Design Revenue Bonds, Series 2009 A (West Virginia Water Development Authority), dated February 24, 2009, issued in the original aggregate principal amount of \$491,200 (the "Prior Bonds"). Other than the Prior Bonds, there are no other outstanding bonds or obligations of the Issuer which rank prior to or on a parity with the Series 2009 B Bonds as to liens, pledge and/or source of and security for payment.

4. The Series 2009 B Bonds have 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 therefor in the Bond Legislation.

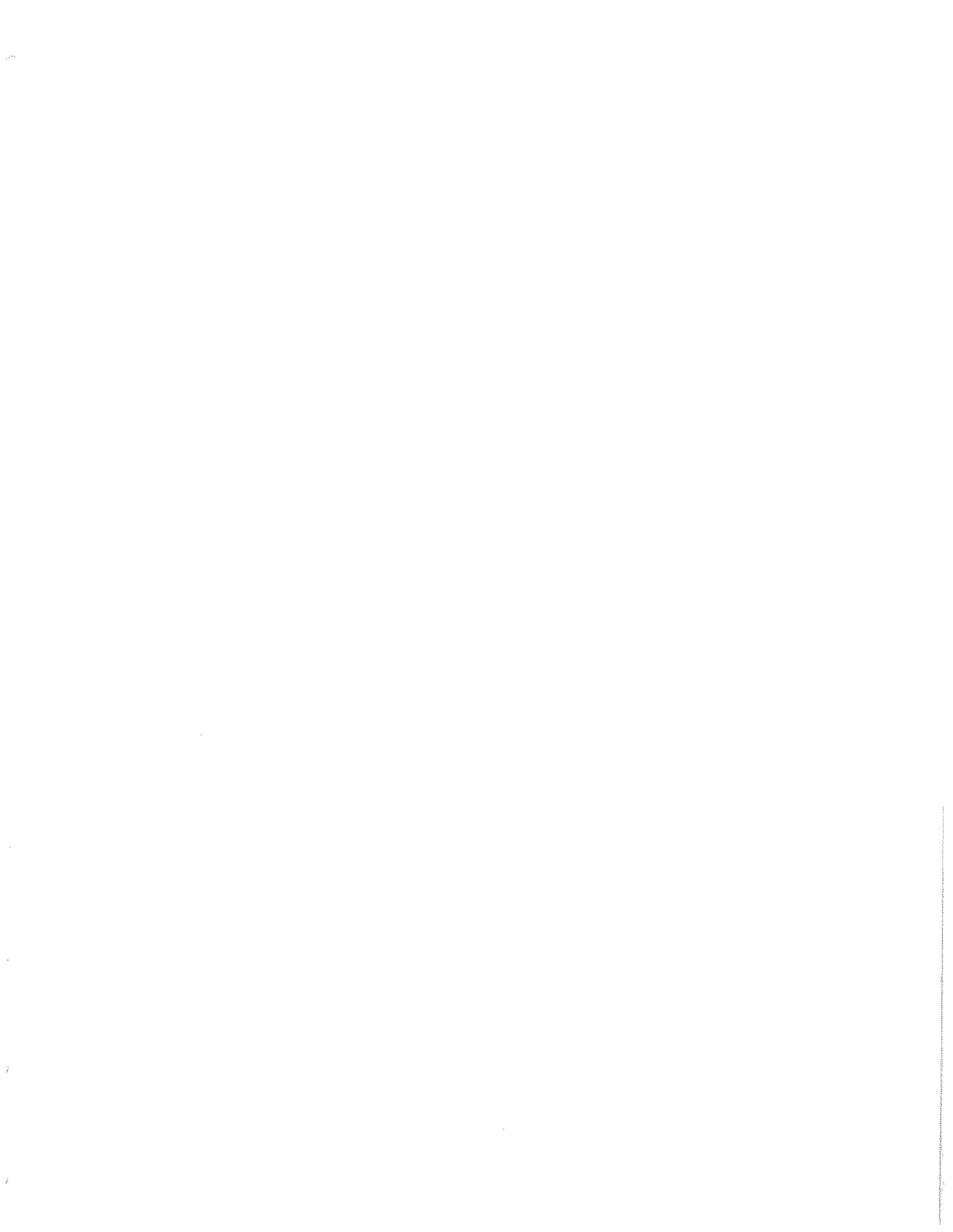
5. The Series 2009 B Bonds have not been issued on the basis that the interest, if any, thereon is or will be excluded from the gross income of the owners thereof for federal income tax purposes; therefore, the interest on the Series 2009 B Bonds is not excluded from gross income for federal income tax purposes. We express no opinion regarding other federal tax consequences arising with respect to the Series 2009 B Bonds.

6. The Series 2009 B Bonds are, under the Act, exempt from all taxation by the State of West Virginia, and the other taxing bodies of said State, and interest on the Series 2009 B Bonds is exempt from personal and corporate net income taxes imposed directly thereon by the State of West Virginia.

It is to be understood that the rights of the holder of the Series 2009 B Bonds and the enforceability of the Series 2009 B Bonds, the Bond Legislation and the liens and pledges set forth therein may be subject to and limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights heretofore or hereafter enacted to the extent constitutionally applicable and that the enforcement thereof may also be subject to the exercise of judicial discretion in appropriate cases.

Very truly yours,

  
STEPTOE & JOHNSON PLLC



**Caton N. Hill, Jr.**  
**Attorney at Law**  
**P. O. Box 10**  
**Philippi, West Virginia 26416**

Telephone 304-457-3580

State Bar ID #1723

Fax 304-457-3581

April 16, 2009

The City of Philippi  
Water Revenue Bonds, Series 2009 B  
(United States Department of Agriculture)

The City of Philippi  
Philippi, West Virginia

Steptoe & Johnson PLLC  
Charleston, West Virginia

Ladies and Gentlemen:

I am counsel to the City of Philippi, a municipal corporation and political subdivision of the State of West Virginia in Barbour County of said State (the "Issuer"). As such counsel, I have examined a copy of the approving opinion of Steptoe & Johnson PLLC, as bond counsel, a bond ordinance of the Issuer duly enacted on February 17, 2009, and a Supplemental Resolution duly adopted by the Issuer on April 7, 2009 (collectively, the "Bond Legislation"), and other documents and papers relating to the Issuer and the above-captioned Bonds of the Issuer (the "Bonds"). Terms used in the Bond Legislation and not otherwise defined herein shall have the same meanings as in the Bond Legislation when used herein.

I am of the opinion that:

1. The Issuer is duly created and validly existing as a municipal corporation and a political subdivision of the State of West Virginia.

2. The Mayor, Clerk and members of the Council of the Issuer have been duly, lawfully and properly elected or appointed, as applicable, have taken the requisite oaths, and are authorized to act in their respective capacities on behalf of the Issuer.

3. The Bond Legislation has been duly adopted and enacted by the Issuer and is in full force and effect.

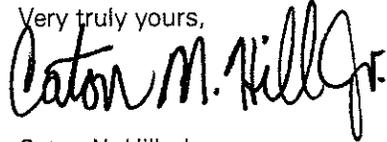
4. The execution and delivery of the Bonds and the consummation of the transactions contemplated by the Bonds and the Bond Legislation, and the carrying out of the terms thereof, do not and will not, in any material respect, conflict with or constitute, on the part of the Issuer, a breach of or default under any agreement, document or instrument to which the Issuer is a party or by which the Issuer or its properties are bound or any existing law, regulation, rule, order or decree to which the Issuer is subject.

5. All permits, licenses, approvals, consents, certificates, orders, exemptions and authorizations necessary for the creation and existence of the Issuer, the issuance of the Bonds, the acquisition and construction of the Project, the operation of the System and the imposition of rates and charges have been entered and/or received, including, without limitation, all requisite orders, certificates, consents and approvals from the Public Service Commission of West Virginia, and the Issuer has duly taken any other action required for the imposition of such rates and charges, including, without limitation, the enactment of an ordinance prescribing such rates and charges, the time for appeal of which has expired prior to the date hereof without appeal.

6. To the best of my knowledge, there is no action, suit, proceeding or investigation at law or in equity before or by any court, public board or body, pending or threatened, wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated by the Bonds and the Bond Legislation, the acquisition and construction of the Project, the operation of the System, or the validity of the Bonds, or the collection or pledge of the Gross Revenues therefor.

All counsel to this transaction may rely upon this opinion as if specifically addressed to them.

Very truly yours,

A handwritten signature in black ink that reads "Caton N. Hill, Jr." The signature is written in a cursive style with a large, prominent initial "C".

Caton N. Hill, Jr.

CNHjr:sdl  
CNH-81/PHILIPPI.5

**Caton N. Hill, Jr.**  
**Attorney at Law**  
**P. O. Box 10**  
**Philippi, West Virginia 26416**

0 8 APR 2009

Telephone 304-457-3580

Fax 304-457-3581

NARRATIVE OPINION

April 16, 2009



Joseph D. Crickenberger  
USDA, Rural Development  
Rural Utilities Service  
1200 Harrison Avenue, Ste. 150  
Elkins, WV 26241

Re: City of Philippi  
Municipal Water System Improvements  
Project #0101-98-0206-003

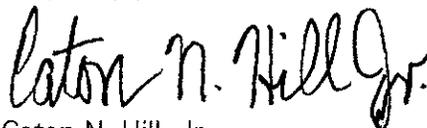
Dear Mr. Crickenberger:

I am the attorney for the City of Philippi for its project to make improvements to its municipal water system, and as such, I have reviewed various documents prepared by Potesta Engineers & Environmental Consultants setting forth the necessary easements and rights of way for water lines, one booster station site, and two tank sites for the construction of the improvements to the water distribution system and for the operation and maintenance of the system, and based upon my review of said documents and the records in the office of the Clerk of the County Commission of Barbour County, West Virginia, I am of the opinion:

1. That the City of Philippi is a duly created and existing municipal corporation with all of the powers and authorities granted to municipalities under the laws of the State of West Virginia, and as such, has the legal power and authority to construct, operate and maintain the water distribution system described by Potesta Engineers & Environmental Consultants.
2. That the City of Philippi has good and marketable title to its water plant property and to all tank sites, booster stations, and rights of way and easements necessary for the construction, operation and maintenance of its water distribution system, including the acquisition of two new tank sites, one booster station site, rights of way and easements for the tank sites and booster station site, and three additional rights of way or easements for a sump pump drain line and installation and maintenance of a water line. There are no other rights of way or easement required for the project.
3. That Potesta Engineers & Environmental Consultants have informed me that all permits and approvals for the construction of the water distribution system have been obtained which are:
  - a) Approval from West Virginia Department of Transportation, Division of Highways;
  - b) West Virginia Department of Health and Human Resources;
  - c) West Virginia Department of Environmental Protection (construction storm water).
4. That all necessary authority and approval have obtained from the Public Service Commission of West Virginia.

Therefore, subject to the completion of all requirements set forth in the letter of conditions, and upon proper closing, USDA Rural Development, Rural Utilities Service, will have a shared first statutory lien upon all of the city properties referred to herein.

Very truly yours,

A handwritten signature in black ink that reads "Caton N. Hill Jr." in a cursive, slightly slanted script.

Caton N. Hill, Jr.  
Attorney for the City of Philippi  
State Bar #1723

CNHjr:sdl  
CNH-81/PHILIPPI.3

**FINAL TITLE OPINION**

|   |  |                        |
|---|--|------------------------|
| LOAN APPLICANT<br>Project #0101-98-0206-003<br>City of Philippi | ADDRESS OR PROPERTY COVERED BY THIS OPINION<br>City of Philippi and<br>Philippi District |                        |
| APPLICANT FOR TITLE EXAMINATION<br>City of Philippi             | COUNTY<br>Barbour  | STATE<br>West Virginia |

- I. I have examined title to the property described in the security instrument described in paragraph II. B. below. My examination covered the period from the time of termination of title search covered by my Preliminary Title Opinion on Form RD 1927-9; or the time of recordation of the initial loan security instrument if this opinion covers land already owned by the loan applicant in a subsequent loan case, to April 16, 2009, at \_\_\_\_\_ a.m. (including the time of filing the current security instrument).  
(Date) p.m.
- II. Based on said title examination, my preliminary title examination if any, and any additional information concerning the title which has come to my attention, it is my opinion that:
- A. Good and marketable title, in accordance with title examination standards prevailing in the area, to said property (real estate and any water rights offered as security) is now vested in City of Philippi
- as \_\_\_\_\_  
(Joint tenants, tenants by the entirety, etc.)
- B. The United States of America holds a valid shared first statutory lien on said property as required by Rural Development or the Farm Service Agency, or their successor (Agency), which lien was filed for record on \_\_\_\_\_, \_\_\_\_\_, at \_\_\_\_\_ a.m. and is recorded in \_\_\_\_\_ p.m.  
(Priority) (Mortgage, etc.) (Date) (Book, page, and office)
- C. Said property and lien are subject only to encumbrances, reservations, exceptions, and defects which were approved by written administrative waivers of the Agency attached hereto or to my Preliminary Title Opinion.
- III. If a water right is involved and is not covered by the current security instrument, it is subject only to the encumbrances, reservations, exceptions, and defects set forth in said administrative waivers and was made available as security in the following manner (Water stock would normally be reissued in the names of said land owners and the United States of America and delivered to the Agency Official at the time of loan closing):

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0575-0147. The time required to complete this information collection is estimated to average 20 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.



0 3 111 513  
*[Signature]*

FINAL TITLE OPINION

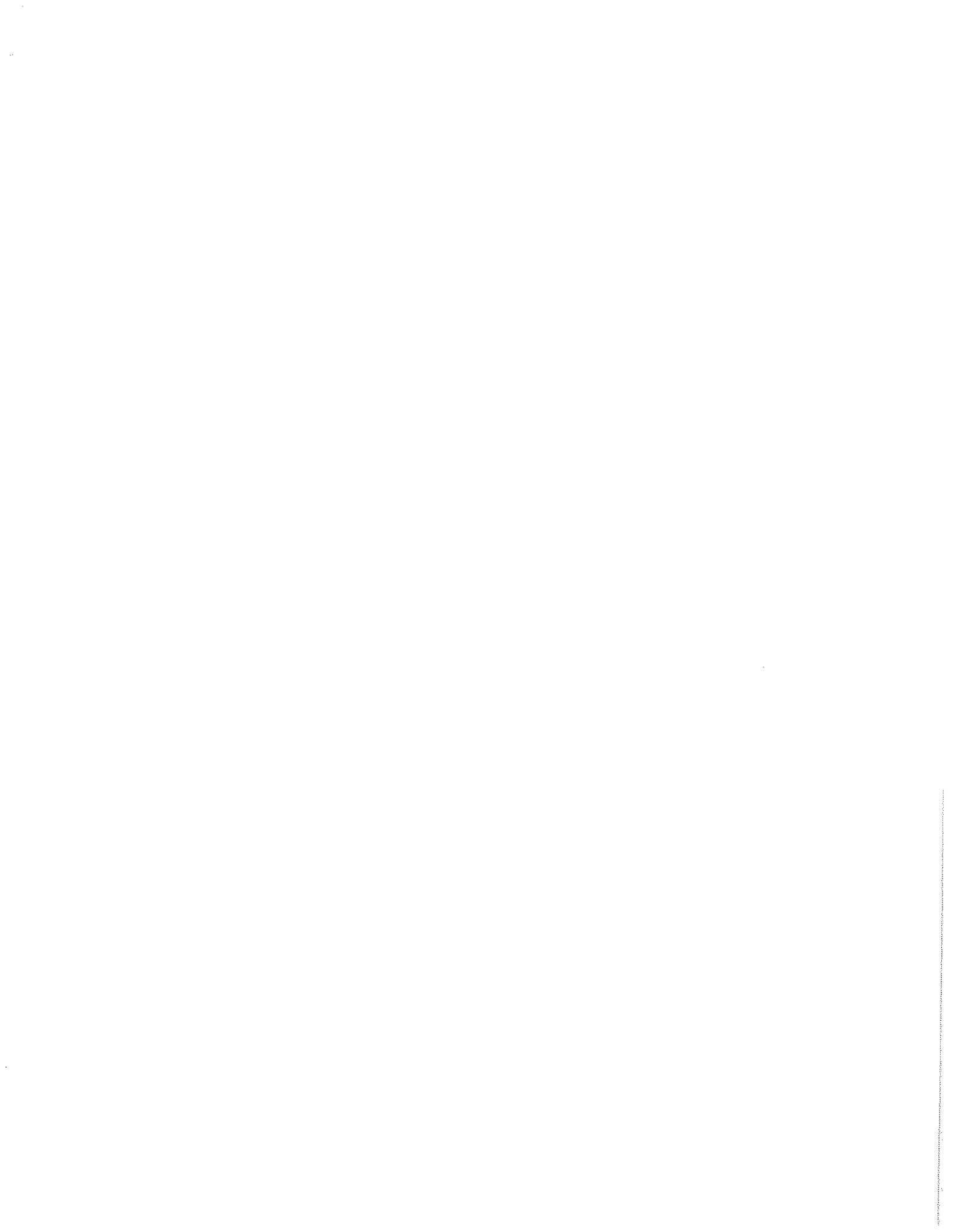
|   |  |                        |
|---|--|------------------------|
| LOAN APPLICANT<br>Project #0101-98-0206-003<br>City of Philippi | ADDRESS OR PROPERTY COVERED BY THIS OPINION<br>City of Philippi and<br>Philippi District |                        |
| APPLICANT FOR TITLE EXAMINATION<br>City of Philippi             | COUNTY<br>Barbour  | STATE<br>West Virginia |

- I. I have examined title to the property described in the security instrument described in paragraph II. B. below. My examination covered the period from the time of termination of title search covered by my Preliminary Title Opinion on Form RD 1927-9; or the time of recordation of the initial loan security instrument if this opinion covers land already owned by the loan applicant in a subsequent loan case, to April 16, 2009, at \_\_\_\_\_ a.m. (including the time of filing the current security instrument),  
(Date) p.m.
- II. Based on said title examination, my preliminary title examination if any, and any additional information concerning the title which has come to my attention, it is my opinion that:
  - A. Good and marketable title, in accordance with title examination standards prevailing in the area, to said property (real estate and any water rights offered as security) is now vested in City of Philippi  
\_\_\_\_\_ as  
(Joint tenants, tenants by the entirety, etc.)
  - B. The United States of America holds a valid shared first statutory lien on said property as required by Rural  
(Priority) (Mortgage, etc.)  
Development or the Farm Service Agency, or their successor (Agency), which lien was filed for record on \_\_\_\_\_,  
(Date) \_\_\_\_\_, at \_\_\_\_\_ a.m. and is recorded in \_\_\_\_\_  
p.m. (Book, page, and office)
  - C. Said property and lien are subject only to encumbrances, reservations, exceptions, and defects which were approved by written administrative waivers of the Agency attached hereto or to my Preliminary Title Opinion.
- III. If a water right is involved and is not covered by the current security instrument, it is subject only to the encumbrances, reservations, exceptions, and defects set forth in said administrative waivers and was made available as security in the following manner (Water stock would normally be reissued in the names of said land owners and the United States of America and delivered to the Agency Official at the time of loan closing):

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0575-0147. The time required to complete this information collection is estimated to average 20 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

EXISTING PROPERTY ACQUIRED BY THE CITY OF PHILIPPI  
TO BE USED IN ASSOCIATION WITH THE WATER SYSTEM

1. A PERMANENT RIGHT OF WAY OR EASEMENT FOR THE CONSTRUCTION OPERATION, MAINTENANCE, ALTERATION OR REMOVAL OF A WATER LINE, UTILITY LINE, TANK SITE AND/OR BOOSTER STATION, AND A CONVEYANCE OF A TRACT OR PARCEL OF REAL ESTATE CONTAINING 0.057 ACRE, MORE OR LESS, FROM JOHN L. KENNEDY, JR. TO THE CITY OF PHILIPPI DATED JULY 12, 2005, AND RECORDED IN DEED BOOK 412 AT PAGE 405. COPY AND PLAT ATTACHED (RECORDED IN MAP BOOK 5 AT PAGE 48).
2. A RIGHT OF WAY OR EASEMENT FOR THE CONSTRUCTION, OPERATION, MAINTENANCE, ALTERATION OR REMOVAL OF A WATER LINE OR UTILITY LINE, AND INCLUDING ALL NECESSARY RIGHTS TO BUILD, REPAIR, ALTER OR REMOVE SAID WATER LINE OR UTILITY LINE AND BOOSTER STATION CONTAINING 738 SQUARE FEET, MORE OR LESS, FROM JOHN L. KENNEDY, JR. TO THE CITY OF PHILIPPI, DATED JUNE 30, 2003, AND RECORDED IN DEED BOOK 412 AT PAGE 409. COPY AND PLAT ATTACHED.
3. A CORRECTIVE RIGHT OF WAY OR EASEMENT, AGREEMENT AND CONVEYANCE FOR A PERMANENT RIGHT OF WAY OR EASEMENT FOR THE CONSTRUCTION, OPERATION, MAINTENANCE, ALTERATION OR REMOVAL OF A WATER LINE OR UTILITY LINE, ROAD AND TANK, INCLUDING ALL NECESSARY RIGHTS TO BUILD, REPAIR, ALTER OR REMOVE SAID WATER LINE OR UTILITY LINE, ROAD AND TANK, CONTAINING 0.49 ACRE, MORE OR LESS, AND A CONVEYANCE OF A TRACT OR PARCEL OF REAL ESTATE CONTAINING 0.19 ACRE, MORE OR LESS, FROM JOHN M. MOSESSO TO THE CITY OF PHILIPPI, DATED SEPTEMBER 19, 2006, AND RECORDED IN DEED BOOK 418 AT PAGE 281. COPY AND PLAT ATTACHED.
4. A RIGHT OF WAY OR EASEMENT TO CONSTRUCT, INSTALL AND PLACE A WATER LINE AND RELATED FIXTURES, AND WITH THE RIGHT OF ACCESS AT ALL TIMES TO THE PERMANENT EASEMENT TO THEREAFTER USE, INSPECT, MAINTAIN, REPAIR, REPLACE AND REMOVE THE WATER LINE, FROM J & B RENAL PROPERTIES, LLC, A WEST VIRGINIA LIMITED LIABILITY COMPANY TO THE CITY OF PHILIPPI, DATED MARCH 2, 2009, AND RECORDED IN DEED BOOK 433 AT PAGE 369. PLAT ATTACHED.
5. A RIGHT OF WAY OR EASEMENT TO CONSTRUCT, INSTALL AND PLACE A WATER LINE AND RELATED FIXTURES ON THE REAL ESTATE OF J & B RENTAL PROPERTIES, LLC AND THE RIGHT OF ACCESS AT ALL TIMES THEREAFTER TO THE PERMANENT EASEMENT TO USE, INSPECT, MAINTAIN, REPAIR, REPLACE OR REMOVE THE WATER LINE, FROM PATTY LOUISE BAILEY TO THE CITY OF PHILIPPI, DATED MARCH 23, 2009, AND RECORDED IN DEED BOOK 433 AT PAGE 365. PLAT ATTACHED.



LAW OFFICES  
ROBERT R. RODECKER  
BB&T SQUARE  
300 SUMMERS STREET, SUITE 1230  
POST OFFICE BOX 3713  
CHARLESTON, WEST VIRGINIA 25337

ROBERT R. RODECKER  
rodecker@wvdsi.net

JAMES V. KELSH  
OF COUNSEL  
kelshlaw@yahoo.com

AREA CODE 304  
343-1654

FACSIMILE  
343-1657

April 1, 2009

The City of Philippi  
Water Revenue Bonds, Series 2009 B  
(United States Department of Agriculture)

The City of Philippi  
Philippi, West Virginia

United States Department of Agriculture  
Elkins, West Virginia

Steptoe & Johnson PLLC  
Charleston, West Virginia

Ladies and Gentlemen:

I am special counsel to The City of Philippi, a municipal corporation and political subdivision of the State of West Virginia in Barbour County of said State (the "Issuer"). As such counsel, I have represented the Issuer before the Public Service Commission of West Virginia in connection with the issuance of the above-referenced bonds, and the acquisition and construction of the Project. All capitalized terms used herein and not otherwise defined herein shall have the same meaning set forth in the Bond Legislation when used herein.

I am of the opinion that:

The Issuer has received all orders, certificates and authorizations from the Public Service Commission of West Virginia necessary for the issuance of the Bonds, the acquisition and construction of the Project, the operation of the System and the implementation of rates and charges, and the Issuer has taken any other action required for the imposition of such rates and charges, including, without limitation, the adoption of a resolution prescribing such rates and charges. The Issuer has received a Recommended Decision of the Public Service Commission of West Virginia entered December 18, 2002, which became Final Order on January 7, 2003 in Case

Page Two  
April 1, 2009

No. 02-1020-W-CN, among other things, granting to the Issuer a certificate of public convenience and necessity for the Project and approving the financing for the Project. The time for appeal of such Order has expired prior to the date hereof.

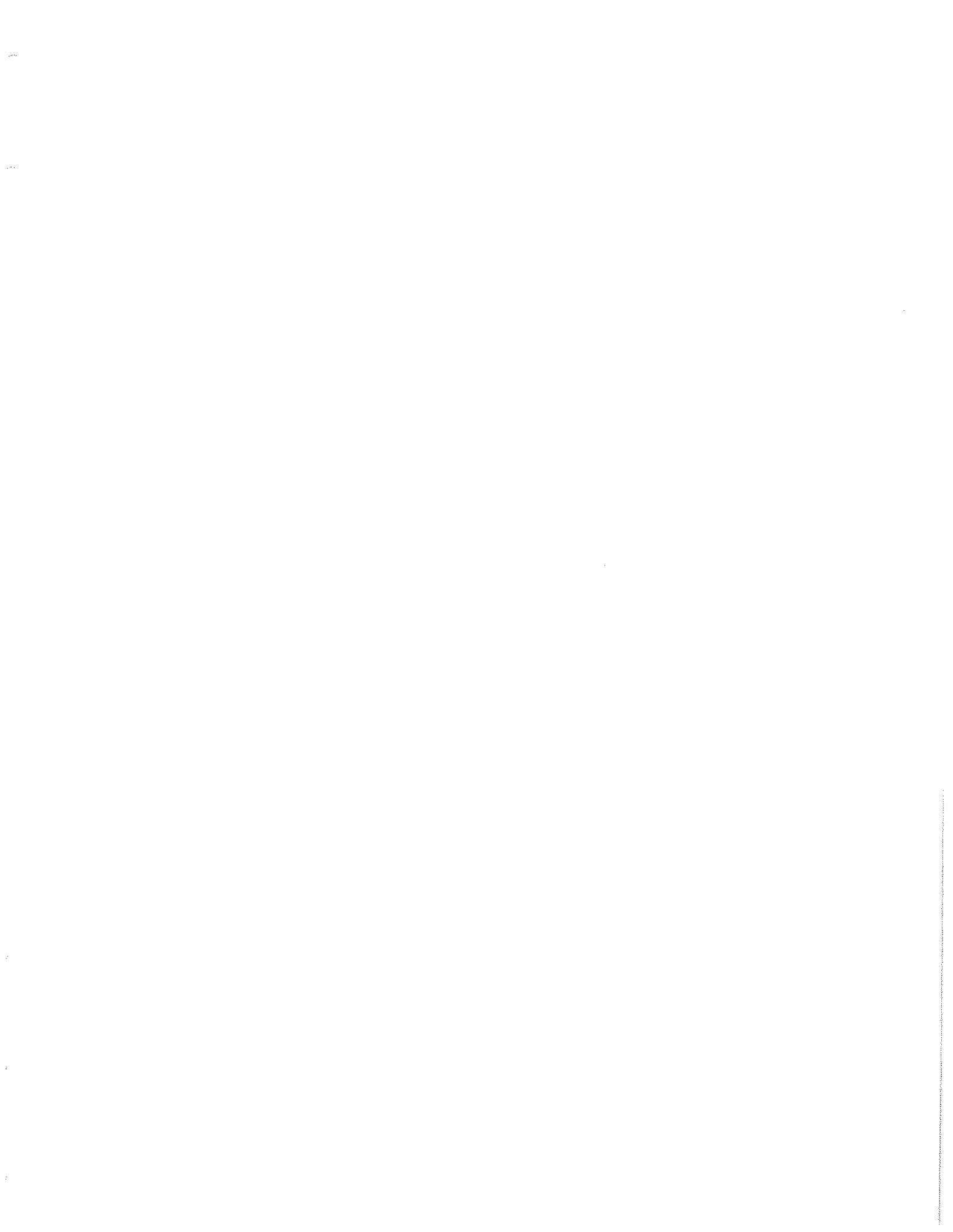
All counsel to this transaction may rely upon this opinion as if specifically addressed to them.

Sincerely,

A handwritten signature in cursive script, appearing to read "Robert R. Rodecker".

Robert R. Rodecker  
WV State Bar No. 3145

RRR/bg



THE CITY OF PHILIPPI

Water Revenue Bonds, Series 2009 B  
(United States Department of Agriculture)

COMBINED CERTIFICATE OF ISSUER AND ATTORNEY ON:

1. AUTHORIZATION AND AWARD OF BOND
2. NO LITIGATION
3. GOVERNMENTAL APPROVALS
4. PUBLICATION AND NO PROTEST
5. NO ADVERSE FINANCIAL CHANGE; INDEBTEDNESS
6. SIGNATURES, ETC.
7. CERTIFICATION OF COPIES OF DOCUMENTS
8. INCUMBENCY AND OFFICIAL NAME, ETC.
9. DELIVERY AND PAYMENT AND USE OF PROCEEDS
10. LAND AND RIGHTS OF WAY
11. MEETINGS; PUBLICATION AND POSTING OF NOTICES, ETC.
12. CONTRACTORS' INSURANCE, ETC.
13. CONNECTIONS, ETC.
14. MANAGEMENT
15. CONFLICT OF INTEREST
16. PROCUREMENT OF ENGINEERING SERVICES
17. EXECUTION OF COUNTERPARTS

We, the undersigned MAYOR and CLERK of The City of Philippi, in Barbour County, West Virginia (the "Issuer"), and the undersigned COUNSEL to the Issuer, acting for the Issuer and in its name, hereby state and certify on this 16th day of April, 2009, in connection with The City of Philippi Water Revenue Bonds, Series 2009 B (United States Department of Agriculture), No. BR-1, fully registered, dated the date hereof, in the principal amount of \$1,651,000, and bearing interest at the rate of 4.5% per annum (the "Series 2009 B Bonds") as follows:

1. AUTHORIZATION AND AWARD OF BOND: The undersigned are authorized to execute this certificate on behalf of the Issuer and are knowledgeable with respect to the matters set forth herein. The entire issue of the Series 2009 B Bonds have been duly awarded to the United States of America, acting by the United States Department of Agriculture, Rural Utilities Service (the "Purchaser"), pursuant to a Letter of Conditions from the Purchaser, dated July 30, 2001, as amended, and as appears in Section 7.03 of the Bond Ordinance duly enacted on February 17, 2009, as supplemented by Supplemental

Resolution duly adopted by the Issuer on April 7, 2009, authorizing issuance of the Bond (collectively, the "Ordinance" or "Bond Ordinance"). Terms used herein and not otherwise defined herein shall have the same meaning as defined in the Bond Ordinance when used herein. The Series 2009 B Bonds are being issued on this date to permanently finance a portion of the cost of acquisition and construction of the Project located within the boundaries of the Issuer and to pay costs of issuance thereof.

2. NO LITIGATION: No controversy or litigation of any nature is now pending, or, to the knowledge of any of the undersigned, threatened, restraining, enjoining or affecting the issuance and delivery of the Series 2009 B Bonds or receipt of any grant moneys committed for the System; nor questioning the proceedings and authority by which the Issuer authorized the issuance and sale of the Series 2009 B Bonds; nor in any way questioning or affecting the validity of the grants committed for the System or the Series 2009 B Bonds, or any provisions made or authorized for the payment thereof, including, without limitation, the pledge or application of the Gross Revenues or any other moneys or security provided for the payment of the Bonds or the existence or the powers of the Issuer insofar as they relate to the authorization, sale and issuance of the Bonds, the acquisition and construction of the Project, the operation of the System, the pledge or application of moneys and security or the collection of the Gross Revenues; nor questioning the existence, powers or proceedings of the Issuer or the Council of the Issuer (the "Governing Body") or the title of the members and officers thereof to their respective offices; nor questioning the operation of the waterworks system of the Issuer (the waterworks system, as improved and expanded by the Project, as defined in the Ordinance, is herein called the "System") or the acquisition and construction of the Project being financed in part out of the proceeds of sale of the Series 2009 B Bonds; nor questioning the rates and charges provided for services of the System

3. GOVERNMENTAL APPROVALS: All applicable and necessary approvals, permits, authorizations, registrations, exemptions, consents and certificates required by law for the acquisition and construction of the Project, the operation of the System, including, without limitation, the imposition of rates and charges, and the issuance of the Series 2009 B Bonds have been duly and timely obtained and remain in full force and effect, the time for appeal of which or rehearing having expired. Competitive bids for the acquisition and construction of the Project have been solicited in accordance with Chapter 5, Article 22, Section 1 of the Official West Virginia Code of 1931, as amended, which bids remain in full force and effect.

The Issuer has received the Recommended Decision of the Public Service Commission of West Virginia entered on December 18, 2002 in Case No. 02-1020-W-CN, granting to the Issuer a certificate of public convenience and necessity for the Project, and approving the financing for the Project. The time for appeal of the Commission Order has expired prior to the date hereof. Such Order is not subject to any appeal, further hearing, reopening or rehearing by any customer, protestant, intervenor or other person not a party to such Order. Such Order remains in full force and effect.

The Issuer enacted water rates and charges for the System on June 21, 2000 as amended by Recommended Decision dated October 19, 2000 which became Final Order on November 8, 2000 and Corrective Order dated October 20, 2000 in Case No. 00-0989-W-MA of the Public Service Commission of West Virginia. The time for appeal of such rates has expired prior to the date hereof without any timely appeals having been filed.

4. PUBLICATION AND NO PROTEST: Notice of public hearing upon the Bond Ordinance finally adopted and enacted February 17, 2009, as supplemented, was duly published as required by law.

There was not any protest to the passage of the Bond Ordinance, oral or written, and the Bond Ordinance became fully effective following the public hearing thereon and remains in full force and effect.

5. NO ADVERSE FINANCIAL CHANGE; INDEBTEDNESS: There has been no adverse change in the financial condition of the Issuer or the System since the approval by the Purchaser of a loan to assist in acquisition and construction of the Project.

The Issuer has outstanding its Waterworks System Design Revenue Bonds, Series 2009 A (West Virginia Water Development Authority), dated February 24, 2009, issued in the original aggregate principal amount of \$491,200 (the "Series 2009 A Bonds" or the "Prior Bonds"). The Series 2009 A Bonds are payable from and secured by a first lien on the Gross Revenues of the System. The Series 2009 B Bonds shall be issued on a parity with the Series 2009 A Bonds with respect to liens, pledge and source of and security for payment and in all other respects.

Prior to the issuance of the Series 2009 B Bonds, the Issuer will obtain (i) a certificate of an Independent Certified Public Accountant stating that the coverage and parity tests of the Series 2009 A Bonds are met; and (ii) the written consent of the Holders of the Series 2009 A Bonds to the issuance of the Series 2009 B Bonds on a parity with the Series 2009 A Bonds. Other than the Prior Bonds, there are no other outstanding bonds or obligations of the Issuer which are secured by revenues of the System.

The Issuer is not in default under the terms of the Prior Bonds, the ordinance and resolution authorizing the Prior Bonds or any document in connection therewith, and has complied with all requirements of all the foregoing with respect to the issuance of parity bonds or has obtained a sufficient and valid consent or waiver thereof.

6. SIGNATURES, ETC.: The undersigned Mayor and Clerk did, for the Issuer on the date hereof, officially execute and seal the Series 2009 B Bonds with the official corporate seal of the Issuer, an impression of which seal is on this certificate above our signatures and said officers are the duly elected or appointed (as applicable), qualified and serving officers as indicated by the official titles opposite their signatures below, and are duly authorized to execute and seal the Series 2009 B Bonds for the Issuer.

7. CERTIFICATION OF COPIES OF DOCUMENTS: The copies of the below-listed documents hereto attached or delivered herewith or heretofore delivered are true, correct and complete copies of the originals of the documents of which they purport to be copies, and such original documents are in full force and effect and have not been repealed, rescinded, amended, supplemented or changed in any way unless modification appears from later documents also listed below.

Bond Ordinance

Series 2009 A Bond Ordinance and Supplemental Resolution

Consent of West Virginia Water Development Authority to Issuance of Parity Bonds

Public Service Commission Orders

United States Department of Agriculture Loan Resolution

Specimen Series 2009 B Bond

Charter

Oaths of Office of Officers and Council Members

Resolution on Open Governmental Proceedings

Water Rate Ordinance

Affidavit of Publication on Rate Ordinance

Minutes on Adoption and Enactment of Rate Ordinance

Affidavit of Publication on Bond Ordinance

Minutes on Adoption and Enactment of Bond Ordinance

United States Department of Agriculture Letter of Conditions and Closing Instructions

Receipt of Depository Bank

8. INCUMBENCY AND OFFICIAL NAME, ETC.: The proper corporate title of the Issuer is the "The City of Philippi." The Issuer is a municipal corporation in Barbour County and is presently existing under the laws of, and a political subdivision of, the State of West Virginia. The governing body of the Issuer is its council,

consisting of a Mayor, a Clerk and 5 councilmembers, all duly elected or appointed, as applicable, qualified and acting, and whose names and dates of commencement and termination of current terms of office are as follows:

| <u>Name</u>                | <u>Date of Commencement of Office</u> | <u>Date of Termination of Office</u> |
|----------------------------|---------------------------------------|--------------------------------------|
| David Chris Mulniex, Mayor | July 1, 2008                          | June 30, 2012                        |
| Tammy Stemple, Clerk       | July 1, 2008                          | June 30, 2012                        |
| Christie Allen             | July 1, 2008                          | June 30, 2012                        |
| Barbara Bryan              | July 1, 2008                          | June 30, 2012                        |
| Terrence Boyd              | July 1, 2008                          | June 30, 2012                        |
| John Enz                   | July 1, 2008                          | June 30, 2012                        |
| Edward Larry               | July 1, 2008                          | June 30, 2012                        |

The duly appointed and acting Counsel to the Issuer is Caton N. Hill, Jr., in Philippi, West Virginia and the duly appointed Special PSC Counsel to the Issuer is Robert Rodecker, Esquire in Charleston, West Virginia.

9. DELIVERY AND PAYMENT AND USE OF PROCEEDS: On the date hereof, the Series 2009 B Bonds were delivered to the Purchaser at Philippi, West Virginia, by the undersigned Mayor for the purposes herein set forth, and at the time of such delivery, the Series 2009 B Bonds had been duly and fully executed and sealed on behalf of the Issuer in accordance with the Bond Ordinance.

At the time of delivery of the Series 2009 B Bonds, the amount of \$170,700 was received by the undersigned Mayor, being a portion of the principal amount of the Series 2009 B, the balance to be paid as acquisition and construction of the Project progresses.

The Series 2009 B Bond is dated the date hereof and interest on advances thereon at the rate of 4.5% per annum is payable from the date of each respective advance.

The Series 2009 B Bonds and the entire proceeds thereof will be used for the purposes herein set forth and for no other purposes.

10. LAND AND RIGHTS OF WAY: All land in fee simple and all rights of way and easements necessary for the acquisition and construction of the Project, the operation and maintenance of the System have been acquired or can and will be acquired by purchase, or, if necessary, by condemnation by the Issuer and are adequate for such purposes and are not or will not be subject to any liens, encumbrances, reservations or exceptions which would adversely affect or interfere in any way with the use thereof for such purposes. The costs thereof, including costs of any properties which may have to be acquired by condemnation, are, in the opinion of all the undersigned, within the ability of

the Issuer to pay for the same without jeopardizing the security of or payments on the Series 2009 B Bonds.

11. MEETINGS; PUBLICATION AND POSTING OF NOTICES, ETC.: All actions, ordinances, resolutions, orders and agreements taken by and entered into by or on behalf of the Issuer in any way connected with the acquisition, construction, operation and financing of the Project and the System were authorized, enacted or adopted at meetings of the Governing Body of the Issuer duly and regularly called and held pursuant to the Charter of the Issuer and any Rules of Procedure of the Governing Body and all applicable statutes, including particularly and without limitation, Chapter 6, Article 9A of the West Virginia Code of 1931, as amended, and a quorum of duly elected or appointed (as applicable), qualified and acting members of the Governing Body was present and acting at all times during all such meetings. All notices required to be published and/or posted were so published and/or posted.

12. CONTRACTORS' INSURANCE, ETC.: All contractors will be required to maintain Workers' Compensation, public liability and property damage insurance, and builder's risk insurance where applicable, in accordance with the Letter of Conditions of the Purchaser, as amended, and the Bond Ordinance.

13. CONNECTIONS, ETC.: The Issuer will serve at least 1,668 bona fide full time users of the System, upon completion of the Project, in full compliance with the requirements of the Purchaser.

14. MANAGEMENT: The Issuer has heretofore delivered to the Purchaser a plan concerning operation and management of the System, which plan was found to be acceptable by the Purchaser.

15. CONFLICT OF INTEREST: No officer or employee of the Issuer has a substantial financial interest, direct, indirect or by reason of ownership of stock in any corporation, in any contract with the Issuer or in the sale of any land, materials, supplies or services to the Issuer or to any contractor supplying the Issuer, relating to the Bond, the Bond Ordinance and/or the Project, including, without limitation, with respect to the Depository Bank, as defined in the Bond Ordinance. For purposes of this paragraph, a "substantial financial interest" shall include, without limitation, an interest amounting to more than 5% of the particular business enterprise or contract.

16. PROCUREMENT OF ENGINEERING SERVICES: The Issuer has complied in all respects with the requirements of Chapter 5G, Article 1 of the West Virginia Code of 1931, as amended, in the procurement of engineering services to be paid from proceeds of the Bonds.

17. EXECUTION OF COUNTERPARTS: This document may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same document.

WITNESS our signatures and the official corporate seal of THE CITY OF PHILIPPI on the day and year first written above.

[CORPORATE SEAL]

SIGNATURE

OFFICIAL TITLE

David C. Wulbrecht

Mayor

Sammy R. Stemple

Clerk

\_\_\_\_\_

Counsel to Issuer

\_\_\_\_\_

Special PSC Counsel

03.31.09  
700470.00001

WITNESS our signatures and the official corporate seal of THE CITY OF PHILIPPI on the day and year first written above.

[CORPORATE SEAL]

SIGNATURE

OFFICIAL TITLE

\_\_\_\_\_

Mayor

\_\_\_\_\_

Clerk

\_\_\_\_\_



Counsel to Issuer

\_\_\_\_\_

Special PSC Counsel

WITNESS our signatures and the official corporate seal of THE CITY OF PHILIPPI on the day and year first written above.

[CORPORATE SEAL]

SIGNATURE

OFFICIAL TITLE

\_\_\_\_\_

Mayor

\_\_\_\_\_

Clerk

\_\_\_\_\_

Counsel to Issuer

*Robert R. Rodick*

Special PSC Counsel

03.31.09  
700470.00001



THE CITY OF PHILIPPI

Water Revenue Bonds, Series 2009 B  
(United States Department of Agriculture)

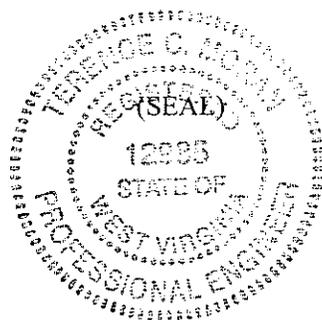
ENGINEER'S CERTIFICATE

I, Terence C. Moran, Registered Professional Engineer, West Virginia License No. 12985, of Potesta & Associates, Inc., Charleston, West Virginia, hereby certify that my firm is the engineer for the acquisition and construction of improvements and extensions to the existing waterworks system (the "Project") of The City of Philippi (the "Issuer"), to be acquired and constructed in Barbour County, West Virginia, which acquisition and construction are being financed in whole or in part by the above-captioned revenue bonds of the Issuer.

I further certify that the Project will, to the best of my knowledge, be constructed in accordance with plans and specifications prepared by my firm and that such system and Project are situate wholly or chiefly within the boundaries of the Issuer.

I further certify that the Project is adequate for the purposes for which it was designed and that all necessary governmental approvals, consents, authorizations, certificates and permits for the acquisition and construction thereof have been obtained or can and will be obtained.

WITNESS my signature on this 16th day of April, 2009.



POTESTA & ASSOCIATES

*Terence C. Moran* 4/9/09

Terence C. Moran, P.E.  
West Virginia License No. 12985

12.29.08  
700470.00001





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CPA Certificate

April 16, 2009

The City of Philippi  
Water Revenue Bonds, Series 2009 B  
(United States Department of Agriculture)

The City of Philippi  
Philippi, West Virginia

United States Department of Agriculture  
Elkins, West Virginia

West Virginia Water Development Authority  
Charleston, West Virginia

Ladies and Gentlemen:

Based upon the rates and charges set forth in the water rate ordinance enacted by The City of Philippi (the "Issuer") on June 21, 2000, and projected operation and maintenance expenses and anticipated customer usage as furnished to me by Potesta & Associates, consulting engineers, it is my opinion that such rates and charges will be sufficient to provide revenues which, together with other revenues of the waterworks system (the "System") of the Issuer, will pay all repair, operation and maintenance expenses of the System and leave a balance each year equal to at least 115% of the maximum amount required in any year for debt service on the Water Revenue Bonds, Series 2009 B (United States Department of Agriculture) (the "Series 2009 B Bonds"), and the Issuer's outstanding Waterworks System Design Revenue Bonds, Series 2009 A, (West Virginia Water Development Authority), dated February 24, 2009, issued in the original aggregate principal amount of \$491,200 (the "Prior Bonds").

It is further my opinion that the Net Revenues actually derived from the System during any 12 consecutive months, within the 18 months immediately preceding the date of the actual issuance of the Series 2009 B Bonds, plus the estimated average increased annual Net Revenues expected to be received in each of the 3 succeeding years after the completion of the improvements to be financed by the Series 2009 B Bonds, are not less than 115% of the largest aggregate amount that will mature and become due in any succeeding fiscal year for the principal of and interest on the Series 2009 B Bonds and the Prior Bonds currently outstanding.

Very truly yours,

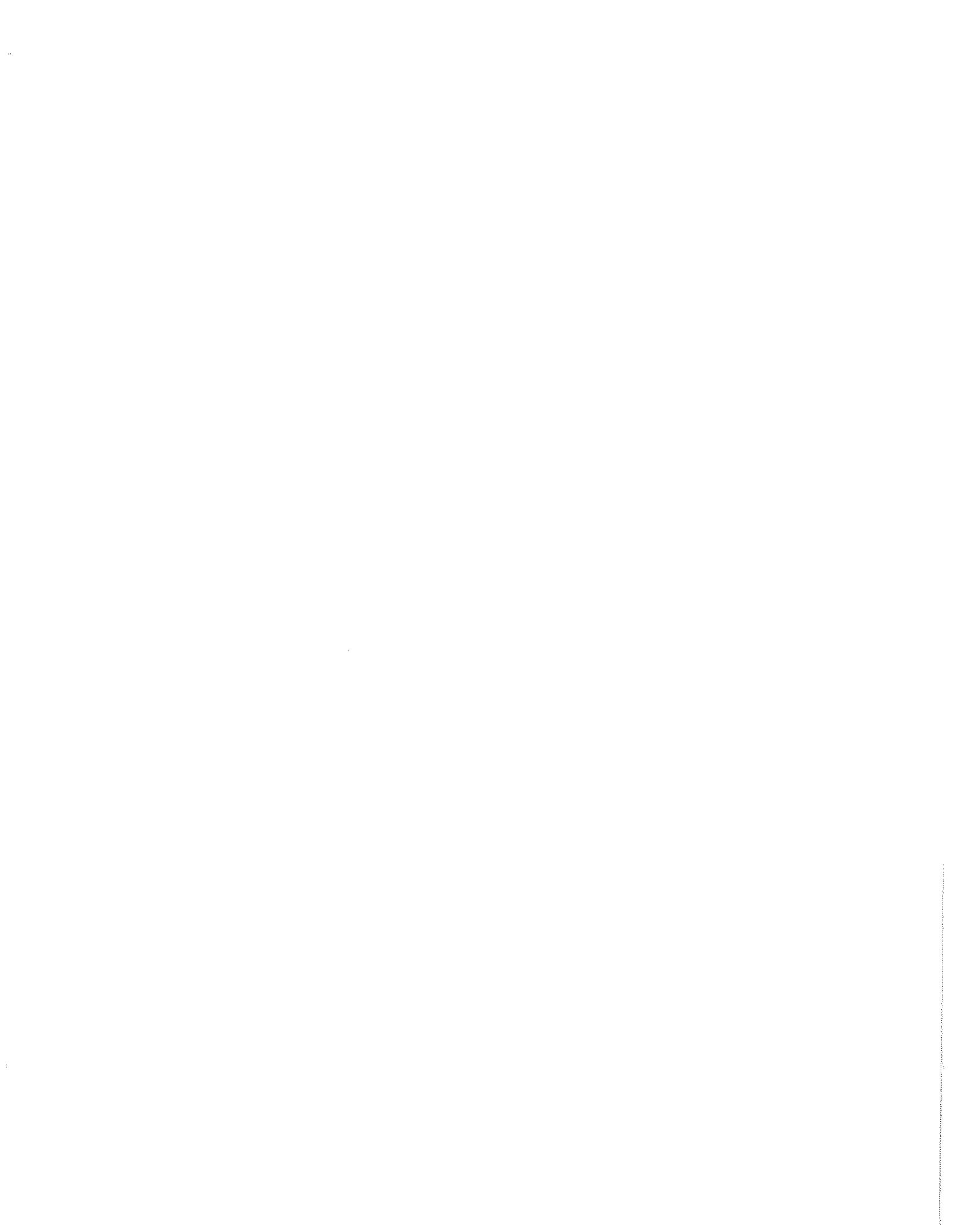
Michael D. Griffith, CPA, AFI  
Griffith & Associates, PLLC

MDG/dk

---

Michael D. Griffith, CPA, AFI  
michaelsgriffithcpa@verizon.net

950 Little Coal River Road Alum Creek, WV 25003  
Phone: (304) 756.3600 Facsimile: (304) 756.2911



THE CHARTER  
OF THE  
CITY OF PHILIPPI, WEST VIRGINIA

EDITOR'S NOTE: This Part contains the Charter of the City of Philippi as same is set out in Acts 1923, Ch. 71, as amended, passed April 17, 1923, and in effect from passage. Dates appearing in parentheses following section headings indicate those sections were subsequently amended, added or repealed on the date given.

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- Sec. 5. Municipal Authorities, Powers Vested In.
- Sec. 6. Elections; Qualifications of Voters; Contested Elections; Registration of Voters; Returns of Elections; Tie Decided by Lot.
- Sec. 7. Election Date; Terms of Office. (4-20-84)
- Sec. 7a. Elections; Mode of Voting; Law Governing. (4-20-84)
- Sec. 8. Oath of Office.
- Sec. 9. Powers and Duties of Officers; Bond of Chief of Police.
- Sec. 10. Bonds of Other Officers.
- Sec. 11. Removal from Office; How Vacancy Filled.
- Sec. 12. Meetings of Council; Mayor to Preside Over; Tie Vote; Quorum, etc.
- Sec. 13. Records and Archives; Copies by Clerk Prima Facie Evidence.
- Sec. 14. Reading and Correction of Former Proceedings; When Yeas and Nays to Be Entered.
- Sec. 15. Reading of Ordinances.
- Sec. 16. Powers of Council. (11-22-55)
- Sec. 17. Authority To Make and Enforce Ordinances, etc.
- Sec. 18. Contract Interest. (4-20-84.)
- Sec. 19. Duties and Powers of Mayor.
- Sec. 20. Procedure to Enforce Ordinances. (11-22-55)
- Sec. 21. Executions for Fines and Costs.
- Sec. 22. Jailer of Barbour County to Receive Prisoners.
- Sec. 23. Police Docket; Contents Thereof.
- Sec. 24. Appeal From Judgment of Mayor to Circuit Court. (11-22-55)
- Sec. 25. Appeals; Transcript to Be Furnished.
- Sec. 26. Appeals; Judgment Upon.
- Sec. 27. Appeals; in Cases Other Than For Violation of Ordinances.

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- Sec. 28. Clerk; Duties of.
  - Sec. 29. Clerk; Duties and Powers as to Assessments. (11-22-55)
  - Sec. 30. Estimates and Levy. (11-22-55)
  - Sec. 31. Clerk; Bond; to be Custodian of Moneys; Other Duties. (11-22-55)
  - Sec. 32. Clerk to Extend Levies and Collect Taxes; Discount and Interest on Taxes. (11-22-55)
  - Sec. 33. Clerk to Return List of Delinquent Taxes; Accounts, etc.
  - Sec. 34. Lien for City Taxes; Manner of Enforcement.
  - Sec. 35. Chief of Police; Duties and Bond.
  - Sec. 36. Arrests for Violation of Ordinances in Sight of Police Officers; Chief of Police to Execute Process; Other Powers and Duties and Compensation Therefor, Surety Liable for Dereliction of Duty.
  - Sec. 37. City to Have Right of Eminent Domain.
  - Sec. 38. Council May Issue Bonds, etc. (11-22-55)
  - Sec. 39. Officers Subject to This Act. (11-22-55)
  - Sec. 40. General Powers; Responsibility; and Liability. (11-22-55)
  - Sec. 41. Severability. (11-22-55)

THE CHARTER  
OF THE  
CITY OF PHILIPPI, WEST VIRGINIA

Be it enacted by the Legislature of West Virginia:

An Act to amend and re-enact Chapter Thirteen of the Acts of the legislature of one thousand nine hundred and five, as amended by Chapter Seven of the Acts of the legislature of one thousand nine hundred and seven, and as amended by Chapter Seven of the Acts of the legislature of one thousand nine hundred fifteen, concerning the Charter of the City of Philippi.

SECTION 1. CORPORATE NAME, RIGHTS AND POWERS.

The inhabitants of that portion of Barbour County, this State, now and hereafter residing within the boundaries described in the next section hereof, shall be and they are hereby constituted a body politic and corporate, by and under the name of "The City of Philippi", and as such and by and in that name, shall be in perpetual succession and a common seal and may sue and be sued, contract and be contracted with, purchase, lease, hold and use real property personal property necessary for corporate purposes and generally shall have all the rights, powers and franchises, belonging to or pertaining to municipal corporations in this State.

SECTION 2. CORPORATE LIMITS.

The corporate limits of said City shall be hereafter as follows:

Beginning at a sugar tree on the east bank of the Tygarts Valley River above the present brick and tile factory; thence south sixty-four degrees fifteen minutes east, one thousand three hundred and seven feet to a stake in the County road; thence north seventy-four degrees forty minutes east, one thousand one hundred and eighty-four feet to a stake; thence north forty-eight degrees twenty-two minutes east, one thousand six hundred and sixty-one feet to a chestnut in the W.G. Key's property; thence north nine degrees nine minutes east, one thousand five hundred and five feet to a stake in the divide of the farm of J. Hop. Woods; thence north twenty-five degrees forty-two minutes west, six hundred and twenty-nine feet to a stake; thence north thirty-four degrees fifty-one minutes west, four thousand five hundred and seventy feet to an apple tree in David Smith's farm; thence north seventy-eight degrees twenty-seven minutes west, six hundred and twenty-seven feet to a stake on the said farm; thence south twenty-seven degrees forty-six minutes west, seven hundred and fifty-seven feet to a pear tree; thence south twenty-one degrees twenty-one minutes west, one thousand six hundred and seventy feet to a stake in the Talbott farm; thence south twenty-six degrees thirteen minutes east, one thousand four hundred and sixty feet to a stone in the pike; thence north nine degrees fifty-five minutes east, four hundred and forty-four feet to the east bank of Tygarts Valley River; thence with the low water marking following the meanders of the east bank of said river to the beginning.

**SECTION 3. COUNCIL TO DIVIDE CITY INTO WARDS.**

The Council of said City, shall divide the territory of said City into wards, of not less than four, and may increase the number of wards from time to time, due regard being had to the increase of population, and shall, by ordinance, bound each ward with reasonable certainty, and give to each ward equal representation in the Council.

**SECTION 4. MUNICIPAL OFFICERS; HOW ELECTED, QUALIFICATIONS; COMPENSATION.**

The municipal authorities of said City shall consist of a Mayor, City Clerk and five (5) councilmen to be elected by the voters of the whole City, (2 councilmen from the South District and 3 from the North District) with residency requirements to insure equal distribution of representation. The number of councilmen from each district can be increased and diminished by ordinance with increase or loss of population. The Common Council shall receive such compensation as the Council shall from time to time determine, and which shall not be increased or diminished during their term of office. (Amended 4-20-84)

**SECTION 5. MUNICIPAL AUTHORITIES, POWERS VESTED IN.**

The Municipal authorities of said City shall consist of the Mayor and councilmen, who together shall form a Common Council, and all the corporate powers of said Coporation shall be exercised by said Council, or under its authority, except where otherwise provided.

**SECTION 6. ELECTIONS; QUALIFICATIONS OF VOTERS; CONTESTED ELECTIONS; REGISTRATION OF VOTERS; RETURNS OF ELECTIONS; TIE DECIDED BY LOT.**

The first election hereunder shall be held on the second Tuesday in March, one thousand nine hundred and twenty-four, and annually thereafter. Every person who has been a bona fide resident of the City for six months next preceding any election, and otherwise a qualified voter under the Constitution and laws of the State, shall be entitled to vote at such election in the ward in which he resides. The elections shall be held, conducted and the result thereof ascertained, certified, returned and determined under such rules and regulations as may be prescribed by the Council, which shall not be inconsistent with the general laws of the State governing municipal elections, and shall conform as nearly as practicable to such laws. Contested elections shall conform as nearly as may be to similar proceedings in the case of County and district officers. Not more than five days before such election, or any annual election thereafter in such City, the Clerk shall ascertain who are legal voters in such City or any ward thereof and shall make a list of the qualified voters for each ward and deliver same to the officers appointed to hold such election in the respective wards; but any qualified voter whose name is omitted from such list may cast his vote by making oath before the election officers that he is a qualified voter in such ward. The Council shall be the judge of the election, returns and qualifications of its own members. In case two or more persons receive an equal number of votes for the same office, if such number be the highest cast for such office, the Council shall determine by lot which of them shall be returned elected, and shall make their return accordingly.

**SECTION 7. ELECTION DATE; TERMS OF OFFICE.**

Beginning with the calendar year of 1984, the election shall be held on the third Tuesday of May and every four years thereafter, on the third Tuesday of May. There shall be elected by the qualified voters of said City, a Mayor and such other officers as may be prescribed by ordinance as provided for in Section 4. The officers shall hold their office for the term of four years, commencing on the first day of July after his election until their successor shall be elected and qualified. (Amended 4-20-84)

**SECTION 7a. ELECTIONS; MODE OF VOTING; LAW GOVERNING.**

The mode of voting shall be by ballot, but the voter shall be left free to vote an open, sealed or secret ballot, as he may elect. The elections in said City shall be held and conducted and the result thereof certified, returned and finally determined under the laws in force in this State, relating to general elections, as they exist at the time any such election is being held, except that the persons conducting said elections shall, on the day after the election is held, deliver the ballots, tally sheets and poll books to the City Clerk, and thereafter the Common Council of said City shall meet on the sixth day succeeding said election and canvass the returns of said election, and declare the result thereof, and in all respects comply with the requirements of the statutes relating to general elections as they are in force at the time of holding said election. The corporate authorities of said City shall perform all the duties in relation to such election required by general law of county courts (county commissions) and officers in the general election laws of this State, and the provisions of Chapter 3 of the Code of West Virginia, in effect at the date of such election, concerning elections by the people, shall govern such elections and be applicable thereto, and the penalties therein prescribed for offenses relating to elections shall be enforced against the offenders at such corporate election; and the said general election laws shall have the same force and effect as if they were specially enacted for corporate elections and were by this Charter specially reenacted in extenso, except as modified in this amended Charter of the City of Philippi. (Added 4-20-84)

**SECTION 8. OATH OF OFFICE.**

Every person elected or appointed to any office in said City shall, within twenty days after his election or appointment and before entering upon the discharge of the duties thereof, take and subscribe an oath that he will support the Constitution of the United States, and the Constitution of this State, and that he will well and truly perform the duties of his office, to the best of his skill and ability, which may be done before the Mayor, or Clerk of said City, or before any person authorized to administer oaths; and the same together with a certificate of the officer administering the oath shall be filed with the Clerk of said City.

**SECTION 9. POWERS AND DUTIES OF OFFICERS; BOND OF CHIEF OF POLICE.**

The Council shall by ordinance, consistent with this Act and general law, prescribe the powers, and define the duties of the Chief of Police, and other policemen, and of all other officers and appointees of the Council; and the Council shall require from the Chief of Police a bond, with good security to be approved by it, in the penalty of not less than one thousand dollars conditioned for the faithful performance of his duties as such Chief of Police

and to account for and turn over all moneys or property coming into his hands as such officer, and the Council may require and take from appointive officers, respectively, bonds payable to the City, in its corporate name, with such security and in such penalties as may be deemed proper, conditioned for the faithful performance of their duties.

#### SECTION 10. BONDS OF OTHER OFFICERS.

The Council shall require and take from all officers elected or appointed as aforesaid, whose duty it shall be to receive funds, assets or properties belonging to said City, or having charge of the same, such bond, obligations or other writings as may be deemed necessary and proper, to secure the faithful performance of their several duties. All bonds, obligations or other writings taken in pursuance of any of the provisions of this Act shall be made payable to the City of Philippi, with such securities and in such penalties as may be deemed proper, conditioned for the faithful performance of their duties and for the accounting for any paying over as required by law, all moneys coming into their hands by virtue of their offices, and the respective persons and their heirs, executors and assigns bound thereby shall be subject to the same proceedings on said bond, obligations and other writings for enforcing the conditions of the terms thereof by motion or otherwise, before any court of competent jurisdiction held in and for the County of Barbour that collectors of County levies and other sureties are or shall be subject to on their bond for enforcing the payment of the County levies.

#### SECTION 11. REMOVAL FROM OFFICE; HOW VACANCY FILLED.

The Council shall have authority to remove from office, any officer of the City, whether elected or appointed, or any appointee, for misconduct or neglect of duty, intoxication, or for any wilful violation of the laws of this State, or of the City ordinances, by an affirmative vote of three-fourths of the members of the Council; but only after reasonable notice to such officer or appointee, and a hearing of the charges preferred; and any vacancy in office, however occasioned, may be filled by the Council for the unexpired term.

#### SECTION 12. MEETINGS OF COUNCIL; MAYOR TO PRESIDE OVER; TIE VOTE; QUORUM, ETC.

The Council shall fix the place and time of holding its regular meetings; may provide for special and adjourned meetings; prescribe rules and regulations not inconsistent herewith for the transaction of business for its own guidance and government. The Council shall be presided over at its meetings by the Mayor, or in his absence, by one of the councilmen selected by a majority of the Council present, who may vote on any question as member of the Council. The Mayor shall have a vote in case of a tie, and in no case shall the presiding officer have more than one vote. A majority of the Council shall be necessary to constitute a quorum for the transaction of business. No member of the Council shall vote upon or take part in the consideration of any proposition in which he is or may be interested otherwise than as a resident of said City.

SECTION 13. RECORDS AND ARCHIVES; COPIES BY CLERK PRIMA FACIE EVIDENCE.

The Council shall cause to be kept by the Clerk in a well-bound book, to be called the "minute book", an accurate record of all of its proceedings, ordinances, acts, orders and resolutions, and in another to be called "ordinance book", accurate copies of all general ordinances adopted by the Council, both of which shall be fully indexed and open to the inspection of anyone required to pay taxes to the City or who may be otherwise interested. All oaths and bonds of officers of the City and all papers of the Council, shall be endorsed, filed and securely kept by the Clerk. All printed copies of such ordinances purporting to be published under authority of the Council, and transcripts of such ordinances, acts, orders and resolutions certified by the Clerk, under the seal of the City, shall be deemed prima facie correct, when sought to be used as evidence in any court, or before any justice.

SECTION 14. READING AND CORRECTION OF FORMER PROCEEDINGS; WHEN YEAS AND NAYS TO BE ENTERED.

At each meeting of the Council, the proceedings of the last meeting shall be read, and if erroneous, corrected and signed by the presiding officer for the time being. Upon the call of any members the yeas and nays on any question shall be taken and recorded in the minute book.

SECTION 15. READING OF ORDINANCES.

No ordinance or bylaw, and no resolution or measure for the expenditure of money, other than to defray the current and incidental expenses of the City, shall be deemed passed or adopted unless it shall have been fully read at two consecutive meetings of the Council, and shall have received a majority of the votes of the members present, when it shall stand and be declared adopted, and not otherwise.

SECTION 16. POWERS OF COUNCIL.

The Council of said City shall have the following general powers enumerated in the subdivisions of this section as follows:

- (1) To lay off, open, close, vacate or maintain public grounds, parks, public places, name and rename the same, to have control and supervision thereover, to protect the same from damage or other injury by persons or property, to fix fines and punishments for any injury thereto in violation of any of the orders of said Council, and to maintain good order and prevent violations of the ordinances of said City therein or thereon.
- (2) To establish, maintain and regulate free public libraries and reading rooms and to purchase books, papers, maps, manuscripts and other proper things therefor, to receive donations and bequests of money or property for the same, in trust or otherwise, and to pay the necessary expenses for establishing, maintaining and regulating the same out of the funds for general purposes; provided, such expenditure shall not exceed one hundred dollars (\$100.00) per annum unless by unanimous vote of all the members of the Council.

- (3) To protect divine worship within the limits of said City, and to fix fines and punishment for disturbance of any assemblage of people, then and there, met for the worship of God, to prohibit any interference with or disturbance of divine worship or an assemblage of people met together for the worship of God by any person or persons loitering about the premises or places where such worship is being had or such assemblage is met, or from loitering in the public streets or public places adjacent thereto in such manner as to interrupt such worship.
- (4) To acquire either by purchase, condemnation or any other modes provided by general law, ground within said City for such streets and alleys as the Council may deem proper; to locate, lay off, vacate, close, open, alter, grade, straighten, widen or narrow, pave or repave, construct and keep in good repair, the roads, streets, alleys, pavements, sidewalks, crosswalks, drains, viaducts and gutters therein, and such bridges as may be owned or built by the said City, for the use of the public or of any of the citizens thereof, and to improve and light the same and to keep the same clean and free from obstruction of every kind; provided, the Municipality shall not be liable for, or responsible in damages for injuries to persons or property caused by or from any defect or obstruction in or on any street or alley within said City, that has been or may be taken over by the State Road Commission, under and by virtue of the laws of this State; nor shall said Municipality be liable in damages for injuries to persons or property caused by or from a defect or obstruction in or on the plat of ground between the gutter or curb of any street and the paved or plank sidewalks extending there along or between any such sidewalks and the property lying next adjacent thereto, unless the Municipality had actual notice of such defect or obstruction prior to the time of the injury complained of; and, provided, further, that where said City shall be required to respond in damages by reason of injury to persons or property occasioned by the failure of any abutting owner to so provide or keep in repair any sidewalk along such property, after being notified by the Council so to do, that such property owner shall be liable to the City for any sum of money, costs and counsel fees which it has been required to pay by reason thereof.
- (5) To regulate the width of sidewalks and the streets and the width and the care of public grounds or grass plots abutting thereon, and to order the sidewalks, footways, crossways, drains and gutters to be curbed, paved, or repaved and kept in good order, free and clean, and to provide for the removal of snow and ice therefrom, and for sprinkling the same by the owners or occupants of the real property next adjacent thereto, and to provide and enforce punishments for obstructing, injuring or preventing the free and proper use thereof, and to provide and enforce fines and penalties for throwing therein or thereupon any paper, glass, rubbish, decaying substances or other things that would make said streets, sidewalks, grass plots, crosswalks, drains, or gutters unsightly or unhealthy.

- (6) To regulate the use of the walks, highways, bridges, streets, alleys and gutters and the rate of speed of travel thereon, and to prevent and punish for fast riding or driving thereon of any horse, bicycle, wheeled vehicle, wagon, steam or electric or traction engine, motor car or automobile and to prevent injury to such streets, alleys, roads and highways from overloaded or improperly loaded vehicles, and from dragging logs or other matter therein, and to regulate the speed of engines or trains or streetcars upon or across any such streets, alleys, highways, bridges, public places or any other place where the Council deems the public safety requires such regulation.
- (7) To regulate the planting, trimming and preservation of shade trees, by persons and by corporations, in streets, alleys, roads, public grounds and places, and shall require the owner of adjacent property to trim or remove any shade tree or ornamental shrubbery or other tree that in the opinion of the Council is an obstruction to the streets, alleys, or sidewalks, or a menace to public safety.
- (8) The Council shall have the right to require the owner or occupier of any property in the City to keep his premises clean and free from all matters that would endanger the health of the City, and may require the removal of any wastepaper or waste material of any kind or character upon the private property of any citizen or property owner that would cause the spread of fire or when the Council deems the same should be removed; and may require the removal or straightening of any fence, wire, railings, or other material enclosing any lot, when, in the opinion of the Council, the same is dangerous or obstructs or encroaches upon the streets, alleys or sidewalks; provided, that in all such cases, if the owner or occupier of such property fails to do any of the things enumerated in this section required by the Council, after notice by the Council, the Council may take such action as may be necessary to perform such acts and the expense thereof shall be charged to the property owner and collected as taxes are collected.
- (9) To regulate the making of division fences of an unsightly nature and property walls by the owners of adjoining and adjacent premises and lots, insofar as the same shall not be in conflict with the general law.
- (10) To regulate or require drainage by the owner or occupier of any lot or other real estate, by proper drains, ditches, and sewers, and to require the owner or occupier of any lot to fill the same, at his own expense, so that water will not collect in a body thereon, or so the same will not become a menace to public health.
- (11) To regulate or prohibit street carnivals, or street fairs, or street parades, advertising exhibitions thereon, or the exhibition of goods, wares, merchandise, material or artificial curiosities upon any street, sidewalk, alley or public place of the said Town.
- (12) To regulate or prohibit the ringing of bells, blowing of steam whistles, or use of hand organs, or other instruments of any annoying character, or other music of itinerant performers in the streets, or public speaking and preaching in the streets, roads, parks, or public places of the Municipality.
- (13) To license, regulate or prohibit auctioneering.
- (14) To license, regulate or prohibit the sale of goods, wares, merchandise, drugs or medicine on the streets or other public places.

- (15) To prevent the illegal sale, offering or exposing for sale, or advertising of spiritous liquors, wine, porter, ale, beer, or drinks of a like nature.
- (16) To prevent the illegal sale of tobacco, cigars, snuff, or cigarettes, within said Municipality, and to prevent the smoking, by any person under twenty-one years of age of any cigarette, in any public building or upon any public grounds, street, alley, sidewalk or public place within said City, and to fix fines and punishments for violations thereof.
- (17) To regulate, control or prohibit runners for hotels, boardinghouses and eating houses, and to regulate draymen or persons hauling or transporting for hire at and about the railroad depots and stations and other public places and in an assemblage of people within the said City.
- (18) To regulate, assess and collect a license fee for the said City for the doing of anything or business on which a State license is required, subject to the exceptions provided by general law.
- (19) To provide, assess and collect a license tax from residents in said City who own and operate or run an automobile therein, or from any person, whether a resident of said City or not, who shall run or operate an automobile for hire, or keep the same for hire within said City; provided, that any person, not a resident of said City, who shall run or operate an automobile in said City, not for hire, for a longer period than one month at any time, shall pay the license tax assessed against resident automobile owners.
- (20) To establish, when the Council may deem proper, locate and keep in repair, market places, market houses, and regulate markets, prescribe the time for holding the same, to authorize the seizure there at and destruction of any and all such food and drink products, as shall be found unwholesome, dangerous or offensive, and without recourse against the Municipality for its cost or value.
- (21) To regulate the sale of food and drink products, milk, fresh meats, fish and vegetables, and to provide penalties for the sale of any such that are unwholesome and unfit for use.
- (22) To regulate and provide for the weighing of hay, coal and other articles for sale in the markets, or to residents of said City.
- (23) To require the merchants and other persons selling goods, foods or materials that must be weighed, to keep correct scales, to seize and destroy such as are found to be incorrect, and not corrected after due and proper notice to the owner or person using the same, without damage or expense to the Municipality for the value thereof.
- (24) To prevent injury or annoyance to the public or individuals from anything dangerous, offensive or unwholesome.
- (25) To regulate the keeping, handling and transportation of explosives and dangerous combustibles within the Municipality; and to regulate or prohibit the use of firecrackers, skyrocket, toy pistols, air rifles or guns, within said Municipality.
- (26) To regulate or prohibit the erection or operation, or maintenance in what the Council deems an improper locality within said City, any blacksmith shop, livery stable, barn, stable, cattle pen, poultry house, pigpen, privy, billboard, signboard, gas or other engine, coal mine, coal plant, or coal bin, or any other thing that may in the opinion of the Council be a menace to persons or property or public safety, or that would injure private property or annoy citizens of said City.

- (27) To regulate or prohibit the use of walls or walks for signs; to regulate or prevent the distribution or posting of any sign, bill or other paper that, in the opinion of the Council or Mayor, is indecent or immoral.
- (28) To define by ordinance what shall constitute a nuisance, and to abate all nuisances whether defined or not, and to require the removal or abatement of any building, obnoxious business, signboard, billboard signs, or other thing, which in the opinion of Council is a nuisance.
- (29) To regulate or prohibit the distribution of handbills, circulars and other advertisements of like kind, on the streets, roads, alleys and public places, or the placing the same in private yards, buildings or other structures, without having first procured the consent of the owner or occupier of such property.
- (30) To regulate or prohibit within the Municipality or within one mile of its corporate limits, the erection or maintenance of any slaughterhouse, soap factory, glue factory, lampblack factory, tannery, or other house, shop or factory of like kind or character.
- (31) To establish within said Municipality public drinking fountains and water troughs; and to regulate the time and place and manner of bathing in pools, streams and public waters within the police jurisdiction of said Municipal corporation.
- (32) To prevent hogs, cattle, sheep, horses, and other animals and fowl of all kinds, from going at large in the Municipality and to establish and maintain places for their detention, make regulations respecting the same, appoint a pound master and define his duties and provide for the sale of such property impounded.
- (33) To arrest, convict and punish any person for committing adultery or fornication, or for any lewd or lascivious cohabitation within said City, and for keeping an assignation house, house of ill fame, or for leasing or letting to another person any house or other building to be kept or used as such, or for knowingly permitting any house, under the control or owned by any person, to be used as an assignation house or house of ill fame; and to convict and punish for frequenting, entering or loitering in any assignation house or house of ill fame within said Municipality.
- (34) To arrest, convict and punish any person for importing, printing, publishing, selling, giving away, exhibiting, or distributing any book, picture or device, or other thing containing any obscene picture or language, or making any indecent representation.
- (35) To restrain, convict and punish vagrants, mendicants, beggars, tramps, common prostitutes, and their associates, and drunken or disorderly persons within the Municipality, and to provide for their arrest and manner of punishment.
- (36) To prevent and prohibit the use of indecent or profane language within the corporate limits, and to provide and fix punishment therefor.
- (37) To prevent and prohibit any tumult, riot, quarrel, angry contention, abusive language, and to prevent the use of insulting epithets, assaults, assault and battery, and fix fines and punishments therefor.

- (38) To prevent and prohibit trespass upon private property or the doing of anything which would annoy the occupier of any premises, and to fix and provide fines and punishments therefor.
- (39) To provide against danger or damages by fire, and to that end, to require, when the Council may think necessary, an inspection of all the properties within the said City, and to require the owner or occupier of any property in which a defective or dangerous chimney or flue is found, to immediately repair the same, and to prevent the use thereof until repaired as required.
- (40) To prohibit and prevent intoxication or drunkenness, and the drinking of intoxicants in any public place, store, street, or alley, and to fix fines and penalties therefor.
- (41) To prohibit and punish for larceny where the amount stolen is less than twenty dollars.
- (42) To prohibit, prevent and punish for anything that is against the good morals and common decency, or that would tend to corrupt, vice or crime.
- (43) To protect the public schools in said City, and to prohibit and prevent any disturbance thereof in and about the buildings or upon the grounds, and to prevent injury, destruction or defacement of any school property or building.
- (44) To establish a board of health and vest it with the necessary power to maintain its object, and to fix fines and penalties for any violation of its lawful orders.
- (45) To establish quarantine, and to erect and maintain pest houses and places of detention, and to make and enforce necessary orders for controlling or preventing the spread of infectious and contagious diseases and for abating pestilences.
- (46) To prohibit the bringing into the corporate limits by railroads, carrier, persons, or in any manner, persons, who are paupers or persons who are afflicted with contagious diseases; to punish by fine or imprisonment, or both, any person who shall bring into the corporate limits any such pauper or person afflicted with contagious disease, knowing or having reason to believe, at the time that such person is a pauper or afflicted with such contagious disease, and to collect and recover from any such railroad company, carrier, or other person, the expense of keeping and maintaining such pauper or diseased person, until such person can be lawfully removed from the corporate limits.
- (47) To provide for the poor of the Municipality, and to that end, the Municipality may contract with County Court of Barbour County, for keeping of such poor person, or any number of them, at the County poorhouse, at a price and on such terms as may be agreed upon between the County Court and the proper Municipal authorities.
- (48) To authorize the taking up and providing for the maintenance and safekeeping, and educating of (for such period as may be deemed expedient) all children within said City who are destitute of proper parental and other care.
- (49) To arrest, convict and punish any person for cruelty, unnecessary or needlessly beating, torturing, mutilating, killing or overloading, overdriving, or wilfully depriving necessary substance, any horse or other domestic animal.

- (50) To regulate the hitching of horses within the corporate limits, and the driving of cows and cattle through, upon and along the streets and alleys of the said City.
- (51) To prohibit, prevent and punish for the pollution of any stream of water running into or through the said Municipality; and to prohibit and prevent the throwing into any such stream of any trash, dirt, filth, offal, decayed substances or matters, or anything that would make said water unhealthy or unfit for domestic use.
- (52) To prohibit, prevent and punish for any desecration of the Sabbath day; prohibit the playing of any game, exhibiting any show, theater picture show, and the keeping open of business places, except hotels, eating houses, boardinghouses, restaurants, drugstores and places where ice cream or soft drinks are furnished.
- (53) To restrain, prevent and punish fraudulent practices of any kind or character within the Municipality.
- (54) To arrest, convict and punish any person for gambling or keeping any gaming table, commonly called "faro bank", or table and chips used in playing such game; crap table, chips or dice used in playing such game; or roulette or the wheel, chips, or other equipment used in playing such game; or keno table or table of like kind or device used in playing the same; or table of like kind under any denomination, whether the game or games be played with cards, dice or otherwise on which anything is bet or wagered, whether the same be playing in any public or private room or residence; and may convict and punish any person who shall be a partner or concerned or interested in the keeping of such gambling devices theretofore enumerated, or in any game played, such as is prohibited hereby, or in keeping or maintaining any gambling house or place of gambling for money or anything of value; and shall have the right to destroy such gambling paraphernalia as may be found in use on any such premises; and any officer armed with a warrant for the arrest of any person engaged in any such unlawful game or for the search of any room in which gambling is suspected, or for the seizure of any gambling paraphernalia, shall have the right to break into any building, other than a private dwelling house, without notice or demand, and into a private dwelling or room, after demand and refusal to open same, to execute any such warrant.
- (55) To restrain all felons and persons guilty of offenses against this State or the United States, and deliver them over to the authorities or court having jurisdiction of the offense whereof such persons are accused.
- (56) To apprehend and punish any person who, without a State license therefor, is guilty of carrying about his person, within the Municipality, any revolver or ther pistol, dirk, bowie knife, slingshot, razor, billy, metallic or false knuckle, or any other dangerous or deadly weapon of like kind and character, as provided by chapter fifty-one of the Acts of the legislature of one thousand nine hundred and nine, or any amendment thereof, and the punishment therefor, whether for the first or other offenses, shall be that prescribed by said chapter for any such person guilty under the

misdemeanor clause provided therein; provided, that the Mayor acting as ex-officio justice of the peace, may, after enforcing this ordinance, hold such offender to answer to an indictment in the Circuit Court of Barbour County for such offense, under the State law.

- (57) To regulate the erection, construction, alteration and repair of dwelling houses, buildings and other structures, within the Municipality, to issue permits therefor, and to compel the numbering of such houses and buildings by the owners and occupiers thereof; and to prescribe by ordinance the distance which dwelling houses, and other structures in resident districts shall be set back from the sidewalk.
- (58) To regulate the hanging of doors, the construction of stairways and elevators, and require fire escapes in theaters, churches, school buildings, factories and other places deemed necessary by the Council.
- (59) To establish fire limits and to regulate the construction of buildings, and designate materials to be used in the construction of buildings within such limits.
- (60) To regulate the building of fire walls, fireplaces, chimneys, boilers, smokestacks, stovepipes, and the burning of wastepaper, trash or other waste matter, in the corporate limits.
- (61) To regulate the height, construction and inspection of all new buildings hereafter erected, the alteration and repair of all buildings now and hereafter erected, to require permits to be obtained of the Council therefor, and the submission of plans and specifications to the Council for its approval; to regulate the limits within which it shall be lawful to erect any steps, porticos, bay windows, awnings, signs, columns, piers, or other projection of structural ornaments of any kind for the houses or buildings on any street or alley.
- (62) To provide for the prevention and extinguishing of fires, and for this purpose, the Council may equip and govern fire companies, prescribe the powers and duties of such companies and departments, and the several officers thereof, and may authorize the organization of volunteer fire companies under such rules and regulations as the Council may prescribe, and impose on those who fail to obey any lawful command of the officer in charge of said fire company or volunteer company, any penalty which the Council is authorized to impose for violation of an ordinance, and to give authority to the chief fire officer to direct the pulling down or destruction of any building, fence, wall or other thing, if such officer deems it necessary to prevent the spreading of any fire which is being extinguished under the direction of such officer, and without any liability on the Municipality for damages therefor, and to regulate the flow of traffic going to the scene of or returning from any fire.
- (63) To protect the persons and property within the corporate limits and preserve the peace and good order therein, and for this purpose, to appoint, when necessary, a police force and such other officers as may be deemed necessary; and to provide a lockup, jail or other

- suitable place to confine persons sentenced to imprisonment for violation of the ordinances of said City; provided, however, that the jail of Barbour County may be used for that purpose, if authorized by the County Court of said County.
- (64) To require any person violating any of the ordinances of said City, or any order for which a fine, imprisonment or both is imposed, to work upon the streets of said City in case of nonpayment of said fine, until the same is paid by such labor, or in case imprisonment is imposed, to work upon the streets of said City during the term of such imprisonment in addition to the payment of such fine, under such regulations as the Council may prescribe.
- (65) To prescribe the powers, define the duties of the officers appointed under the corporate authority, fix their terms of service and compensation, if not otherwise prescribed by this Charter, and to require and take from them bonds, when deemed necessary, payable to the State of West Virginia or the City of Philippi, with sureties, and in such penalties as may be prescribed, conditioned for the faithful discharge of their respective duties; provided, that the compensation of any officer, elected or appointed, shall not be increased nor diminished during the time for which he is elected or appointed, unless due notice of such intention is first served on the officer interested.
- (66) To make regulations with respect to, and have supervision and control over the erection, removal and relocation of all telephone, telegraph, electric light or other poles within said City, and the extension of wires, lines or poles by any individuals or corporations.
- (67) To require the extension of any electric light wire, telephone lines, gas line, water system, or other public service within said corporate limits, to meet the needs of the inhabitants, when, in the opinion of the Council, such extension is necessary and justifiable.
- (68) To grant and regulate all franchises in, upon, over and under the streets, alleys and public ways of said City, under such restrictions as shall be provided by ordinances and general law; but no exclusive franchise shall be granted by said City Council to any individual or corporation; nor shall any franchise be granted for a longer period than twenty years.
- (69) To acquire, erect or authorize or prohibit the erection of gas works, electric light works or waterworks within the City limits; to prevent injury to such works or the pollution of any gas or water used or intended to be used by the public or by individuals; and to do all things necessary to adequately supply said City and the inhabitants thereof with pure, healthful and wholesome water; and to require any company furnishing gas or electricity for sale or distribution in said City, to furnish an adequate supply thereof; to require gas fixtures, electric light wires, telephone wires and all apparatuses used in connection with any of these, to be kept in repair and suitable for use, and free from danger, so far as practicable; to use, generate, distribute, sell and control electricity and gas heat, light and power, and to furnish light for the streets, highways, buildings, stores and other places in and about said City.

- (70) To require any gas company or person furnishing gas for said City or the inhabitants thereof, to put in standard meters for the measurement thereof, and may appoint a competent person to inspect the meters and remove the same if not standard and in good order; to prevent injury to any gas works, electric light works, water system or any gas meter or meter within said Municipality.
- (71) The Council shall have the right to require of any water company or person furnishing water for the use of the inhabitants of said City, for hire, compensation or regard, to obey any order of the Council with respect to keeping the reservoir or other source from which said water is furnished, free from filth and in a good, clean condition, and may require said water company to put in such lines as may be necessary to pump the said water into the reservoir or other receptacle therefor, without pumping the same into the main distributing lines, or in any other way or manner effecting them; and may fix fines and penalties for any failure on the part of any corporation, company or other person distributing water, to obey and order of the Council or any authorized officer of the Town, respecting the same, or any ordinance that may be enacted by the Council relative thereto.
- (72) The Council shall have the right to own, maintain, operate and control any electric light plant within said City, or to provide for, or purchase electric power and to use, generate, distribute, sell and control electricity and gas for heat, light and power, and to furnish light for the streets, houses, buildings, stores and other places in and about said City, and for such electricity other than that furnished for the Municipality in lighting its streets and public places, it may charge reasonable rates, but such rates in all cases shall be uniform; and such electric light plant shall be under the supervision and control of the Council, and its wires, poles, distributing system and machinery shall be kept in such repair so that as little danger as possible shall arise therefrom and so the same will furnish an adequate supply of electricity to all persons in said City desiring to use same.
- (73) The Council shall have the right to provide a sewerage system for said City, and may require the owner of any property abutting upon any street or alley in which a sewer had been laid or placed, to connect a sewer leading from his or her property or lot into any public sewer which is located in such street or alley adjoining the same, and if the owner or occupier of said lot or property fails or refuses so to do, after having been given a reasonable notice, the Council may enter upon such lot and construct such sewers, and may levy the actual cost thereof against the lot upon which the same is built and collect such costs from the owner of such lot in the same manner as City or State taxes are collected; in addition thereto, the Council may punish by fine, or fine and imprisonment, any person who permits any drainage from his residence or lot to enter upon any street or upon any property after a sewer has been placed in a street or alley adjacent to his property to which he should connect, after notice has been given to him by the Council to make such connection.

- (74) The Council shall have the right to impose fines and penalties for any interference with or destruction of the sewer system or any part thereof in said City, or for the destruction of or damage to any street, alley or sidewalk in said City, or any improper use thereof; it shall have the right to regulate or prevent the use of the sidewalk for bicycles, pushcarts, sleds, tricycles, roller skates and other things of like character, and to fix fines and penalties for violation of the ordinances respecting same.
- (75) To grant by ordinance or resolution permits for the temporary use of such parts of its streets, roads, alleys and public places as the Council may deem proper and right to be used in the construction, alteration or repair of buildings located thereon, or for such other purposes as the Council may deem proper and right, and under such regulations and for such time as the Council may prescribe.
- (76) The Council may buy, lease and operate either within or without the Municipality, stone quarries, crusher and land for said purposes or for the purpose of furnishing a supply of stone or other matter suitable for macadamizing or paving the streets, sidewalks and alleys, and improving public property.
- (77) Whenever in the opinion of the Council it is necessary that any sidewalk be built or repaired, it shall first have a competent engineer fix a grade line for such sidewalk and shall then, by order of Council, name the character of material out of which same is to be built, and fix the width thereof, and put in such curbing as the Council may deem necessary, and shall then give notice, in writing, to the owner or occupier of said lot, if he be found, and if he be not found, posting a notice thereof upon the said lot and at the front door of the Courthouse of Barbour County for at least ten days, requiring the construction of said sidewalk in accordance with the requirements of the Council and upon the grade fixed by the said engineer, and if such sidewalk be not built, altered or repaired within twenty days after such notice is first given or posted, the Council shall proceed to put in the same under its supervision and control, and shall charge the expense thereof against the property along which the same is being placed, altered or repaired, and shall cause an itemized account of the same to be made up and delivered to such property owner or occupier of such premises, if found, and if he be not found, have the same recorded in the County Clerk's office of Barbour County, and the same shall constitute a lien upon the same lot or property and shall be collected as other taxes are collected; provided, nothing herein contained shall prevent the Council from requiring immediate repair of such sidewalks now or hereafter constructed that may become dangerous, and after notice to the property owner along which the same run, the Council may make such immediate repairs, if the property owner fails to make same after such notice, and the expense thereof shall be a lien in the manner aforesaid.
- (78) The Council shall have the right, when, in its opinion, it is necessary or proper to do so, to pave any street or alley of said City, and to prescribe the material to be used in such paving and

- to charge one-third of the total costs of preparing and paving the said street, to the adjacent property owners on each side of the said street or alley, and to pay one-third thereof out of such funds as the Council may provide, but such paving shall be done and such assessments and charges made against the property owner as provided by chapter eight of the Acts of the legislature of one thousand nine hundred and eight, and any amendments thereto, and hereafter made.
- (79) To operate by ordinance such committees or boards, and delegate such authority thereto as may be deemed necessary or advisable by the Council; and to employ such legal counsel on behalf of the City, from time to time, as the City may deem necessary to protect the interests of the City.
- (80) To provide for the annual assessment of the taxable property in said City, including dogs kept in said City, and to provide a revenue for the City for Municipal purposes and appropriate such revenue to its expenses; provided, nothing herein contained shall require the Council to keep in repair and maintain any bridge or bridges within said corporation, now or hereafter owned by the County of Barbour, but the officers of said corporation in the preservation of law and order shall have jurisdiction over any such bridges within such corporation; and provided, further, that the police regulations as may be ordained by said City, and the right and power to enforce the same shall extend one mile into the State of West Virginia beyond the corporate limits of said City.
- (81) The Council may, within any prescribed area, prohibit the erection on any street or in any square, of any building, or of any addition to any building more than ten feet high, unless the outer walls thereof be made of brick and mortar or other fireproof material, and may require the removal of any building or addition which shall be hereafter erected contrary to this prohibition, at the expense of the owner or owners thereof.
- (82) The Council shall keep all roads, streets and alleys within its limits passable and in good repair, and may provide the expenses therefor by a direct taxation, as provided under this Charter, or in any other manner authorized by law; and the residents of said City who are taxed herein for the purpose of maintaining such streets and alleys shall be exempt from the payment of any County road tax.
- (83) In the enforcement of the ordinances, orders, rules, regulations and bylaws of the said City, no fine shall be imposed exceeding five hundred dollars (\$500.00), and no person shall be imprisoned or compelled to labor on the streets of said City, as aforesaid, exceeding six months; provided, that any violation of the prohibition or liquor laws of this State shall be punished by the fines and penalties herein prescribed; and violations of the road law or automobile laws, may be punished by the fines and penalties prescribed by general law, unless different fines and penalties are expressly prescribed by the ordinances of said City, and in all cases where a fine is imposed for an amount exceeding ten dollars or a person be imprisoned or compelled to labor as aforesaid, an

appeal may be taken from such decision upon the same terms and conditions that appeals are taken from the judgment of a justice of this state; and in no case shall a fine of less than ten dollars be imposed where the ordinance prescribed a fine, if the defendant requests that such fine be made at least ten dollars for the purpose of appeal.

- (84) The Council shall have the right to enforce the attendance of its members at all regular meetings and at all special meetings of which such members have notice, and may cause the arrest and punishment, by fine or fine and imprisonment, of any such member who refuses to attend and take part in its proceedings.
- (85) It shall be the express duty of the Council to present charges against any of its members, or any officer of the City, who fails to perform, or who does not promptly and diligently perform any duty prescribed by this Act, or by any ordinance or resolution of the Council, and upon hearing thereof before the Council, after notice to such officer, he shall be removed from office by the Council, if the charges be found correct. (Amended 11-22-85.)

SECTION 17. AUTHORITY TO MAKE AND ENFORCE ORDINANCES, ETC.

To call into effect these enumerated powers and all others by this Act or by general law conferred, or which may hereafter be conferred upon the said City, or its Council, or any of its officers, the said Council shall have and possess full authority to make, pass and adopt all needful ordinances, bylaws, orders and resolutions, not repugnant to the Constitution of the United States, the Constitution of West Virginia and laws of this State; and to enforce any and all of such ordinances, bylaws, orders or resolutions, by prescribing for a violation thereof fines and penalties, and imprisonment in either the County jail of Barbour County, or the City prison, if there be one; but no fine shall exceed five hundred dollars (\$500.00) and no person shall be imprisoned or compelled to labor on the streets of said City for a longer period than six months; provided, that any violation of the prohibition or liquor laws of this State shall be punished by the fines and penalties prescribed by general law, unless, different fines and penalties are imposed and recovered, and such imprisonment inflicted and enforced by the judgment of the Mayor of said City, or in case of his absence or inability to act then by the Clerk of said City or in the case of the absence or inability to act of both of such officers then one of the councilmen appointed for that purpose shall act.

SECTION 18. CONTRACT INTEREST.

No officer, agent or employee of said City shall be pecuniarily interested, either directly or indirectly, in any contract, sale or purchase for or on behalf of the City, or in the proceeds of any improvements made by or on behalf of the City, nor shall he receive, directly or indirectly, any compensation for his services rendered on behalf of the City, other than herein specified. (Amended 4-20-84.)

**SECTION 19. DUTIES AND POWERS OF MAYOR.**

The Mayor shall be the chief executive officer of said City and shall take care that the orders, bylaws, ordinances and resolutions of the Council thereof, are faithfully executed. He shall be a conservator of the peace within such City, and shall within the same have, possess, and may exercise, all the powers and perform all of the duties, whether civil or criminal vested by law in a justice of the peace. Any summons, warrant or other proceedings issued by him may be executed at any place within the County. He shall have control of the police of the City, and may appoint special police officers whenever he deems it necessary; it shall be his duty especially to see that the peace and good order of the City are preserved, and that persons and property therein are protected; and to this end he may arrest and detain or cause the arrest and detention of all riotous and disorderly persons before taking other proceedings in the case. He shall, from time to time, recommend to the Council such measures as he may deem needful for the welfare of the City. He shall not receive any money due or belonging to the State, or to corporations, or to individuals, unless and until he shall be given the bond and security required of a justice of the peace West Virginia Code Chapter 50, and all of the provisions of said chapter relating to moneys received by a justice, shall apply in like manner to him.

**SECTION 20. PROCEDURE TO ENFORCE ORDINANCES.**

In proceedings to enforce any ordinance which prescribes a fine or imprisonment, or both, for the violation thereof, there shall be issued a warrant by the Mayor of the City of Philippi, based upon a written complaint duly signed and sworn to, directed to the Chief of Police or any police officer or any constable of any district within the County, requiring such officer to apprehend and bring before the Mayor for trial the person accused therein of such violation and which person shall thereafter be dealt with according to law. The complaint and warrant shall contain such a statement of the facts alleged as will inform such person of the general nature of the offense against the City with which he stands charged. Such warrant shall be issued only upon complaint on the oath of some credible person. The mayor of the City, or in the absence of the Mayor, the City Clerk shall have authority to receive such complaint in writing of the violation of any ordinance and sign and issue a proper warrant based on such complaint. The Mayor shall have, possess and may exercise the power and authority belonging to a Justice of the Peace under West Virginia Code Chapter 50 in issuing subpoenas and enforcing the attendance and examination of witnesses in punishing for contempt, in granting continuance, and in securing and enforcing the further attendance of the accused for a trial or hearing. If any recognizance or bond is taken for such further attendance and is forfeited the Mayor may record the default and an action may be maintained in the name of the City, before the Mayor or any justice having jurisdiction against the accused and his sureties, if any; to recover the penalty thereof. (Amended 11-22-55)

**SECTION 21. EXECUTIONS FOR FINES AND COSTS.**

The Mayor shall have power to issue an execution for any fine and costs assessed or imposed by him, for the violation of any ordinance, or he may at the time of rendering judgment therefor or at any time thereafter, and before satisfaction of such judgment, by his order in writing, require the immediate

payment thereof, and in default of such payment he may commit the person so in default to the jail of Barbour County, or, in his discretion, to the prison of said City, if one shall have been provided by the Council, until the fine and costs are fully paid; but such imprisonment shall not exceed ninety days.

SECTION 22. JAILER OF BARBOUR COUNTY TO RECEIVE PRISONERS.

The Jailer of Barbour County shall take and receive into his custody any person sentenced to imprisonment in the jail of said County, or committed for the nonpayment of a fine and costs, or for the failure to enter into a recognizance by the judgment or order of the Mayor, in proceedings for the violation of an ordinance; and the expense of maintaining such persons while so in confinement shall be paid by the City.

SECTION 23. POLICE DOCKET; CONTENTS THEREOF.

A book well-bound and indexed, to be denominated the "docket", shall be kept in the office of the Mayor, in which shall be noted each case brought or tried by him, together with the proceedings therein, including a statement of complaint, the summons, the return, the face of appearance or nonappearance, the defense, the hearing, the judgment, the cost and, in case the judgment be one of conviction, the action taken to enforce the same. The record of such cases shall be signed by the Mayor or other person acting in his stead; and the original papers thereof, if no appeal be taken, shall be kept together and preserved in his office.

SECTION 24. APPEAL FROM JUDGMENT OF MAYOR TO CIRCUIT COURT.

In any case for the violation of an ordinance of said City, in which there is a judgment of the Mayor of imprisonment or for a fine of ten dollars (\$10.00) or more (and in all cases the fine shall not be less than ten dollars (\$10.00) when the accused requests it) an appeal shall lie at the instance of the person against whom such judgment is rendered to the Circuit Court of Barbour County; such appeal shall not be granted by the Mayor unless within ten days from the date of judgment, such person shall enter into a recognizance or bond with security approved by the Mayor, to appear before said Court on the seventh day of the next term, to answer for the offense against him and not thence depart without leave of Court and which bond shall be a continuing bond from time to time until the case shall be determined. The provisions of general law, relating to a recognizance or bond in criminal cases shall be applicable to the recognizance or bond contemplated by this section; but any money recovered thereon by virtue thereof shall inure to said City. (Amended 11-22-55.)

SECTION 25. APPEALS; TRANSCRIPT TO BE FURNISHED.

If such appeal be taken the Mayor shall forthwith deliver to the clerk of said Court the complaint in writing, if any, the summons, a transcript of the record, including the judgment, the recognizance and any other papers belonging to the case; and such clerk shall receive and file the same, and place the case upon the trial docket of the next succeeding term of said court; and said court shall proceed to try the same in its order.

SECTION 26. APPEALS; JUDGMENT UPON.

If the appellant be found guilty of violation of the ordinance in question, whether upon the verdict of a jury or otherwise, the Court shall ascertain by its judgment the fine or imprisonment, or the fine and

imprisonment, to be paid or suffered by such defendant, having regard to the punishment prescribed by such ordinance, and shall include in any such judgment the costs incurred by said City, as well in the proceedings before the Mayor, as those in Court, and the fee, if any, of the jailer or the keeper of the City prison; and the proceedings to enforce the collection of any such fines and costs, may be the same as provided in sections ten, eleven and twelve of chapter thirty-six of the Code of West Virginia, except that the writ mentioned in the tenth section may be issued by the Clerk upon the order of the Mayor of the City and the notice contemplated by the eleventh section shall be given to such officer. If the judgment be for the defendant he shall recover his costs from the City.

SECTION 27. APPEALS; IN CASES OTHER THAN FOR VIOLATION OF ORDINANCES.  
From all judgments by the Mayor in cases other than for violation of ordinances, appeals shall be allowed as in similar cases before justices.

SECTION 28. CLERK; DUTIES OF.

It shall be the duty of the City Clerk to keep a journal of the proceedings of the Council and have charge of and preserve the records, bonds, papers, and other documents belonging to the City. It shall be his duty to attend the sessions of the Police Court and keep accurate records of its proceedings, and all judgments shall be entered by him within twenty-four hours after the same are rendered. He shall, in case of sickness or disability of the Mayor act, or in case of his absence from the City, or during any vacancy in the office of the Mayor, perform the duties of the Mayor and shall be vested with all powers necessary for the performance of such duties. He shall also perform such other duties pertaining to the fiscal affairs of the City or otherwise, as may be required of him by this Act or by the Council.

SECTION 29. CLERK; DUTIES AND POWERS AS TO ASSESSMENTS. (Repealed)  
(EDITOR'S NOTE: Former Section 29 was repealed on November 22, 1955.)

SECTION 30. ESTIMATES AND LEVY.

The Council shall hold a session on the first Tuesday of August of each year for the general transaction of business, at which time it shall ascertain the condition of the fiscal affairs of the City and make up or cause to be made up an itemized statement of the same which shall set forth in detail the following:

A. The amount due and the amount that will become due and collectible from every source during the current fiscal year except from levy of taxes to be made for the year.

B. The interest, sinking fund and amortization requirements for the fiscal year of bonded indebtedness.

C. Other contractual indebtedness, not bonded.

D. All other expenditures to be paid out of receipts of the Municipality for the current fiscal year with proper allowance for delinquent taxes, exonerations and contingencies.

E. The total amount necessary to be raised by the levy of taxes for the current fiscal year.

F. The proposed rate of levy in cents on each one hundred dollars (\$100.00) assessed valuation of each class of property.

G. The separate and aggregate assessed valuation of real, personal and public utility property in each class in the Municipality.

The Clerk of the Municipality shall forward immediately a certified copy of the statement to the Tax Commissioner and shall publish the statement forthwith. The session shall then stand adjourned until the third Tuesday in August, at which time it shall reconvene, hear and consider any objections made orally or in writing by the City Attorney, by the Tax Commissioner or his representative or by any taxpayer of the City to the estimate and proposed levy or to any item thereof. The Council shall enter of record any objections so made and the reasons therefor. After hearing objections, the Council shall reconsider the proposed original estimate and proposed rates of levy and if the objections are well taken shall correct the estimate and levy. No such estimate and levy, however, shall be entered until the same shall have been first approved, in writing, by the Tax Commissioner of the State. When same shall have been approved by the Tax Commissioner the Clerk shall then enter the estimate and levy, together with the order of the Council approving them, and the written approval of the Tax Commissioner in the property record book. The Council shall then levy as many cents per hundred dollars (\$100.00) assessed valuation on each class of property in the City as will produce the amounts, according to the last assessments shown on the levy estimate.  
(Amended 11-22-55)

SECTION 31. CLERK; BOND; TO BE CUSTODIAN OF MONEYS; OTHER DUTIES.

The Clerk of said City shall execute a bond conditioned for the faithful performance of the duties of his office before entering upon the discharge of same and to account and pay over as required by law all money which may come into his hands by virtue of his office, with sureties satisfactory to Council, payable to the City in the penalty of not less than three thousand dollars (\$3,000), and as much more as the Council may deem necessary for its protection. He shall be custodian of all money, bonds, notes, certificates and other evidences of indebtedness of the City and all valuable papers which may be placed in his possession by the Council. He shall be charged with and it shall be his duty to receive the City taxes, levies and assessments, to collect licenses and fees and to collect any and all money that may be due to the City for regular City purposes or which may be due upon any proprietary function of the City. (Amended 11-22-55)

SECTION 32. CLERK TO EXTEND LEVIES AND COLLECT TAXES; DISCOUNT AND INTEREST ON TAXES. (Repealed)

(EDITOR'S NOTE: Former Section 32 was repealed on November 22, 1955.)

SECTION 33. CLERK TO RETURN LIST OF DELINQUENT TAXES; ACCOUNTS; ETC.

It shall be the duty of the Clerk, at least once in six months during his continuance in office, and oftener when required by the Council to render an account of the taxes, levies, assessments and other claims in his hands for collection, and return a list of such as he shall not have been able to collect by reason of insolvency, removal or other cause, to which list he shall attach an affidavit that he has used due diligence to collect the claims therein mentioned, but has been unable to do so, and if the Council shall be

satisfied with the correctness of said list, it shall allow him a credit for said claim, but may thereafter take such lawful measures to collect the same as may be prescribed. He shall keep regular books of account to be examined and approved by the Council, of all moneys received and disbursed by him, and of other matters pertaining to his office, which books shall at all times be open to the inspection of the Council, or any committee appointed by it for such purpose. All moneys belonging to the City shall be paid over to the Clerk, and no moneys shall be paid out by him except upon the order of the Council, countersigned by the Mayor. If the Clerk shall fail to collect, amount for and pay over all or any of the moneys with which he may be chargeable, belonging to the City, according to the conditions of his bond and the orders of the Council, the same may be recovered by action or motion, upon ten days' notice in the corporate name of the City, in the Circuit Court of Barbour County, against him and his sureties or any or either of them or his or their executors or administrators. If the sum claimed does not exceed three hundred dollars, such recovery may be had before the Mayor or any justice of said County.

#### SECTION 34. LIEN FOR CITY TAXES; MANNER OF ENFORCEMENT.

There shall be a lien on real estate, within said City, for the City taxes assessed thereon, and for all fines and penalties assessed to, or imposed upon the owners thereof by the authorities of such City from the time the same are so assessed or imposed, which shall have priority over all other liens, except the lien for taxes due the State, County and district; and which may be enforced by the Council in the same manner provided by law for the enforcement of the lien for County taxes. And there shall also be a lien on the real estate of adjoining property owners, for the amount due from such owner or owners for building or repairing sidewalks and paving streets or alleys, under subsections seventy-eight and seventy-nine of section sixteen of this Act, which lien may enforced in a court of equity. If any real estate within said City be returned delinquent for the nonpayment of the delinquent taxes thereon a copy of such delinquent list may be certified by the Council to the auditors, and the same may be sold for the City taxes, interest and Commission thereon, in the same manner, at the same time and by the same officer as real estate is sold for the nonpayment of State taxes.

#### SECTION 35. CHIEF OF POLICE, DUTIES AND BOND.

It shall be the duty of the Chief of Police to preserve order and quiet in said City, and to see that all subordinate police officers faithfully perform their official duties. He shall be present in the Police Court, whenever the same shall be in session, and see that all its orders and requirements are properly executed. He shall, before entering upon the discharge of his duties, execute a bond conditioned for the faithful performance by him of his duties of his office, and for the accounting for and paying over, as required by law, all money which may come into his hands by virtue of his office, with securities satisfactory to the Council in a penalty of not less than one thousand dollars (\$1,000) nor more than three thousand dollars (\$3,000) as the Council may prescribe.

SECTION 36. ARRESTS FOR VIOLATION OF ORDINANCES IN SIGHT OF POLICE OFFICERS: CHIEF OF POLICE TO EXECUTE PROCESS; OTHER POWERS AND DUTIES AND COMPENSATION THEREFOR, SURETY LIABLE FOR DERELICTION OF DUTY.

In case a violation of any ordinance of said City is committed in the presence or within view of the Chief of Police or other police officer, the offender may be forthwith apprehended and taken before the Mayor, and a complaint under oath, stating such violation there lodged and filed; and thereupon such offender may be tried and dealt with according to law, without summons. The Chief of Police shall execute within the County of Barbour, any proper process issued by the Mayor in proceedings for the enforcement of ordinances; and shall collect by a levy of execution or otherwise, and duly account for all fines assessed and costs imposed in such proceedings. He shall also have the rights and powers, within said City, in regard to the arrest of persons, the collection of claims and the execution and return of process, that are or may be lawfully exercised by a constable of the district within the same, and shall be entitled to the compensation therefor; and he and his sureties shall be liable for all fines, penalties and forfeitures for which a constable is liable, and for dereliction of duty in office, to be removed in the same manner and in the same courts, that such fines, penalties and forfeitures for which a constable is liable, and for dereliction of duty in office, to be removed in the same manner and in the same courts, that such fines, penalties and forfeitures are recovered against constables.

SECTION 37. CITY TO HAVE RIGHT OF EMINENT DOMAIN.

The Council shall have the right to institute proceedings the name of the City, for the condemnation of real estate for streets, alleys, drains, market grounds, parks, playgrounds, landings, wharves, City prison, or other work of public utility. Such proceedings shall conform to the general laws of the State of West Virginia; and the costs thereof shall be borne by the City, except that in contests involving a hearing in the Circuit Court, costs shall be recovered by the prevailing party.

SECTION 38. COUNCIL MAY ISSUE BONDS, ETC.

The Council of said City shall have power to issue general obligation bonds in behalf of said City for the payment of debts or for improvements and establish a sinking fund for the payment thereof provided the same shall be in accordance with Section 8, Article 8 of the Constitution and general laws of the State. The Council shall have power to issue revenue bonds in behalf of said City for any and all purposes for which the general law will permit the issuance of revenue bonds, and to make, provide and establish a sinking fund to make provision for, and establish a sinking fund for, the payment thereof. (Amended 11-22-55.)

SECTION 39. OFFICERS SUBJECT TO THIS ACT.

All officers elected under the present Charter of the City of Philippi shall be subject to the provisions of this amended charter on and after the effective date of same, as hereafter shown, and shall continue in office until the first Monday in April, 1956, or until their successors are elected or appointed and qualified and shall exercise all the powers conferred on them by the original charter of the City or by this amendment after the effective date thereof. (Amended 11-22-55.)

**SECTION 40. GENERAL POWERS; RESPONSIBILITY; AND LIABILITY**

The City of Philippi shall have all power and authority conferred upon any City within its classification by the general laws of the State of West Virginia and shall be subject to and accept all responsibilities and liability imposed upon it by the general law of West Virginia, all as contained in Chapter 8 of the official West Virginia Code. (Added 11-22-55.)

**SECTION 41. SEVERABILITY.**

These amendments to the Charter of the City of Philippi and each paragraph, section, sentence, clause or phrase is hereby declared to be severable and if any part, portion, paragraph, section, clause or phrase shall hereafter be declared unconstitutional or improper the remainder, nevertheless, shall be valid and enforceable. (Added 11-22-55.)



**City of Philippi**  
**Terms of Office**

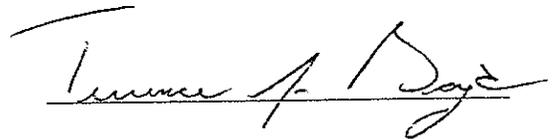
| <b>Name</b>           | <b>Title</b>   | <b>Term Begin Date</b> | <b>Term End Date</b> |
|-----------------------|----------------|------------------------|----------------------|
| ✓ David Chris Mulneix | Mayor          | 7/1/2008               | 6/30/2012            |
| ✓ Christie Allen      | Council Member | 7/1/2008               | 6/30/2012            |
| ✓ Terrence Boyd       | Council Member | 7/1/2008               | 6/30/2012            |
| ✓ Barbara Bryan       | Council Member | 7/1/2008               | 6/30/2012            |
| ✓ John Enz            | Council Member | 7/1/2008               | 6/30/2012            |
| Edward Iary           | Council Member | 7/1/2008               | 6/30/2012            |
| ✓ Tammy Stemple       | City Clerk     | 7/1/2008               | 6/30/2012            |

**OFFICER'S OATH**

STATE OF WEST VIRGINIA

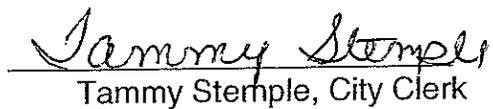
COUNTY OF BARBOUR, to wit:

I, Terrence Boyd, do solemnly swear that I will support the Constitution of the United States, the Constitution of West Virginia, and that I will faithfully discharge the duties of the office of City Council to which I have been elected to the best of my skill and judgment. So help me God.



Handwritten signature of Terrence A. Boyd in cursive script, written over a horizontal line.

Subscribed and sworn before the undersigned authority, this,  
the 1<sup>st</sup> day of July, 2008.



Handwritten signature of Tammy Sterple in cursive script, written over a horizontal line. Below the line, the text "Tammy Sterple, City Clerk" is printed.

**OFFICER'S OATH**

STATE OF WEST VIRGINIA

COUNTY OF BARBOUR, to wit:

I, Christie Allen, do solemnly swear that I will support the Constitution of the United States, the Constitution of West Virginia, and that I will faithfully discharge the duties of the office of City Council to which I have been elected to the best of my skill and judgment. So help me God.

Christie Allen

Subscribed and sworn before the undersigned authority, this,  
the 1<sup>st</sup> day of July, 2008.

Tammy Stemple  
Tammy Stemple, City Clerk

**OFFICER'S OATH**

STATE OF WEST VIRGINIA

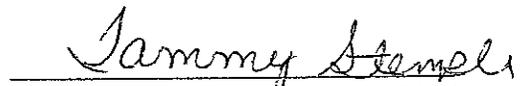
COUNTY OF BARBOUR, to wit:

I, John Enz, do solemnly swear that I will support the Constitution of the United States, the Constitution of West Virginia, and that I will faithfully discharge the duties of the office of City Council to which I have been elected to the best of my skill and judgment. So help me God.



A handwritten signature in cursive script, reading "John Enz", is written over a horizontal line.

Subscribed and sworn before the undersigned authority, this,  
the 1<sup>st</sup> day of July, 2008.



Tammy Stemple, City Clerk

A handwritten signature in cursive script, reading "Tammy Stemple", is written over a horizontal line. Below the line, the name "Tammy Stemple, City Clerk" is printed in a standard font.

**OFFICER'S OATH**

STATE OF WEST VIRGINIA

COUNTY OF BARBOUR, to wit:

I, Barbara Bryan, do solemnly swear that I will support the Constitution of the United States, the Constitution of West Virginia, and that I will faithfully discharge the duties of the office of City Council to which I have been elected to the best of my skill and judgment. So help me God.

Barbara S Bryan

Subscribed and sworn before the undersigned authority, this,  
the 1<sup>st</sup> day of July, 2008.

Tammy Stemple  
Tammy Stemple, City Clerk

**OFFICER'S OATH**

STATE OF WEST VIRGINIA

COUNTY OF BARBOUR, to wit:

I, Ed Larry, do solemnly swear that I will support the Constitution of the United States, the Constitution of West Virginia, and that I will faithfully discharge the duties of the office of City Council to which I have been elected to the best of my skill and judgment. So help me God.



A handwritten signature in cursive script, reading "Ed Larry", written over a horizontal line.

Subscribed and sworn before the undersigned authority, this,  
the 1<sup>st</sup> day of July, 2008.



A handwritten signature in cursive script, reading "Tammy Stemple", written over a horizontal line. Below the line, the text "Tammy Stemple, City Clerk" is printed.

**OFFICER'S OATH**

STATE OF WEST VIRGINIA

COUNTY OF BARBOUR, to wit:

I, Tamula Stemple, do solemnly swear that I will support the Constitution of the United States, the Constitution of West Virginia, and that I will faithfully discharge the duties of the office of City Clerk to which I have been elected to the best of my skill and judgment. So help me God.

Tamula Stemple

Subscribed and sworn before the undersigned authority, this,  
the 1<sup>st</sup> day of July, 2008.

David C. Mahon

**OFFICER'S OATH**

STATE OF WEST VIRGINIA

COUNTY OF BARBOUR, to wit:

I, David C. Mulneix, do solemnly swear that I will support the Constitution of the United States, the Constitution of West Virginia, and that I will faithfully discharge the duties of the office of Mayor to which I have been elected to the best of my skill and judgment. So help me God.

David C. Mulneix

Subscribed and sworn before the undersigned authority, this,  
the 1<sup>st</sup> day of July, 2008.

Tammy Stemple  
Tammy Stemple, City Clerk



CITY OF PHILIPPI

RESOLUTION ON OPEN GOVERNMENTAL PROCEEDINGS RULES

Pursuant to Chapter 6, Article 9A, Section 3 of the West Virginia Code, the Council of the City of Philippi does hereby adopt the following rules to make available, in advance, the date, time, place and agenda of all regularly scheduled meetings of the Council, and the date, time, place and purpose of all special meetings of the Council to the public and news media (except in the case of an emergency requiring immediate action) as follows:

1. Regular Meetings. A notice shall be posted and maintained by the Recorder at the front door or bulletin board of the City Hall of the date, time and place fixed and entered of record by Council for the holding of regularly scheduled meetings. In addition, a copy of the agenda for each regularly scheduled meeting shall be posted at the same location by the City Recorder not less than three (3) business days before such regular meeting is to be held. The agenda listing the matters requiring official action that may be addressed at the meeting may be amended up to two (2) business days prior to the meeting. If a particular regularly scheduled meeting is canceled or postponed, a notice of such cancellation or postponement shall be posted at the same location as soon as feasible after such cancellation or postponement has been determined.

2. Special Meetings. A notice shall be posted by the City Recorder at the front door or bulletin board of the City Hall not less than two (2) business days before a specially scheduled meeting is to be held, stating the date, time, place and purpose for which such special meeting shall be held. If the special meeting is canceled, a notice of such cancellation shall be posted at the same location as soon as feasible after such cancellation has been determined.

These rules regarding notice of meetings shall replace any and all previous rules heretofore adopted by Council.

Adopted this 6<sup>th</sup> day of January 2009

Sammy Stemple  
City Clerk

[SEAL]



CITY OF PHILIPPI  
(PHILIPPI MUNICIPAL WATER SYSTEM)

OF

PHILIPPI, WEST VIRGINIA 26416

RATES, RULES AND REGULATIONS FOR FURNISHING  
WATER

at Philippi, Barbour County, West Virginia and Vicinity

Filed with THE PUBLIC SERVICE COMMISSION  
of  
WEST VIRGINIA

---

Issued November 21, 2000

Effective for all service provided  
on and after December 4, 2000  
or as otherwise provided herein

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Issued by authority of an order of the  
Public Service Commission of West Virginia  
in Case No. 00-0989-W-MA final  
November 8, 2000 or as otherwise provided herein

Issued by City of Philippi  
(Philippi Municipal Water System)

By \_\_\_\_\_

\_\_\_\_\_  
Title

RULES AND REGULATIONS

- I. Rules and Regulations for the Government of Water Utilities, adopted by the Public Service Commission of West Virginia, and now in effect, and all amendments thereto and modifications thereof hereafter made by said Commission.

APPLICABILITY

Applicable in Philippi and vicinity, West Virginia

AVAILABILITY OF SERVICE

Available for general, domestic, commercial and industrial services; to colleges; and to hospitals

(A) RATE

|          |                |            |              |                   |
|----------|----------------|------------|--------------|-------------------|
| First    | 2,000 gallons  | \$4.68 net | (5.15 gross) | per 1,000 gallons |
| Next     | 3,000 gallons  | \$4.68 net | (5.15 gross) | per 1,000 gallons |
| Next     | 20,000 gallons | \$2.61 net | (2.87 gross) | per 1,000 gallons |
| All Over | 25,000 gallons | \$2.15 net | (2.37 gross) | per 1,000 gallons |

MINIMUM CHARGE

No bill shall be rendered for less than the following amounts, according to the size of the meter installed, to-wit:

|     |                         |                    |
|-----|-------------------------|--------------------|
| (A) | 5/8 inch meter, or less | \$ 9.36 per month  |
| (A) | 3/4 inch meter          | \$ 14.05 per month |
| (A) | 1 inch meter            | \$ 23.40 per month |
| (A) | 1 -1/4 inch meter       | \$ 34.20 per month |
| (A) | 1 -1/2 inch meter       | \$ 46.80 per month |
| (A) | 2 inch meter            | \$ 74.90 per month |
| (R) | 3 inch meter            | \$140.40 per month |
| (R) | 4 inch meter            | \$234.00 per month |
| (R) | 6 inch meter            | \$468.00 per month |

RESALE RATES

|     |                 |                           |
|-----|-----------------|---------------------------|
|     | Customer Charge | \$50.00 per month         |
| (A) | Usage Charge    | \$ 1.80 per 1,000 gallons |

DISCOUNTS

The difference between gross and nets above specified shall constitute a discount for the prompt payment if bill is paid in full on or before the 20th day after that on which the bill is rendered.

CUSTOMER DEPOSITS

Deposits shall not exceed one-twelfth (1/12) of the estimated annual charge to the customer for service.

- (A) Indicates increase
- (R) Indicates reduction

RECONNECTION CHARGE

When service is terminated to a customer for nonpayment of bills, ten dollars (\$10.00) shall be charged for reconnection.

(A,C) CONNECTION CHARGE

For each separate connection to the City of Philippi Water System a connection fee of three hundred dollars (\$300.00) shall be charged.

(N) DELAYED PAYMENT PENALTY

The above schedule is net. On all accounts not paid in full within twenty (20) days of date of bill, ten percent (10%) will be added to the net amount shown.

(N) LEAK ADJUSTMENT INCREMENT

\$0.46 per 1,000 gallons to be used when the bill reflects unusual consumption which can be attributed to eligible leakage on the customer's side of the meter. This rate is used to calculate consumption above the customer's historical average usage.

FIRE PROTECTION SCHEDULE

APPLICABILITY

Applicable in Philippi and vicinity, West Virginia.

AVAILABILITY OF SERVICE

Available for private and public fire protection service.

RATE

Private Fire Protection

Hydrants: Eighty-seven dollars and fifty cents (\$87.50) per hydrant, per year, to be paid in twelve monthly installments.

Sprinkler System: Thirty dollars (\$30.00) for 250 sprinkler heads or less, per year, to be paid in twelve monthly installments. Each additional sprinkler head over 250 shall be twelve cents (\$0.12) per head per year.

Public Fire Protection - City of Philippi

Three Thousand Five Hundred Dollars (\$3,500.00) per annum, payable in twelve monthly installments. The City of Philippi is to be entitled to as many fire hydrants as it may deem necessary; the said city to furnish said hydrants and to pay for the installation thereof, and the water department to maintain said hydrants.

- (A) Indicates increase
- (C) Indicates change in text
- (N) Indicates new

ORIGINAL

ENTERED

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08 600 Page

PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON

Issued: October 20, 2000

CASE NO. 00-0989-W-MA

CITY OF PHILIPPI,  
a municipal corporation.

Investigation and suspension of increase  
in water rates and charges as a result  
of petitions filed in accordance with  
West Virginia Code §24-2-4b.

CORRECTIVE ORDER

On October 19, 2000, the undersigned Administrative Law Judge issued a Recommended Decision approving rate increases. The approved tariff was attached. In the attachment it was erroneously provided that the Connection Charge was "three hundred fifty dollars (\$350)." The approved tariff must be corrected to provide, "three hundred dollars (\$300)." The attached Approved Tariff, Appendix A hereto, has been corrected.

IT IS, THEREFORE, ORDERED that the approved tariff be corrected, as provided in Appendix A hereto.

IT IS FURTHER ORDERED that the Executive Secretary of the Commission serve copies of this order upon the parties of record by United States Certified Mail, return receipt requested, and upon Commission Staff by hand delivery.



Sunya Anderson  
Administrative Law Judge

SA:s  
000989ad.wpd

*Am...*

CITY OF PHILIPPI  
CASE NO. 00-0989-W-MA

APPROVED RATES

APPLICABILITY

Applicable in Philippi and vicinity, West Virginia.

AVAILABILITY OF SERVICE

Available for general, domestic, commercial and industrial services; to colleges; and to hospitals.

RATE

First 2,000 gallons \$4.68 net (5.15 gross) per 1,000 gallons  
Next 3,000 gallons \$4.68 net (5.15 gross) per 1,000 gallons  
Next 20,000 gallons \$2.61 net (2.87 gross) per 1,000 gallons  
All Over 25,000 gallons \$2.15 net (2.37 gross) per 1,000 gallons

MINIMUM CHARGE

No bill shall be rendered for less than the following amounts, according to the size of the meter installed, to-wit:

|                         |                    |
|-------------------------|--------------------|
| 5/8 inch meter, or less | \$ 9.36 per month  |
| 3/4 inch meter          | \$ 14.05 per month |
| 1 inch meter            | \$ 23.40 per month |
| 1-1/4 inch meter        | \$ 34.20 per month |
| 1-1/2 inch meter        | \$ 46.80 per month |
| 2 inch meter            | \$ 74.90 per month |
| 3 inch meter            | \$140.40 per month |
| 4 inch meter            | \$234.00 per month |
| 6 inch meter            | \$468.00 per month |

RESALE RATES

|                 |                           |
|-----------------|---------------------------|
| Customer Charge | \$50.00 per month         |
| Usage Charge    | \$ 1.80 per 1,000 gallons |

DISCOUNTS

The difference between gross and nets above specified shall constitute a discount for the prompt payment if bill is paid in full on or before the 20th day after that on which the bill is rendered.

CUSTOMER DEPOSITS

Deposits shall not exceed one-twelfth (1/12) of the estimated annual charge to the customer for service.

RECONNECTION CHARGE

When service is terminated to a customer for nonpayment of bills, ten dollars (\$10.00) shall be charged for reconnection.

CONNECTION CHARGE

For each separate connection to the City of Philippi Water System a connection fee of three hundred dollars (\$300.00) shall be charged.

DELAYED PAYMENT PENALTY

The above schedule is net. On all accounts not paid in full within twenty (20) days of date of bill, ten percent (10%) will be added to the net amount shown.

LEAK ADJUSTMENT INCREMENT

\$0.46 per 1,000 gallons to be used when the bill reflects unusual consumption which can be attributed to eligible leakage on the customer's side of the meter. This rate is used to calculate consumption above the customer's historical average usage.

FIRE PROTECTION SCHEDULE

Applicable in Philippi and vicinity, West Virginia.

AVAILABILITY OF SERVICE

Available for private and public fire protection service.

RATE

Private Fire Protection

Hydrants:

Eighty-seven dollars and fifty cents (\$87.50) per hydrant, per year, to be paid in twelve monthly installments.

Sprinkler System:

Thirty dollars (\$30.00) for 250 sprinkler heads or less, per year, to be paid in twelve monthly installments. Each additional sprinkler head over 250 shall be twelve cents (\$0.12) per head per year.

Public Fire Protection - City of Philippi

Three Thousand Five Hundred Dollars (\$3,500.00) per annum, payable in twelve monthly installments. The City of Philippi is to be entitled to as many fire hydrants as it may deem necessary; the said city to furnish said hydrants and to pay for the installation thereof, and the water department to maintain said hydrants.

PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON

Issued: October 19, 2000

**FINAL**  
11-8-00  
*reconnected 10-20-00*

CASE NO. 00-0989-W-MA

CITY OF PHILIPPI,  
a municipal corporation.

Investigation and suspension of increase  
in water rates and charges as a result  
of petitions filed in accordance with  
West Virginia Code §24-2-4b.

RECOMMENDED DECISION

On June 21, 2000, the City of Philippi (Philippi) adopted an ordinance increasing its water rates as follows, to be effective on August 5, 2000: residential, by 28.46%; commercial, by 21.44%; industrial, by 19.43%, and resale, by 20.38%. The rates would increase its annual revenue by \$112,760, or 23.14%. A copy of the ordinance was filed with the Public Service Commission (Commission).

On June 16, 2000, Century Volga Public Service District (Century Volga), by its chairman, Walter S. Wagner, and Central Barbour Public Service District (Central Barbour), by its chairman, Stewart Jones, filed with the Commission petitions protesting the increase. They stated that the City had imposed on them a rate increase of 18%, effective July 1, 1997.

On June 29, 2000, the Commission issued an Order invoking jurisdiction pursuant to W.Va. Code §24-2-4b.<sup>1</sup> The Commission also made Philippi a respondent to this proceeding; ordered suspension of Philippi's water rates until 12:01 a.m., December 4, 2000, unless otherwise ordered by the Commission; ordered Commission Staff to submit its report on or before September 22, 2000;

<sup>1</sup>W.Va. Code §24-2-4b provides, in pertinent part, that the Commission may review a municipal ordinance raising utility rates when a customer of the municipal utility who resides outside the corporate limits and is affected by the change in rates and charges presents to the Commission a petition alleging discrimination between customers within and without the municipal boundaries. See Code §24-2-4b(c)(2).

*MSD*

and referred this matter to the Division of Administrative Law Judges Division (ALJ Division) for its decision on or before November 3, 2000.

On July 5, 2000, Central Barbour, by its chairman, filed a letter alleging that the resale rate increase would be excessive and discriminatory. On July 13, 2000, Century Volga, by its chairman, filed a like protest.

On July 25, 2000, Staff Attorney Ronald E. Robertson, Jr., filed an Initial Joint Staff Memorandum, with attached memorandum from Sean P. Ireland, Utilities Analyst II, Water and Wastewater Division, and James Spurlock, Technical Analyst, Engineering Division. Staff stated that it would begin its field audit in the near future.

On August 9, 2000, Chief ALJ Melissa K. Marland issued a Procedural Order assigning this matter to the undersigned ALJ. On the same date the undersigned ALJ issued a Procedural Order scheduling this matter for hearing on September 27, 2000. Other orders consistent therewith were entered.

On August 14, 2000, the undersigned ALJ issued a Procedural Order rescheduling this matter for hearing at 10:00 a.m. on September 28, 2000, in Council Chambers, City Building, 108 N. Main Street, Philippi, West Virginia; stating that a public service district must be represented by counsel at hearing; and ordering Philippi to cause to be published a copy of an attached Notice of Hearing in Barbour County, which included the statement, "The water rates of the City of Philippi may be increased, decreased, or left unchanged at the conclusion of these proceedings."

On September 22, 2000, Mr. Robertson filed the Staff Report, prepared by Messrs. Ireland, Spurlock, and Charles Knurek, Senior Utilities Analyst, Water and Wastewater Division.

Hearing was held as scheduled. Robert R. Rodecker, Esq., and Mr. Robertson appeared on behalf of Philippi and Staff, respectively. The manager of Central Barbour, Valli Davis, was the spokesperson for Central Barbour, and the manager of Century Volga, Linda Procell, was the spokesperson for Century Volga. No one from the public appeared at the hearing. (Tr. 8). An affidavit establishing publication of the Notice of Hearing on September 13, 2000, in the Barbour Democrat was entered into evidence as Philippi's Exhibit 1, and the Staff Report was entered into evidence as Staff Exhibit 1. Mr. Rodecker stated that Philippi accepted the recommendations contained in the Staff Report. (Tr. 7). Ms. Davis indicated that a concern of Central Barbour had been addressed by the inclusion of a leak adjustment in the Staff-recommended tariff. She stated that Central Barbour had never been happy with the customer charge of \$50.00, but admitted that the charge has been in place since 1991. (Tr. 14). Ms. Procell stated that Century Volga's concern that the rates of the various customers might be proportionately unfair was addressed by Staff's class cost of service study. (Tr. 16). She further stated that a problem between Century Volga and Philippi, that Century Volga sells back to Philippi some water at a lower rate than it pays Philippi for the water, had been resolved off the record; it had been agreed that the sell back rate would be the same as the resale rate. (Tr. 16). Mr. Rodecker concurred, stating that the agreement would be reduced to writing. (Tr. 24). Ms. Procell stated generally that Century Volga considers the recommended resale rate to be excessive. (Tr. 16-18). Asked by the undersigned ALJ whether Century Volga considers

the rates discriminatory, she asserted that the pumping charge that Century Volga pays renders what it pays Philippi to be discriminatory. (Tr. 17).

Mr. Spurlock explained that presently Philippi has an unaccounted water rate of 31%, which is rather high, but it is making improvements to its system to lower that rate, which he described. (Tr. 9-13, 20). He explained his role of studying the demands of the various classes. (Tr. 21-23). Mr. Knurek testified in detail how he determined what were the revenue requirements of the various classes, and how the rates for the various classes were based thereon. (Tr. 27-34). He concluded by clarifying that the revenues from the residential and resale classes will increase approximately 32%; the revenue increase for the commercial class will be approximately 29.6%, and the revenue increase for the industrial class will be the highest, at 54%. (Tr. 42). Upon questioning from Mr. Rodecker, Mr. Knurek testified that some of the wording of the Staff-recommended tariff was incorrect, and it was agreed that two provisions should be moved. (Tr. 36). Those corrections have been made on Appendix A.

#### DISCUSSION

There was no showing of discrimination in the rates. The Staff-recommended rates will be adopted.

#### FINDINGS OF FACT

1. On June 21, 2000, the City of Philippi adopted an ordinance raising its water rates, to become effective August 5, 2000. Included in the increases was raising the rate for resale customers from \$1.365 to \$1.65 per 1,000 gallons. (See June 26, 2000 filing).
2. On June 16, 2000, Century Volga Public Service District and Central Barbour Public Service District, pursuant to W. Va. Code §24-2-4b(c)(2), filed petitions protesting the increase in the resale rate. (See petitions).
3. By Order of June 29, 2000, the Commission suspended Philippi's ordinance until December 4, 2000, unless ordered otherwise by the Commission. (See order).
4. Commission Staff recommended increasing Philippi's rates as provided in Appendix A hereto, including the resale rate of \$1.80 per 1,000 gallons, as well as a leak adjustment rate of \$0.46 per 1,000 gallons. (See Staff Exhibit 1).
5. A Notice of Hearing was published on September 13 and 20, 2000, in the Barbour Democrat, and no member of the public appeared at the hearing, which was held September 27, 2000.
6. The City of Philippi accepted the Staff-recommended rates. (See Tr. 7).
7. The assertions of Century Volga Public Service District and Central Barbour Public Service District of discrimination related to the \$50.00 customer charge, which has been in place since 1991. (See Tr. 14-17).

## CONCLUSIONS OF LAW

1. No evidence was presented supportive of the assertions of Century Volga Public Service District and Central Barbour Public Service District that the Staff-recommended rates were discriminatory. It is furthermore appropriate to approve the Staff-recommended rates, as provided in Appendix A, because they are reasonable and no member of the public objected to them.

2. The Staff-recommended leak adjustment increment rate is consistent with Rule 4.4.3. of the Commission's Rules and Regulations for the Government of Water Utilities.

## ORDER

IT IS, THEREFORE, ORDERED that the Staff-recommended rates, as provided in Appendix A hereto, be approved, to become effective for all service provided on and after December 4, 2000.

IT IS FURTHER ORDERED that those ordinance sections, rates and clauses addressed in the Staff-recommended tariff be approved, to replace those of the amended ordinance establishing the water rates of the City of Philippi.

IT IS FURTHER ORDERED that the City of Philippi file with the Commission's Tariff Office an original and five (5) copies of its tariff implementing the approved rates, as provided in Appendix A, no later than thirty (30) days after the date that it becomes effective.

IT IS FURTHER ORDERED that this matter be removed from the Commission's docket of open cases.

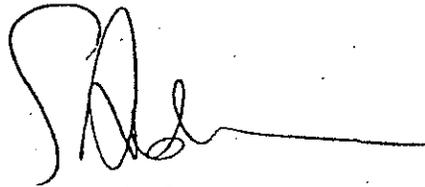
IT IS FURTHER ORDERED that the Executive Secretary is hereby ordered to serve a copy of this order upon the Commission by hand delivery, and upon all parties of record by United States Certified Mail, return receipt requested.

Leave is hereby granted to the parties to file written exceptions supported by a brief with the Executive Secretary of the Commission within fifteen (15) days of the date this order is mailed. If exceptions are filed, the parties filing exceptions shall certify to the Executive Secretary that all parties of record have been served said exceptions.

If no exceptions are so filed this order shall become the order of the Commission, without further action or order, five (5) days following the expiration of the aforesaid fifteen (15) day time period, unless it is ordered stayed or postponed by the Commission.

Any party may request waiver of the right to file exceptions to an Administrative Law Judge's order by filing an appropriate petition in writing with the Secretary. No such waiver will be effective until approved by order of the Commission, nor shall any such waiver operate to make any

Administrative Law Judge's Order or Decision the order of the Commission sooner than five (5) days after approval of such waiver by the Commission.



Sunya Anderson  
Administrative Law Judge

SA:s  
000989ac.wpd

CITY OF PHILIPPI  
CASE NO. 00-0989-W-MA

APPROVED RATES

APPLICABILITY

Applicable in Philippi and vicinity, West Virginia.

AVAILABILITY OF SERVICE

Available for general, domestic, commercial and industrial services; to colleges; and to hospitals.

RATE

|          |                |   |
|----------|----------------|---|
| First    | 2,000 gallons  | \$4.68 net (5.15 gross) per 1,000 gallons |
| Next     | 3,000 gallons  | \$4.68 net (5.15 gross) per 1,000 gallons |
| Next     | 20,000 gallons | \$2.61 net (2.87 gross) per 1,000 gallons |
| All Over | 25,000 gallons | \$2.15 net (2.37 gross) per 1,000 gallons |

MINIMUM CHARGE

No bill shall be rendered for less than the following amounts, according to the size of the meter installed, to-wit:

|                         |                    |
|-------------------------|--------------------|
| 5/8 inch meter, or less | \$ 9.36 per month  |
| 3/4 inch meter          | \$ 14.05 per month |
| 1 inch meter            | \$ 23.40 per month |
| 1-1/4 inch meter        | \$ 34.20 per month |
| 1-1/2 inch meter        | \$ 46.80 per month |
| 2 inch meter            | \$ 74.90 per month |
| 3 inch meter            | \$140.40 per month |
| 4 inch meter            | \$234.00 per month |
| 6 inch meter            | \$468.00 per month |

RESALE RATES

|                 |                           |
|-----------------|---------------------------|
| Customer Charge | \$50.00 per month         |
| Usage Charge    | \$ 1.80 per 1,000 gallons |

DISCOUNTS

The difference between gross and nets above specified shall constitute a discount for the prompt payment if bill is paid in full on or before the 20th day after that on which the bill is rendered.

CUSTOMER DEPOSITS

Deposits shall not exceed one-twelfth (1/12) of the estimated annual charge to the customer for service.

RECONNECTION CHARGE

When service is terminated to a customer for nonpayment of bills, ten dollars (\$10.00) shall be charged for reconnection.

CONNECTION CHARGE

For each separate connection to the City of Philippi Water System a connection fee of three hundred fifty dollars (\$350.00) shall be charged.

DELAYED PAYMENT PENALTY

The above schedule is net. On all accounts not paid in full within twenty (20) days of date of bill, ten percent (10%) will be added to the net amount shown.

LEAK ADJUSTMENT INCREMENT

\$0.46 per 1,000 gallons to be used when the bill reflects unusual consumption which can be attributed to eligible leakage on the customer's side of the meter. This rate is used to calculate consumption above the customer's historical average usage.

FIRE PROTECTION SCHEDULE

Applicable in Philippi and vicinity, West Virginia.

AVAILABILITY OF SERVICE

Available for private and public fire protection service.

RATE

Private Fire Protection

Hydrants:

Eighty-seven dollars and fifty cents (\$87.50) per hydrant, per year, to be paid in twelve monthly installments.

Sprinkler System:

Thirty dollars (\$30.00) for 250 sprinkler heads or less, per year, to be paid in twelve monthly installments. Each additional sprinkler head over 250 shall be twelve cents (\$0.12) per head per year.

Public Fire Protection - City of Philippi

Three Thousand Five Hundred Dollars (\$3,500.00) per annum, payable in twelve monthly installments. The City of Philippi is to be entitled to as many fire hydrants as it may deem necessary; the said city to furnish said hydrants and to pay for the installation thereof, and the water department to maintain said hydrants.

**AN AMENDMENT TO THE ORDINANCE OF THE CITY OF PHILIPPI, WEST VIRGINIA, PROVIDING FOR AND AUTHORIZING THE ESTABLISHMENT OF WATER RATES FOR THE PURPOSE OF DEFRAYING THE COST OF IMPROVEMENTS TO THE WATERWORKS SYSTEM IN THE CITY OF PHILIPPI AND PROVIDING FOR REVENUE FOR THE CONTINUING MAINTENANCE THEREOF**

WHEREAS, the City of Philippi in Barbour County, West Virginia, has deemed and declared it advisable and necessary to operate such water system in a businesslike manner and as an incident to such operation, it is necessary to establish just and reasonable rates and rentals to defray the cost of the system and the maintenance thereof.

NOW, THEREFORE BE IT ENACTED that the City Council of Philippi in Barbour County, West Virginia, does hereby amend the Water Ordinance to establish the following to be the minimum water rates to be charged in connection with the water system usage in the City of Philippi.

**PROPOSED GENERAL TARIFF**

**APPLICABILITY**

Applicable in Philippi and vicinity, West Virginia

**AVAILABILITY OF SERVICE**

Available for general domestic, commercial and industrial services; to colleges; and to hospitals.

**RATE**

|       |                |             |                                   |
|-------|----------------|-------------|-----------------------------------|
| First | 2,000 gallons  | \$ 5.00 net | (\$ 5.50 gross) per 1,000 gallons |
| Next  | 3,000 gallons  | \$ 4.30 net | (\$ 4.73 gross) per 1,000 gallons |
| Next  | 20,000 gallons | \$ 2.40 net | (\$ 2.64 gross) per 1,000 gallons |
| Over  | 25,000 gallons | \$ 1.65 net | (\$ 1.82 gross) per 1,000 gallons |

**MINIMUM CHARGE**

No bill will be rendered for less than the following amounts, according to the size of meter installed, to-wit:

|       |                     |           |           |
|-------|---------------------|-----------|-----------|
| 5/8   | inch meter, or less | \$ 7.90   | per month |
| 3/4   | inch meter          | \$ 10.90  | per month |
| 1     | inch meter          | \$ 18.70  | per month |
| 1-1/4 | inch meter          | \$ 29.50  | per month |
| 1-1/2 | inch meter          | \$ 43.90  | per month |
| 2     | inch meter          | \$ 72.40  | per month |
| 3     | inch meter          | \$ 169.90 | per month |
| 4     | inch meter          | \$ 299.90 | per month |
| 6     | inch meter          | \$ 663.90 | per month |

**PAGE 2 - AMENDMENT TO WATER RATE ORDINANCE****PROPOSED-RESALE TARIFF**

|                 |                           |
|-----------------|---------------------------|
| Customer Charge | \$ 50.00 per month        |
| Usage Charge    | \$ 1.65 per 1,000 gallons |

**DISCOUNT**

The difference between gross and nets above specified shall constitute a discount for the prompt payment if bill is paid in full on or before the 20th day after that on which the bill is rendered.

**CUSTOMER DEPOSITS**

Deposits shall not exceed one-twelfth (1/12) of the estimated annual charge to the customer for service.

**CONNECTION CHARGE**

For each separate connection to the City of Philippi Water System, within its corporate limits, a connection fee of two hundred fifty dollars (\$ 250.00) shall be charged.

For each separate connection to the City of Philippi Water System, outside its corporate limits, a connection fee of three hundred dollars (\$ 300.00) shall be charged.

**RE-CONNECTION CHARGE**

When service is terminated to a customer for nonpayment of bills, ten dollars (\$10.00) shall be charged for re-connection.

**FIRE PROTECTION SCHEDULE**

Applicable in Philippi and vicinity, West Virginia

**AVAILABILITY OF SERVICE**

Available for price and public fire protection service.

**RATE****Private Fire Protection**

|                   |  |
|-------------------|--|
| Hydrants:         | Eighty-seven dollars and fifty cents (\$87.50) per hydrant, per year, to be paid in twelve monthly installments.   |
| Sprinkler System: | Thirty dollars (\$30.00) for 250 sprinkler heads or less, per year, to be paid in twelve monthly installments. Each additional sprinkler head over 250 shall be twelve cents (\$0.12) per head per year. |

Public Fire Protection - City of Philippi:

Three Thousand Eight Hundred Dollars (\$3,800.00) per annum, payable in twelve monthly installments. The City of Philippi to be entitled to as many fire hydrants as it may deem necessary; the said City to furnish said hydrants and to pay for the installation thereof, and the water department to maintain said hydrants.

DELAYED PAYMENT PENALTY

The above schedule is net. On all accounts not paid in full within twenty (20) days of date of bill, ten percent (10%) will be added to the net amount shown.

RULES AND REGULATIONS

1. Rules and Regulations for the Government of Water Utilities, adopted by the Public Service Commission of West Virginia, and now in effect, and all amendments thereto and modifications thereof hereafter made by said Commission.
2. Each Consumer shall be metered and billed separately.
3. Owners or landlords of building occupied by two or more householders or tenants occupying separate apartments, storerooms or offices, shall be required to install pipe lines to connect to the meter installed at the street curb line at their own cost and expense in order that each householder or tenant occupying such separate apartment, storeroom or office in said building can be served through a separate meter.
4. Where it is not practicable for the owner or landlord, or the owner or landlord refuses, to install pipe lines so that each householder or tenant occupying a separate apartment, storeroom or office can be served by separate meter, the owner or landlord shall pay and be responsible for the water bills for all water furnished to the several householders or tenants occupying separate apartments, storerooms or offices in said building.
5. Where the condition described in Rule 4 above exists, the minimum charge as provided in the schedule attached shall apply to each of said householders or tenants occupying separate apartments, storerooms or offices, and the minimum charge for the building shall be determined by multiplying the number of such householders or tenants occupying separate apartments, storerooms or offices by said minimums charge. If the minimum charge thus arrived at is greater than an amount ascertained by applying the schedule of rates herein set out to the total quantity of water consumed, as metered, in such building, the owner or landlord shall be charged for and shall pay said minimum charge for the building; provided, however, that if such minimum charge thus arrived at is less than the commodity rate ascertained by computing the total amount of water metered and supplied to the building in question, then the owner or landlord shall pay the amount ascertained by applying the schedule of rates herein to the total quantity of water used in such building.
6. In no instance shall two or more buildings be supplied with water through one meter.

**PAGE 4 - AMENDMENT TO WATER RATE ORDINANCE**

/Caton N. Hill, Jr.

**Caton N. Hill, Jr, Mayor  
City of Philippi**

**ATTEST:**

/Alana Fletcher Maddox

**Alana Fletcher Maddox  
City Manager**

**1st reading: June 6, 2000**

**2nd Reading: June 21, 2000**

**Adoption: June 21, 2000**



COUNCIL MINUTES

The Philippi City Council met in regular session on Tuesday, June 6, 2000, in the Council Chambers at City Hall.

In attendance: Mayor Caton N. Hill, Jr., City Clerk Doris J. Mundy, Councilmen: Burton Criss, David Lewis, Tommy Poling, & Bob Wilkins. Also attending: City Manager Alana Maddox, Karen Weaver, Buddy Shreve, Whitney Kines, Dennis Fisher, Richard Moars, Jeff Walters, Tammy Stemple, Don Criss, Barbara Bryan, John Cvechko, Jeanne Poling, Gladolene Burner, Andrew & Edith Trader, Jerry Mouser, Jack Murphy, John Pyles, Carl Nestor, Bretzel Allen, & Glenn Rightsman.

The following minutes were approved as written: May 3, 10, 22, & 24.

**Ordinance, Resolutions & Contract**

Budget revision for the General Fund was presented to council for adoption. Councilman Criss made a motion to adopt the budget revision for the General Fund. Councilman Lewis seconded the motion. By roll-call vote, all members present voted to adopt the revision. Motion passed.

Electric Department Budget for FY2001 was presented to council for adoption. Councilman Poling made a motion to adopt the Electric Budget. Councilman Wilkins seconded the motion. By roll-call vote, all members present voted to adopt the budget. Motion passed.

Sewer Department Budget for FY2001 was presented to council for adoption. Councilman Lewis made a motion to adopt the Sewer Budget. Councilman Wilkins seconded the motion. By roll-call vote, all members present voted to adopt the budget. Motion passed.

A Supplement Resolution for the Electric Bond, with County-wide investments, was presented to council for adoption. Councilman Criss made a motion to adopt the Resolution. Councilman Poling seconded the motion. By roll-call vote, all members present voted to adopt the Resolution. Motion passed.

**Bids**

Truck for Public Works Director tabled until State contracts are awarded. Transfer truck bid tabled.

Police cruiser bids were presented to council for approval. Councilman Poling made a motion to accept the lowest bid for vehicle available. Councilman Criss seconded the motion. By roll-call vote, all members present voted to approve the purchase. Motion passed.

Reports were presented to council from City Engineer Fisher who reported the Railroad Siding at the Industrial Park has been completed. Opportunity Builders has provided the Planning Commission with site plans.

Director of Public Works Shreves reported on the FEMA houses which are being dismantled. Required due to the by-pass, water lines have been changed and contractors are in process of moving the sewer lines.

Patrolman Jeff Walters presented the monthly report from the Police Department. He reported five members of the Task Force assisted the police department during the Blue & Gray and no officers were required to work overtime. Council requested letters be sent to those members of the Task Force expressing councils appreciation for their contribution. Walters noted the department has been certified as a training agency and is working with the Municipal Court to start a traffic school.

City Manager Maddox reported a new roof has been installed at the Dayton Park Pavilion. The old backstop has been removed from the North Philippi Park and a new one will be installed.

Summer employees painted the playground equipment at the NP Park. Attended the ribbon-cutting for two new businesses. Attended a seminar on Waste and Water. On July 5th, the Corps of Engineers will present their lease cost plan for helping with flood mitigation.

#### Old Business

Appointment of a BC-Online Board to serve as an advisory group as follows: Bob Wilkins, Chairman, Dianna Wright, Clarence Wright, & Rob Boyer. A fifth person to be appointed.

#### New Business

Parking - Maddox's request to raise overdue parking fine from \$1.00 to \$5.00 was tabled

Appointments to Tri-City Power Authority tabled.

The following Ordinance was presented to council for adoption:

AN AMENDMENT TO THE ORDINANCE OF THE CITY OF PHILIPPI, WEST VIRGINIA PROVIDING FOR AND AUTHORIZING THE ESTABLISHMENT OF WATER RATES FOR THE PURPOSE OF DEFRAYING THE COST OF IMPROVEMENTS TO THE WATERWORKS SYSTEM IN THE CITY OF PHILIPPI AND PROVIDING FOR REVENUE FOR THE CONTINUING MAINTENANCE THEREOF;

AN ORDINANCE ESTABLISHING AND FIXING RATES, FEES, CHARGES AND DELAYED PAYMENT PENALTY FOR SERVICE TO CUSTOMERS OF THE WATER SYSTEM OF THE CITY OF PHILIPPI, WEST VIRGINIA.

Councilman Wilkins made a motion to adopt the Ordinance on first reading. Councilman Lewis seconded the motion. By roll-call votes members voted as follows: Councilman Criss - abstained; Councilman Poling - no; Councilman Wilkins - yes; Councilman Lewis - yes; Mayor Hill - yes. Motion passed to seconded reading on June 21, 2000, 7:00 p.m.

Councilman Poling requested a letter be sent to J. D. Long expressing councils appreciation for the work and upkeep he has contributed over the years at the North Philippi Park. Mr. Long has accepted the position of Athletic Director at Alderson-Broadbudd College.

Councilman Criss called for council to go into Executive Session to discuss a personnel matter.

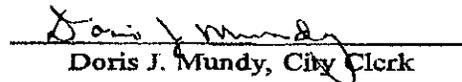
Council returned from the Executive Session at 9:15 p.m.

Councilman Criss made a motion that the present council authorize the raise for the City Manager effective September 1st. Councilman Poling seconded the motion. By roll-call vote, members voted as follows: Councilman Criss - yes; Councilman Poling - yes; Councilman Wilkins - no; Councilman Lewis - no; Mayor Hill - no. Motion failed.

There being no further business to come before council the meeting adjourned.



Caton N. Hill, Jr., Mayor



Doris J. Mundy, City Clerk

PUBLIC HEARING

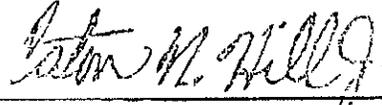
The Philippi City Council held a Public Hearing on Wednesday, June 21, 2000, in the basement of the City Building to discuss and hear comments on the proposed water rate increase.

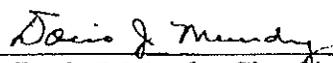
In attendance: Glen Rightson, Southern Engineering; Michelle Klekovic & Lise Sibicky, of Burgess & Niple; E. E. Bryan, Harold Cochran, Bretzel Allen, Carl Nestor, John Pyles, Jeanne Poling, Barbara Wilson, Anna Hesse, R. Hesse, Jerry Mouser, Larry Norris, Tim Lach, Valli Davis, Buddy Shreve, Gladolene Burner, Jerry Burner, Amelia Mouser, Mary Jane Ludwick, Barbara Bryan, John Cvechko, Charles Phillips, Karen Weaver, Carl Radcliff, Danny Lewis, Caton Hill, Doris Mundy, Tommy Poling, & City Manager Alana Maddox.

Glen Rightson explained to those in attendance the need for the water rate increase and accepted comments and questions.

Michelle Klekovic & Lise Sibicky explained their finding and comments on the need to provide additional revenue for debt coverage (long & short term) and increase O&M costs associated with the water treatment plant upgrades.

Following question and answer session, the meeting adjourned at 7:20 p.m.

  
\_\_\_\_\_  
Caton N. Hill, Jr., Mayor

  
\_\_\_\_\_  
Doris J. Mundy, City Clerk

## COUNCIL MINUTES

Following a Public Hearing held to discuss the proposed water rate increase, the Philippi City Council met in regular session on Wednesday, June 21, 2000, in the Council Chambers at City Hall.

In attendance: Mayor Caton N. Hill, Jr., City Clerk Doris J. Mundy, Councilmen: David Lewis, Tommy Poling, & Bob Wilkins. Also attending, City Manager Alana Maddox, Karen Weaver, Danny Lewis, Barbara Bryan, John Cvcchko, Charles Phillips, Jeann Poling, Dorothy Hayhurst, Gladolene & Jerry Burner, Carl Nestor, John Pyles, Bretzel Allen, Jerry Mouser, and Glenn Wrightson.

Minutes from the June 6th meeting were approved as written. Councilman Poling pointed out the fact that his request for speed limit signs on Maple Avenue, was left out of the minutes.

#### Ordinances, Resolutions, & Contract

Draw down request for Small Cities Block Grant 002 was presented to council for approval, as follows: Administration - \$727.87; CARE Brownton - \$18,019.99; CARE Chestnut Ridge - \$2030.97; Laurel Mt. Battlefield - \$583.96; Philippi Industrial Part - \$72,205.87; TOTAL - \$94,468.06. Councilman Wilkins made a motion to approve the draw down request. Councilman Lewis seconded the motion. By roll-call vote, all members present voted to approve the draw down. Motion passed.

Draw down request for Small Cities Block Grant 001 was presented to council for approval, as follows: Administration - \$142.85. Councilman Lewis made a motion to approve the draw down request. Councilman Poling seconded the motion. By roll-call vote, all members present votes to approve the draw down. Motion passed.

The seconded reading of the water rate proposal was presented to council for adoption. (A copy of the Ordinance is attached to the minutes). Councilman Lewis made a motion to adopt the water rate proposal. Councilman Wilkins seconded the motion. By roll-call vote, all members present voted to adopt the water rates. Motion passed.

Mayor Hill noted that he had received copies of letters written to the Public Service Commission, in protest of the water rate increase, from the Central Barbour Public Service District and the Century-Volga Public Service District.

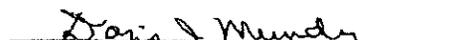
Mayor Hill recognized Councilman Lewis, who has served on council for twelve years and is leaving to pursue employment in Putman County.

Mayor Hill recognized Councilman Poling, who has served on council for twenty years.

Mayor Hill recognized City Clerk Mundy, who has served on council for eight years and did not seek re-election.

There being no further business to come before council, the meeting adjourned.

  
Caton N. Hill, Jr., Mayor

  
Doris J. Mundy, City Clerk



# OFFICE OF THE BARBOUR DEMOCRAT

I, ROBERT A. BYRNE, Editor of the BARBOUR DEMOCRAT, a weekly newspaper published in the City of Philippi, County of Eckhart, State of West Virginia, do hereby certify that the annexed:

## LEGAL NOTICE

was duly printed in said paper two successive weeks commencing on Wednesday, the 31th day of June, 1900.

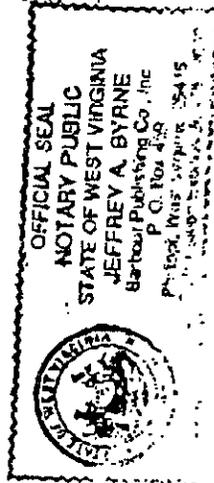
GIVEN under my hand at Philippi, West Virginia, this 14th day of June, 1900.

*Robert A. Byrne*  
 Editor

Printer's Fee ..... \$33.53

STATE OF WEST VIRGINIA, COUNTY OF BARBOUR:

Subscribed before me this 14th day of June, 1900



*Jefferey A. Byrne*  
 NOTARY PUBLIC  
 My Commission Expires July 29, 1903

## PUBLIC NOTICE OF PROPOSED CHANGE IN RATES

Notice is hereby given pursuant to West Virginia Code Section 8-11-4, that the City Council of Philippi has authorized the rate of proposed increase in the rates for water and sewer service to our citizens in the City of Philippi and surrounding areas and is proposing the following rates:

AN ORDINANCE ESTABLISHING FAN FIXING RATES, FEES, CHARGES AND DELAYED PAYMENT PENALTY FOR SERVICE TO CUSTOMERS OF THE WATER SYSTEM OF THE CITY OF PHILIPPI, WEST VIRGINIA

Said rates or charges are necessary to be raised and operated.

The proposed increase in rates and charges will become effective 15 days after the date of the adoption of the same unless otherwise ordered by the Public Service Commission and will produce approximately \$172,760 annually in additional revenue, an increase of 24.13%. The average monthly bill for the various classes of customers will be changed as follows:

|             | (DECREASE) | (INCREASE) |
|-------------|------------|------------|
| Residential | \$ 3.70    | 28.45%     |
| Commercial  | 1 425      | 21.44%     |
| Industrial  | 1 25.00    | 19.43%     |
| Retail      | 1 25.00    | 20.38%     |

The City Council of Philippi will have its final meeting and meeting for the next year on June 21, 2000, at 7:00 p.m. The public will be held in the City Council chambers, in the City of Philippi in the State of West Virginia. Interested parties may appear at the meeting and be heard in respect to the proposed ordinance.

A copy of the proposed ordinance is available for public inspection at the City Clerk's Office, Philippi, West Virginia.

BY CITY COUNCIL OF CITY OF PHILIPPI

Dated: June 8, 2000  
 48-26

# OFFICE OF THE BARBOUR DEMOCRAT

I, **ROBERT A. BYRNE**, Editor of the **BARBOUR DEMOCRAT**, a weekly newspaper published in the City of Philippi, County of Barbour, and State of West Virginia, do certify that the annexed:

**LEGAL NOTICE**

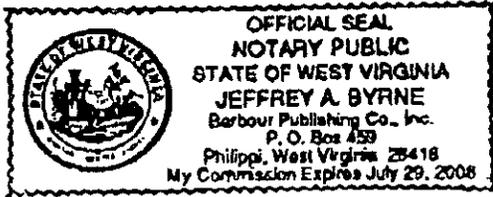
was duly printed in said paper two successive weeks commencing on Wednesday, the 28th day of June, 2000.

Given under my hand at Philippi, West Virginia, this 06th day of July, 2000.

*Robert A. Byrne*, Editor

Printer's Fee ..... \$59.99

STATE OF WEST VIRGINIA, COUNTY OF BARBOUR:  
Sworn to and subscribed before me this 06th day of July, 2000



*Jeffrey A. Byrne*  
NOTARY PUBLIC  
My Commission Expires July 29, 2008

**PUBLIC NOTICE OF CHANGE IN RATES BY MUNICIPALITY**

NOTICE is hereby given that the City of Philippi, a municipal corporation, has adopted, by ordinance on June 21, 2000, a tariff containing increased rates, costs and charges for furnishing water service to customers of the City of Philippi in the County of Barbour. The proposed increased rates and charges will become effective 45 days from adoption of the rate ordinance unless otherwise ordered by the Public Service Commission and will produce approximately \$112,700 annually in additional revenue, an increase of 24.13%. The average monthly bill for the various classes of customers will be changed as follows:

|             | (\$) INCREASE | INCREASE (%) |
|-------------|---------------|--------------|
| Residential | \$3.70        | 28.40%       |
| Commercial  | \$4.20        | 21.48%       |
| Industrial  | \$38.60       | 18.08%       |
| Retail      | \$846.17      | 20.39%       |

The increase shown are based on averages of all customers in the indicated class. Individual customers may receive increases that are greater or less than average. Furthermore, the requested rates and charges are only a proposal and are subject to change (increase or decrease) by the Public Service Commission in its review of this filing. The Commission shall review and approve or modify the increased rates only upon the filing of a petition within thirty (30) days of adoption of the ordinance by:

- (1) Any customer aggrieved by the changed rates or charges who presents to the Commission a petition signed by not less than twenty-five percent of the customers served by such municipality operated public utility; or
- (2) Any customer who is served by a municipally operated public utility and who resides outside the corporation limits and who is affected by the change in said rates or charges and who presents to the Commission a petition alleging discrimination between customers within and without the municipal boundaries. Said petition shall be accompanied by evidence of discrimination; or
- (3) Any customer or group of customers who are affected by said change in rates who reside within the municipal boundaries and who present a petition to the Commission alleging discrimination between said customer or group of customers and other customers of the municipal utility. Said petition shall be accompanied by evidence of discrimination.

All petitions should be addressed to the Executive Secretary, Public Service Commission of West Virginia, 201 Brooks Street, P.O. Box 812, Charleston, WV 25328.

A complete copy of the proposed rates, as well as a representative of the City to provide any information requested concerning it, is available to all customers, prospective customers or their agents at any of the following offices of the City:

- City Clerk
  - City of Philippi
  - City Hall
  - Philippi, West Virginia
- A copy of the proposed rates is available for public inspection at the Office of the Secretary of the Public Service Commission at 201 Brooks Street, P.O. Box 812, Charleston, West Virginia. 62-2x

*Noted 7/13/00*



NOTICE OF PUBLIC HEARING ON THE CITY OF PHILIPPI ORDINANCE

A public hearing will be held on the following entitled Ordinance at a regular meeting of the Council of the City of Philippi (the "City") to be held on Tuesday, February 17, 2009, at 7:00 p.m. at the City Hall, Philippi, West Virginia, and at such hearing any person interested may appear before the City and present protests, and all protests and suggestions shall be heard by the City and it shall then take such actions as it shall deem proper in the premises upon an Ordinance entitled:

CITY OF PHILIPPI

ORDINANCE AUTHORIZING THE DESIGN OF CERTAIN EXTENSIONS, ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING PUBLIC WATERWORKS FACILITIES OF THE CITY OF PHILIPPI AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN \$491,200. IN ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF WATERWORKS SYSTEM DESIGN REVENUE BONDS, SERIES 2009 A (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY), PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING A LOAN AGREEMENT RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

The above quoted title of the Ordinance describes generally the contents thereof and the purposes of the Bonds contemplated thereby. The City contemplates the issuance of the Bonds described in the Ordinance. The proceeds of the Bonds will be used (i) to temporarily pay the costs of design related to the acquisition and construction of certain extensions, additions, betterments and improvements to the public waterworks system of the Issuer (the "Project"); and (ii) to pay certain costs of issuance thereof and related costs. The Bonds are payable solely from revenues to be derived from the ownership and operation of the water system of the City. No taxes may at any time be levied for the payment of the Bonds or the interest thereon.

The above entitled Ordinance was adopted by the Council of the City of Philippi on February 3, 2009. A certified copy of the above entitled Ordinance is on file with the City for review by interested parties during regular office hours.

Following the public hearing, the City intends to enact the Ordinance upon final reading.

A second public hearing will be held on the following entitled Ordinance at a regular meeting of the Council of the City of Philippi (the "City") to be held on Tuesday, February 17, 2009, at 7:10 p.m. at the City Hall, Philippi, West Virginia, and at such hearing any person interested may appear before the City and present protests, and all protests and suggestions shall be heard by the City and it shall then take such actions as it shall deem proper in the premises upon an Ordinance entitled:

ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING PUBLIC WATERWORKS FACILITIES OF THE CITY OF PHILIPPI AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED THEREOF, THROUGH THE ISSUANCE BY THE CITY OF PHILIPPI OF NOT MORE THAN \$2,000,000 IN AGGREGATE PRINCIPAL AMOUNT OF WATER REVENUE BONDS, SERIES 2009 B (UNITED STATES DEPARTMENT OF AGRICULTURE) IN ONE OR MORE SERIES; DEFINING AND PRESCRIBING THE TERMS AND PROVISIONS OF THE BONDS; PROVIDING GENERALLY FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE HOLDER OF THE BONDS; AND PROVIDING WHEN THIS ORDINANCE SHALL TAKE EFFECT.

The above quoted title of the Ordinance describes generally the contents thereof and the purposes of the Bonds contemplated thereby. The City contemplates the issuance of the Bonds described in the Ordinance. The proceeds of the Bonds will be used (i) to pay a portion of the costs of acquisition and construction of certain improvements to the water system of the Issuer (the "Project"); and (ii) to pay certain costs of issuance of the Bonds and related costs. The Bonds are payable solely from revenues to be derived from the ownership and operation of the water system of the City. No taxes may at any time be levied for the payment of the Bonds or the interest thereon.

The above entitled Ordinance was adopted by the Council of the City of Philippi on February 3, 2009. A certified copy of the above entitled Ordinance is on file with the City for review by interested parties during regular office hours.

Following the public hearing, the City intends to enact the Ordinance upon final reading.

/s/ Tammy Stemple  
Clerk

OFFICE OF THE BARBOUR DEMOCRAT

I, LARS O. BYRNE, Editor of the BARBOUR DEMOCRAT, a weekly newspaper published in the City of Philippi, County of Barbour, and State of West Virginia certify that the annexed:

LEGAL NOTICE

was duly printed in said paper two consecutive weeks commencing on Wednesday 4<sup>th</sup> day of February, 2009.

Given under my hand at Philippi, West Virginia, this 11<sup>th</sup> day of February

Lars O. Byrne, Editor

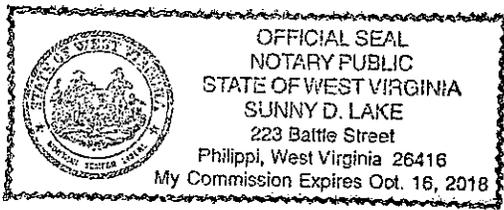
Printer's Fee.....\$ 131

STATE OF WEST VIRGINIA  
COUNTY OF BARBOUR; to wit

Sworn to and subscribed before me this 11<sup>th</sup> day of February, 2009

Sunny D. Lake  
NOTARY PUBLIC

My Commission Expires October 16, 2018





THE CITY OF PHILIPPI

Water Revenue Bonds, Series 2009 B  
(United States Department of Agriculture)

EXCERPT OF MINUTES ON ADOPTION OF BOND ORDINANCE

The undersigned Clerk of the City of Philippi (the "City") hereby certifies that the following is a true and correct excerpt of the minutes of a regular meeting of the Council of the City.

\* \* \*

\* \* \*

\* \* \*

The Council of the City met in regular session, pursuant to notice duly given, on the 17th day of February, 2009, in Philippi, West Virginia, at the hour of 7:00 p.m.

|          |                |   |               |
|----------|----------------|---|---------------|
| PRESENT: | Chris Mulneix  | - | Mayor         |
|          | Tammy Stemple  | - | Clerk         |
|          | Ed Larry       | - | Councilperson |
|          | Barbara Bryan  | - | Councilperson |
|          | John Enz       | - | Councilperson |
|          | Christie Allen | - | Councilperson |

ABSENT: Terrence Boyd

Chris Mulneix, Mayor, presided, and Tammy Stemple, acted as Clerk. The Mayor announced that a quorum of members was present and that the meeting was open for any business properly before it.

Thereupon, the Mayor stated that the proposed Series 2009 B Bond Ordinance heretofore passed on first and second readings would be subject to protests and suggestions from any interested person at this time in accordance with the publication of an abstract of said Series 2009 B Bond Ordinance and a Notice of Hearing, which publication has been duly made, and the Mayor called for protests and suggestions as to said Series 2009 B Bond Ordinance and all persons desiring to protest the said Series 2009 B Bond Ordinance or to make any suggestions with reference thereto were heard.

There being no protests or suggestions made as to said Series 2009 B Bond Ordinance, the Mayor thereupon stated that it would be in order to consider the said Series 2009 B Bond Ordinance for final enactment and the Mayor caused the said Series 2009 B Bond Ordinance to be read as follows:

ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING PUBLIC WATERWORKS FACILITIES OF THE CITY OF PHILIPPI, AND

THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED THEREOF, THROUGH THE ISSUANCE BY THE CITY OF PHILIPPI OF NOT MORE THAN \$2,000,000 IN AGGREGATE PRINCIPAL AMOUNT OF WATER REVENUE BONDS, SERIES 2009 B (UNITED STATES DEPARTMENT OF AGRICULTURE) IN ONE OR MORE SERIES; DEFINING AND PRESCRIBING THE TERMS AND PROVISIONS OF THE BONDS; PROVIDING GENERALLY FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE HOLDER OF THE BONDS; AND PROVIDING WHEN THIS ORDINANCE SHALL TAKE EFFECT.

and caused the same to be read and there was discussion. Thereupon, upon motion duly made by Ed Larry and seconded by Barbara Bryan, it was unanimously ordered that the said Series 2009 B Bond Ordinance be adopted and be in full force and effect on and from the date hereof.

Thereupon, the Mayor stated that the proposed Series 2009 A Bond Ordinance heretofore passed on first and second readings would be subject to protests and suggestions from any interested person at this time in accordance with the publication of an abstract of said Series 2009 A Bond Ordinance and a Notice of Hearing, which publication has been duly made, and the Mayor called for protests and suggestions as to said Series 2009 A Bond Ordinance and all persons desiring to protest the said Series 2009 A Bond Ordinance or to make any suggestions with reference thereto were heard.

There being no protests or suggestions made as to said Series 2009 A Bond Ordinance, the Mayor thereupon stated that it would be in order to consider the said Series 2009 A Bond Ordinance for final enactment and the Mayor caused the said Series 2009 A Bond Ordinance to be read as follows:

ORDINANCE AUTHORIZING THE DESIGN OF CERTAIN EXTENSIONS, ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING PUBLIC WATERWORKS FACILITIES OF THE CITY OF PHILIPPI AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN \$491,200 IN ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF WATERWORKS SYSTEM DESIGN REVENUE BONDS, SERIES 2009 A (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY); PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING A LOAN AGREEMENT RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

and caused the same to be read and there was discussion. Thereupon, upon motion duly made by Ed Larry and seconded by John Enz, it was unanimously ordered that the said Series 2009 A Bond Ordinance be adopted and be in full force and effect on and from the date hereof.

The Mayor presented a proposed Series 2009 A Bonds Supplemental Resolution in writing entitled:

SUPPLEMENTAL RESOLUTION PROVIDING AS TO PRINCIPAL AMOUNT, DATE, MATURITY DATE, REDEMPTION PROVISION, INTEREST RATE, INTEREST AND PRINCIPAL PAYMENT DATES, SALE PRICE AND OTHER TERMS OF THE WATERWORKS SYSTEM DESIGN REVENUE BONDS, SERIES 2009 A (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY), OF THE CITY OF PHILIPPI; APPROVING AND RATIFYING THE LOAN AGREEMENT RELATING TO SUCH BONDS AND THE SALE AND DELIVERY OF SUCH BONDS TO THE WEST VIRGINIA WATER DEVELOPMENT AUTHORITY; DESIGNATING A REGISTRAR, PAYING AGENT AND DEPOSITORY BANK; AND MAKING OTHER PROVISIONS AS TO THE BONDS.

and caused the same to be read and there was discussion. Thereupon, upon motion duly made by Christie Allen and seconded by John Enz, it was unanimously ordered that the said Series 2009 A Bonds Supplemental Resolution be adopted and be in full force and effect on and from the date hereof.

Next, the Mayor presented a proposed Series 2009 A Bonds Sweep Resolution for the authorization of electronic monthly debt service and reserve fund payments to the Municipal Bond Commission. Thereupon, on motion duly made by Ed Larry and seconded by John Enz, it was unanimously ordered that the said Series 2009 A Bonds Sweep Resolution be adopted.

Next, the Mayor presented a proposed Series 2009 A Bonds Draw Resolution for the approval of invoices. Thereupon, on motion duly made by John Enz and seconded by Ed Larry, it was unanimously ordered that the said Series 2009 A Bonds Draw Resolution be adopted.

\* \* \*

\* \* \*

\* \* \*

There being no further business to come before the meeting, on motion duly made and seconded, it was unanimously ordered that the meeting adjourn.

CERTIFICATION

I hereby certify that the foregoing is a true copy of the minutes of the City of Philippi and that such actions remain in full force and effect and have not been amended, rescinded, superseded, repealed or changed.

WITNESS my signature on this 16th day of April, 2009.

Sammy R. Stemple  
Clerk

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**PHILIPPI CITY COUNCIL  
MINUTES  
January 6, 2009**

The Philippi City Council met in regular session on January 6, 2009, in the Council Chambers of Philippi City Hall. Those present were Councilpersons: Terrence Boyd, Barbara Bryan, Christie Allen, John Enz, Ed Larry, Mayor Chris Mulneix and City Clerk, Tammy Stemple. Also present were: City Manger, Karen Weaver, Susie Higgins, Kathleen Logsdon, John Pyles, Carl Nestor, Chief Mitch Payne and Buddy Shreve.

Minutes were read. Motion to approve minutes of December 2, 2008 was made by Councilman Boyd and seconded by Councilman Larry. All members of council voting in the affirmative the motion passed.

**CONTRACTS, RESOLUTIONS AND ORDINANCES**

- 1.) **Resolution on Open Governmental Proceedings Rule**-Ms. Weaver discussed the resolution and that past councils have approved this resolution. Currently work is being done on the funding for the Cherry Hill Tank Project and the Water Plant Project and bond counsel has recommended adopting the resolution again. The resolution is as follows:

**RESOLUTION ON OPEN GOVERNMENT PROCEEDINGS RULES**

Pursuant to Chapter 6, Article 9A, Section 3 of the West Virginia Code, the Council of Philippi does hereby adopt the following rules to make available, in advance, the date, time, place and agenda of all regularly scheduled meetings of the Council, and the date, time, place and purpose of all special meetings of the Council to the public and news media (except in the case of an emergency requiring immediate action) as follows:

1. **Regular Meetings.** A notice shall be posted and maintained by the Recorder at the front door or bulletin board of the City Hall of the date, time, and place fixed and entered of record by Council for the holding of regularly scheduled meetings. In addition, a copy of the agenda for each regularly scheduled meeting shall be posted at the same location by the City Recorder not less than three (3) business days before such regular meeting is to be held. The agenda listing the matters requiring official action that may be addressed at the meeting may be amended up to two (2) business days prior to the meeting. If a particular regularly scheduled meeting is canceled or postponed, a notice of such cancellation or postponement shall be posted at the same location as soon as

feasible after such cancellation or postponement has been determined.

2. **Special Meetings.** A notice shall be posted by the City Recorder at the front door or bulletin board of the City Hall not less than (2) business days before a special meeting is to be held, stating the date, time, place and purpose for which special meeting shall be held. If the special meeting is canceled, a notice of such cancellation shall be posted at the same location as soon as feasible after such cancellation has been determined.

These rules regarding the notice of meetings shall replace any and all previous rules heretofore adopted by Council.

Motion to adopt the resolution was made by Councilman Larry and seconded by Councilwoman Bryan. All members of council voting in the affirmative the motion passed.

## REPORTS

**City Manager-**Ms. Weaver addressed council and discussed several current projects. Regarding the Cherry Hill Water Tank Project it was reported as moving forward with the bidding process in progress. A pre-bid conference is scheduled for Thursday, January 8, 2009 and the bid opening will occur. It was reported by the next council meeting the first reading of the bond ordinance for funding of the project will occur. The public hearing regarding the matter will be scheduled for February 3, 2009 and the final reading of the bond ordinance will be at the February 17, 2009 council meeting. The closing of the RUS loan for the project will be in March 2009. On the Water Treatment Plant Project, applications have been taken to the Infrastructure Council and they have passed the technical review and moved onto the funding committee. Both of the applications have passed reviews and will be voted on in March of 2009.

The project regarding a new section of the North Philippi Walking Trail is being worked on. The grant for the project is \$55,200 with a \$13,800 match. Part of the project will include paving a 6 foot wide section of trail from the North Philippi Park past the Waste Water Treatment Plant approximately 1 mile. Markers for the trail will also be placed.

More information will be brought to council in the near future regarding the Waste Water Treatment Plant project.

Christmas Tree pickup will be on January 13<sup>th</sup> and 14<sup>th</sup>. Residents are asked to have the trees out at the curb and they will be placed in Tygart Lake for fish habitats.

Ms. Weaver reported on a request from Mayor Mulneix with the West Virginia Conservation Agency concerning Anglin Run. The agency did contact the city and did an inspection of the area. A site visit form was completed and revealed that some erosion has occurred in the area but they do not have any funds to assist the landowners in this regard. They found the request ineligible for funding through their agency. They will assist land owners with permits to complete any work themselves to help alleviate the

problems they may be facing. Mayor Mulneix asked what the residents in question can do now. Ms. Weaver reported that she had forwarded the information on the report verbatim and the land owners would have to contact the agency for details.

It was reported that budget meetings will begin and each department will meet with the city manager to set goals for each department. Also there will be meetings with council about the budgets.

Ms. Weaver reported on the Water Resource Group which is a group of individuals and agency representatives who are concerned about the future water supply of the county. This group is very active and Buddy Shreve has been appointed the chairman of the group. The group is working on mapping of all the PSD's and water supplies in the county. The group has funding in place for a water study.

Ms. Weaver reported on a group, WARN- Water Alert Resource Network, which will meet regarding the water supply of the state. Ms. Weaver will be representing the City of Philippi on the steering committee for this group.

A Planning Commission meeting will be held on Tuesday, January 13, 2009 at 7:00 p.m. They will be discussing the numbering of houses and street naming in regards to emergency planning.

#### **NEW BUSINESS**

There currently is vacancy on the Police Committee and Mayor Mulneix appointed Councilman Ed Larry to fill that position.

Chief Payne submitted the written police report to council.

Councilman Boyd asked about the area at the stop light on College Hill in regards to ownership by the city or the Department of Highways and the need for repair of the guardrails in that vicinity. Ms. Weaver reported that it is owned by the Department of Highways and the problem had been previously reported to them. Councilman Boyd also asked if there has been any further information about the Recruitable Communities Project.

Councilwoman Bryan reported to Chief Payne complaints regarding barking dogs on Walnut Street and in the North Philippi area.

Councilman Larry suggested having a meeting with the Recreation Committee to obtain information on getting equipment for the parks.

A motion to adjourn was made by Councilman Larry and seconded by Councilwoman Bryan. All members voting in the affirmative the motion passed. Council ended at 7:35 p.m.

**PHILIPPI CITY COUNCIL MINUTES**  
**February 3, 2009**

The Philippi City Council met in regular session on February 3, 2009, in the Council Chambers of Philippi City Hall. Those present were: Councilpersons Christie Allen, John Enz, Ed Larry, Terrence Boyd, Barbara Bryan, Mayor Chris Mulneix and City Clerk, Tammy Stemple. Also in attendance were City Manager, Karen Weaver, David Sharp, Carl Radcliff, Buddy Shreve and Craig Richards.

Minutes from the January 20, 2009 meeting were read. Motion to approve the minutes was made by Councilman Larry and it was seconded by Councilman Enz. All members of council voting in the affirmative the motion passed.

**CONTRACTS, RESOLUTIONS AND ORDINANCES**

1. To consider on second reading and act upon a proposed Bond Ordinance providing for the issuance of its Waterworks System Design Revenue Bonds, Series 2009 A ( the "Bonds"). The proceeds of the Bonds will be used (i) to temporarily pay the costs of design related to the acquisition and construction of certain extensions, additions, betterments and improvements to the public waterworks system of the Issuer (the "Project"); and (ii) to pay certain costs of issuance thereof and related costs. The Bonds are payable solely from revenues to be derived from the ownership and operation of the water system of the City.-Ms. Weaver discussed the bond ordinance and presented it for the second reading. The ordinance is as follows:

**ORDINANCE AUTHORIZING THE DESIGN OF CERTAIN EXTENSIONS, ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING PUBLIC WATERWORKS FACILITIES OF THE CITY OF PHILIPPI AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN \$491,200 IN ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF WATERWORKS SYSTEM DESIGN REVENUE BONDS SERIES 2009 A (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY); PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING A LOAN AGREEMENT RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISION OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.**

A motion to approve the second reading of the ordinance was made by Councilman Larry and it was seconded by Councilwoman Bryan. All members of council voting in the affirmative the motion passed.

2. **To consider on second reading and act upon a proposed Bond Ordinance providing for the issuance of its Water Revenue Bonds, Series 2009 B (the "Bonds").** The proceeds of the Bonds will be used (i) to pay a portion of the costs of a acquisition and construction of certain improvements to the water system of the Issuer (the "Project"); and (ii) to pay certain costs of issuance of the Bonds and related costs. The Bonds are payable solely from revenues to be derived from the ownership and operation of the water system of the City. Ms. Weaver discussed the bond ordinance for water improvements involving the Cherry Hill Water Project and presented it for the second reading. The ordinance is as follows:

**ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING PUBLIC WATERWORKS FACILITIES OF THE CITY OF PHILIPPI, AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED THEREOF, THROUGH THE ISSUANCE BY THE CITY OF PHILIPPI OF NOT MORE THAN \$2,000,000 IN AGGREGATE PRINCIPAL AMOUNT OF WATER REVENUE BONDS, SERIES 2009 B (UNITED STATES DEPARTMENT OF AGRICULTURE) IN ONE OR MORE SERIES; DEFINING AND PRESCRIBING THE TERMS AND PROVISIONS OF THE BONDS; PROVIDING GENERALLY FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE HOLDER OF THE BONDS; AND PROVIDING WHEN THIS ORDINANCE SHALL TAKE EFFECT.**

A motion to approve the second reading of the bond ordinance was made by Councilman Larry and it was seconded by Councilman Boyd. All members of council voting in the affirmative the motion passed.

3. **Amendment to Engineering Agreement for the Water Treatment Plant Project-** Craig Richards of Burgess and Niple discussed an amendment to the engineering agreement for the Water Treatment Plant. He discussed the modifications and agreement changes with council. This amendment is also subject to USDA approval. A motion to approve the amendment was made by Councilman Larry and it was seconded by Councilwoman Bryan. All members of council voting in the affirmative the motion passed.
4. **Adoption of Ordinance concerning Ferc Order 719-**Ms. Weaver discussed that the city attorney had recommended presenting the ordinance to council for adoption. This item concerns the electric utility and is referred as Ferc Order 719

which was an order passed on October 28, 2008 by the Federal Energy Regulatory Commission, (FERC). The ordinance is as follows:

**AN ORDINANCE OR RESOLUTION TO ALLOW ONLY THE  
[MUNICIPALITY] TO AGGREGATE DEMAND RESPONSE OF  
RETAIL CUSTOMERS IN ACCORDANCE WITH FERC ORDER 719  
AND TAKING OTHER ACTIONS IN CONNECTION THEREWITH.**

A motion to adopt the ordinance was made by Councilwoman Bryan and it was seconded by Councilwoman Allen. All members of council voting in the affirmative the motion passed.

**REPORTS**

1.) **Representative from Potesta will be giving status report on Water System Upgrade Project (Cherry Hill Project).**-Mr. Sharp addressed council regarding the project. He reported that they had received 8 bids for the project and the bids were favorable. The low bid was Sunrisc Construction. Mr. Sharp discussed items that needed to be completed before the loan closure which included a couple of additional easements. Discussions are being held with the property owners regarding these easements. In the near future a meeting will be held with Potesta and a letter will be prepared for council with recommendations for approving the contractor. Also it will include the approval of inspectors for the project. This will be necessary before final approval and before closing on the loan. The project start could begin by the end of ninety days with the construction conclusion by the end of January 2010. Fall 2009 is a foreseeable completion date for the project.

\_\_\_Councilman Boyd asked about the television conversion from analog to digital. Mr. Radoliff reported that the Philippi cable system will be ready for the change.

Councilwoman Bryan thanked Terry Willong for clearing the sidewalks on South Main Street. She asked for an update on the senior center parking lot. Ms. Weaver reported that the Building Commission has given approval for construction and the city has the design for the lot. She also inquired about any agreement with Baughman Towers regarding their parking lot. Ms. Weaver reported that all aspects have not been worked out but the responsibility relies with the owners of Baughman Towers. The city however, is willing to work with them on the matter.

Councilwoman Bryan made a motion to adjourn the meeting and it was seconded by Councilman Enz. Council ended at 7:36 p.m.

**PHILIPPI CITY COUNCIL  
MINUTES  
FEBRUARY 17, 2009**

The Philippi City council met in regular session on February 17, 2009, in the Council Chambers of Philippi City Hall. Those in attendance were Councilpersons; John Enz, Ed Larry, Barbara Bryan, Christie Allen, Mayor Chris Mulneix and City Clerk, Tammy Stemple. Absent was Councilman Terrence Boyd. Also in attendance were: City Manager, Karen Weaver, Carl Nestor, John Pyles, Kathleen Logsdon and John Stump-Steptoe and Johnson.

Minutes from the February 3, 2009 meeting were read. Motion was made by Councilman Enz to approve the minutes and it was seconded by Councilman Larry. All members of council voting in the affirmative the motion passed.

A Public Hearing was called to order regarding two separate bond ordinances. One is for the Water Revenue bonds Series 2009 B, (Cherry Hill Water Project) and the other is for the Water System Design Revenue Bonds which will pay for the design of the water treatment plant. Citizen John Pyles asked for an explanation of the bond projects and Ms. Weaver reported on those items. No other questions or concerns were made and the hearing was closed.

**CONTRACTS, RESOLUTIONS AND ORDINANCES**

- 1.) **To conduct a public hearing and consider on third reading and act upon a proposed Bond Ordinance providing for the issuance of its Water Revenue Bonds, Series 2009 B (the "Bonds"). The proceeds of the Bonds will be used (i) to pay a portion of the costs of a acquisition and construction of certain Improvements to the water system of the Issuer (the "Project"); and (ii) to Pay certain costs of issuance of the Bonds and related costs. The Series 2009 A Bonds are payable solely from revenues to be derived from the ownership and operation of the water system of the City.**-Ms. Weaver discussed the third reading and final approval of the ordinance. The ordinance is as follows:

**ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING PUBLIC WATERWORKS FACILITIES OF THE CITY OF PHILIPPI, AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED THEREOF, THROUGH THE ISSUANCE BY THE CITY OF PHILIPPI OF NOT MORE THAN \$2,000,000 IN AGGREGATE PRINCIPAL AMOUNT OF WATER REVENUE BONDS, SERIES 2009 B (UNITED STATES DEPARTMENT OF AGRICULTURE) IN ONE OR MORE SERIES; DEFINING AND PRESCRIBING THE TERMS AND PROVISIONS OF**

**THE BONDS; PROVIDING GENERALLY FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE HOLDER OF THE BONDS; AND PROVIDING WHEN THIS ORDINANCE SHALL TAKE EFFECT.**

Motion was made by Council Larry for final approval of the ordinance and it was seconded by Councilwoman Bryan. All members of council voting in the affirmative the motion passed.

- 2.) **To conduct a public hearing and consider on third reading and act upon a Proposed Bond Ordinance providing for the issuance of its Waterworks System Design Revenue Bonds, Series 2009 A (the "Bonds"). The proceeds Of the Bonds will be used (i) to temporarily pay the costs of design related to the acquisition and construction of certain extensions, additions, betterments and improvements to the public waterworks system of the Issuer (the "Project"); and (ii) to pay certain costs of issuance thereof and Related costs. The Bonds are payable solely from revenues to be derived from the ownership and operation of the water system of the City.-Ms. Weaver discussed the bond ordinance for the third reading and final approval.**

**ORDINANCE AUTHORIZING THE DESIGN OF CERTAIN EXTENSIONS, ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING PUBLIC WATERWORKS FACILITIES OF THE CITY OF PHILIPPI AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN \$491, 200 IN ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF WATERWORKS SYSTEM DESIGN REVENUE BONDS SERIES 2009 A (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY); PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING A LOAN AGREEMENT RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.**

Motion was made by Councilman Larry for the final reading and approval of the ordinance and it was seconded by Councilman Enz. All members of council voting in the affirmative the motion passed.

- 3.) **Consideration of Supplemental Resolution for the Series 2009 A Bonds (Water woks System Dcsign Revenue Bonds).-Ms. Weaver discussed that Bond Counsel from Steptoe and Johnson would report on the actual closing process for the 2009 A Bonds financing arrangement. Mr. John Stump reported on the financing process, that it is a fixed interest rate at 3% for the first two years and**

then a rate of 5% for the next 18 years. He discussed with council that this supplemental resolution finalizes the terms of the loan agreement. The Supplemental Resolution is as follows:

**SUPPLEMENTAL RESOLUTION PROVIDING AS TO PRINCIPAL AMOUNT, DATE, MATURITY DATE, REDEMPTION PROVISIONS, INTEREST RATE, INTEREST AND PRINCIPAL PAYMENT DATES, SALE PRICE AND OTHER TERMS OF THE WATERWORKS SYSTEM DESIGN REVENUE BONDS, SERIES 2009 A (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY), OF THE CITY OF PHILIPPI; APPROVING AND RATIFYING THE LOAN AGREEMENT RELATING TO SUCH BONDS TO THE WEST VIRGINIA WATER DEVELOPMENT AUTHORITY; DESIGNATING A REGISTRAR, PAYING AGENT AND DEPOSITORY BANK; AND MAKING OTHER PROVISIONS AS TO THE BONDS.**

Motion was made to adopt the Supplemental Resolution for series 2009 A Bonds by Councilwoman Allen and it was seconded by Councilman Enz. All members of council voting in the affirmative the motion passed.

- 4.) **Consideration of Sweep Resolution pertaining to the automatic payment Of Series 2009 A Bonds.**-Mr. Stump discussed the Sweep Resolution for the Water Treatment Plant Project and the automatic payments of the series 2009 A bonds. Motion was made to adopt the Sweep Resolution by Councilman Larry and it was seconded by Councilman Enz. All members of council voting in the affirmative the motion passed.
- 5.) **Consideration of draw down request for proceeds of the Series 2009 A Bonds.**-Mr. Stump discussed the drawdown loan request and reported that the city will be presented with an invoice for drawdown funds. Motion to approve the first draw down requisition was made by Councilman Enz and it was seconded by Councilman Larry. All members of council voting in the affirmative motion passed.

Motion was made by Councilman Larry to adjourn and it was seconded by Councilwoman Bryan. Council ended at 7:30 p.m.

**COUNCIL MINUTES  
EMERGENCY SESSION  
February 24, 2009**

The Philippi City Council met in emergency session on February 24, 2009, in the Council Chambers of Philippi City Hall. Those in attendance were Councilpersons: Barbara Bryan, Terrence Boyd, Ed Larry, Christie Allen, John Enz, Mayor Chris Mulneix, City Clerk, Tammy Stemple and City Manager, Karen Weaver.

Mayor Mulneix called the meeting to order at 6:12 p.m.

The item before council was discussion regarding property located at the Philippi Industrial Park. Councilman Enz made a motion to go into Executive Session regarding the matter. It was seconded by Councilman Larry and all members of council voting in the affirmative the motion passed. Executive Session began at 6:15 p.m.

Council returned to emergency session at 6:40 p.m.

Motion was made by Councilman Larry to write a Letter of Option regarding acreage of land located at the Philippi Industrial Park for building the Department of Environmental Protection and Department of Health and Human Resource offices in Philippi. It was seconded by Councilman Enz. All members of council voting in the affirmative the motion passed.





The purpose of the NEW ISSUE REPORT FORM is to provide the WV Municipal Bond Commission with an early warning of three basic facts no later than the day of closing on any issue for which the Commission is to act as fiscal agent. These are:

1. Formal notification that a new issue is outstanding.
2. Date of first action or debt service.
3. Contact people should we lack documents, information, or funds needed to administer the issue by the date of the first action or debt service.

The commission recognizes that as bond transcripts become increasingly long and complex, it has become more difficult to assemble and submit them to the Commission within the 30 days specified by the West Virginia Code 13-3-8. This notice is not intended to provide all the information needed to administer an issue, but to alert the Commission and ensure that no debt service payments are missed due to delays in assembling bond transcripts. If, at the time of closing, documents such as the ordinance and all supplements, debt service schedules, and a specimen bond or photostat are available and submitted with this form, it will greatly aid the Commission in the performance of its duties. These documents are needed to set up the proper accounts and to advise the issuer of monthly deposit requirements as far in advance of the first debt service as possible.

It is not necessary to complete all items if they are not pertinent to your issue. Indicate the County of the issuer. With PSDs that overlap more than one county, indicate the county of their business office. Complete "Rate" only if the issue has only one rate. Please complete a separate form for each series of an issue. Other important information can be recorded under "Notes."

Again, please submit this form on each new issue on the day of closing. If fund transfers into or out of the Commission at closing are required, please submit this form before closing. If no significant facts change by closing, no resubmission at closing is required. If, however, there are changes, please submit an updated form, with changes noted, at closing.

If you should have any questions concerning this form, please call the Commission.





United States  
Department of  
Agriculture

Rural  
Development

*BOND COUNSEL*  
*Water*  
Federal Building  
75 High Street, Room 320  
Morgantown, WV 26505-7500  
Phone (304) 284-4888  
FAX (304) 284-4892  
TTY/TDD (304) 284-4836

July 30, 2001

The Honorable Caton N. Hill, Jr.  
Mayor, City of Philippi  
P.O. Box 460  
Philippi, WV 26416

COPY

Dear Mayor Hill:

This letter, with Attachments 1 through 11 and enclosures, establishes conditions which must be understood and agreed to by you before further consideration may be given to your application. The loan will be administered on behalf of the Rural Utilities Service (RUS) by the State and Area staff of USDA, Rural Development. Any changes in project cost, source of funds, scope of services, or any other significant changes in the project or applicant must be reported to and approved by USDA, Rural Development, by written amendment to this letter. Any changes not approved by Rural Development shall be cause for discontinuing processing of the application.

The docket may be completed on the basis of an RUS loan in the amount of \$1,651,000, for a total project cost of \$1,651,000.

The loan will be considered approved on the date a signed copy of Form RD 1940-1, "Request for Obligation of Funds," is mailed to you. The interest rate will be the lower of the rate in effect at the time of loan approval or the time of loan closing.

Extra copies of this letter are being provided for use by your engineer, attorney, bond counsel and accountant. The enclosures and attachments listed below are attached to the copies as noted. Enclosed are the following:

- Attachment No. 1 - Project Construction Budget (All Copies)
- Attachment No. 2 - Water and Waste Processing Checklist (All Copies)
- Attachment No. 3 - RUS Instruction 1780, Subparts A and B (Applicant Copy)
- Attachment No. 4 - RUS Instruction 1780, Subpart C (Engineer Copy)
- Attachment No. 5 - RUS Instruction 1780, Subpart D (Attorney and Bond Counsel Copies)
- Attachment No. 6 - RUS Supplemental General Conditions (Engineer Copy)
- Attachment No. 7 - Government Auditing Standards (Revision 1994) (Accountant Copy)
- Attachment No. 8 - RUS Bulletin 1780-30, "Water Programs Audit Guide and Compliance Supplement"

- Attachment No. 9 - RUS Bulletin 1780-31, "Water Programs Compliance Supplement for OMB Circular A-133 Audits"  
Attachment No. 10 - Sample Credit Agreement (Applicant Copy)  
Attachment No. 11 - Various other RD Forms as identified on Attachment No. 2

The conditions referred to above are as follows:

1. Loan Repayment - The loan will be scheduled for repayment over a period of 21 years. The payments due the first 12 months will consist of interest only. Payments for the remaining 240 months will be equal amortized monthly installments. For planning purposes use a 4.5% interest rate and a monthly amortization factor of 0.00633, which provides for a monthly payment of \$10,451.00. You have the option of participating in the PREAUTHORIZED DEBIT (PAD) payment process. It will allow for your payment to be electronically debited from your account on the day your payment is due. Your authority must establish and fund monthly a debt service reserve account and a depreciation reserve account, which together equal 10% of the annual debt service each year for the life of the loan. Five percent (5%) will be deposited into both accounts until an annual debt payment has been accumulated. Thereafter, the entire 10% will be deposited into the depreciation reserve account.

You are reminded that your authority may be required to refinance (graduate) the unpaid balance of its RUS loan, in whole or in part, upon the request of RUS if at any time it shall be determined the authority is able to obtain a loan for such purposes from responsible cooperative or private sources at reasonable rates and terms for loans for similar purposes and periods of time.

2. Security - The loan must be secured by a statutory lien of first priority, a pledge of the system's revenues and other agreements between you and RUS as set forth in the bond ordinance which must be properly adopted and executed by the appropriate officials of your organization. Additional security requirements are contained in RUS Bulletin 1780-27 which is mentioned later.
3. Users - This conditional commitment is based upon you providing evidence that there will be at least 1,668 bona fide users on the proposed system when it has been completed and is placed in operation. This evidence will consist of a certification from you that identifies and attests to the number of users that are actually connected to the City's existing water system which is to be partially replaced by the new system, at the time you request authorization to advertise the project for construction bids.

Before RUS can agree to the project being advertised for construction bids, you must provide evidence that the total required number of bona fide users has been acquired and currently using the system.

4. Bond Counsel - The services of a recognized bond counsel are required. The bond counsel will prepare the form of ordinance to be used, in accordance with Subpart D of RUS Instruction 1780. You should immediately provide your bond counsel with a copy of this letter of conditions, its attachments and enclosures.
5. Engineering Services - It will be necessary for you to obtain the services of an engineer. EJCDC No. 1910-1, "Standard Form of Agreement between Owner and Engineer for Professional Services" should be used to obtain the services of an engineer. The EJCDC document is issued under copyright and cannot be provided by RUS.
6. Legal Services – It will be necessary for you to obtain the services of a local attorney. For your convenience RUS Bulletin 1780-7, "Legal Services Agreement" is enclosed for your use.
7. Accounting Services – It will be necessary for you to obtain the services of a qualified accountant. The accountant must agree to develop and provide the following:

Prior to the advertisement of bids, your accountant must certify that the accounts and records as required by your bond ordinance have been established and are operational.

The Accountant's Agreement should be submitted to RUS for review. Compensation in the contract should include only those services identified above and not include payment for construction management services from the accountant unless RUS concurrence is obtained.

RUS regulations (Attachment No. 3) outline requirements for the submission of management reports and audits. Appropriate state statutes place certain audit requirements on your City. The attached booklets, "Government Auditing Standards (Revised 1994)" (Attachment No. 7), and RUS Bulletins 1780-30 1780-31 (Attachment Nos. 8 and 9) outline audit requirements.

You are reminded that certain provisions of the Office of Management and Budget Circular A-133 are applicable to any public body or nonprofit association that expends \$300,000 or more in federal funds in any one fiscal year. You must enter into an agreement annually with an accountant (or the State Tax Department) to perform the audit. The agreement must be in accordance with the requirements of the State Tax Commissioner of West Virginia. Compensation for preparation of the A-133 audit or your annual audit are not included in project funds and should be paid from the operational revenues generated from your system operation.

8. Facility Control - Prior to advertisement for construction bids, you must furnish satisfactory evidence that you have or can obtain adequate continuous and valid control over the lands and rights needed for the project. Such evidence must be in the following form:
- a. A right-of-way map showing clearly the location of all lands and rights needed for the project. The map must designate public and private lands and rights and the appropriate legal ownership thereof.
  - b. A copy of deeds, contracts or options for any lands needed other than rights-of-way, along with a preliminary title opinion covering such lands. Form RD 1927-9, "Preliminary Title Opinion" may be used. In the case of your existing system or where the City already acquired real property (land or facilities), a preliminary title opinion(s) concerning all such property(s) will be provided.
  - c. A narrative opinion from your attorney concerning all permits, certifications and other items necessary to show that all legal requirements can be met and stating how they will be met. This narrative should also identify any condemnation proceedings that are anticipated and state how they will be handled.
  - d. A certification and legal opinion relative to title to rights-of-way and easements. Form RD 442-22, "Opinion of Counsel Relative to Rights-of-Way," may be used. This form may contain a few exceptions such as properties that must be condemned; however, prior to the start of construction or loan closing, whichever occurs first, a new Form RD 442-22, must be provided which does not provide for any exceptions.
  - e. On the day of loan closing, the City's attorney must furnish final title opinions on all land(s) being acquired. Form RD 1927-10, "Final Title Opinion" may be used. In the case of your existing system or where the City has already acquired real property(s) (land or facilities), the City's attorney will provide a separate final title opinion(s) covering such property(s) on the day of loan closing.
9. Permits - Copies of all permits needed for the project must be provided for review prior to advertisement for construction bids. Such permits will include but are not limited to the following:
- West Virginia Department of Highways
  - Railroads

- State Department of Health
- Department of Environmental Protection
- Public Land Corporation

10. Public Service Commission Approvals and Rates - You must determine that the Certificate of Convenience and Necessity which you now have from the Public Service Commission of West Virginia is adequate to cover the entire area to be served by the proposed system. If it is not adequate, a new certificate must be obtained and a copy provided for RUS. If it is determined the City's present certificate is adequate, the City must, if necessary, properly develop, adopt, and promulgate the required rates in accordance with the applicable provisions of Article I, Chapter 24 of the Code of West Virginia, as amended, and to the satisfaction of your bond counsel. The rate ordinance as adopted must include, as a minimum, all the rate related items (everything except project costs section, the use analysis section, and the operation and maintenance expense breakdown section) contained in the attached project construction budget (Attachment No. 1). The draft rate ordinance must be provided for RUS review and concurrence prior to its adoption.
11. Insurance and Bonding Requirements - Prior to preliminary loan closing, you must acquire the following insurance and bond coverage:
  - a. Liability Insurance - Personal Liability - \$500,000; Property Damage - \$200,000 - \$200,000. The limits of liability coverage noted herein should be considered as suggested amounts only. RUS recommends that you consider analyzing your actual needs in detail before you obtain coverage in a specific amount.
  - b. Workers' Compensation - In accordance with appropriate State laws.
  - c. Position Fidelity Bond(s) - All positions occupied by persons entrusted with the receipt and/or disbursement of funds must be bonded. As a good business practice you will probably wish to have each position bonded in an amount equal to the maximum amount of funds to be under the control of that position at any one time. The minimum coverage acceptable to RUS will be for each position to be bonded for an amount at least equal to one annual installment on your loan(s).
  - d. National Flood Insurance - In addition to meeting the requirements for the type of assistance requested, the following requirements must be met for financial assistance for acquisition and/or construction in designated special flood or mudslide prone areas:
    - (1) If flood insurance is available, you must purchase a flood insurance policy at the time of loan closing.

(2) Applicants whose buildings, machinery or equipment are to be located in a community which has been notified as having special flood or mudslide prone areas will not receive financial assistance where flood insurance is not available.

e. Real Property Insurance - Prior to the acceptance of the facility from the contractor(s), you must obtain real property insurance (fire and extended coverage) on all above-ground structures, to include machinery and equipment housed therein. This does not apply to water reservoirs, standpipes, elevated tanks or noncombustible materials used in treatment plants, clearwells, filters and the like.

12. Contract Documents, Final Plans and Specifications -

a. The contract documents should consist of the following:

(1) EJCDC Document No. 1910-8-A-1-FA, 1997 Edition, "Standard Form of Agreement between Owner and Contractor on the Basis of Stipulated Price" and EJCDC Document No. 1910-8-FA, "Standard General Conditions of the Construction Contract – Funding Agency Edition" and Attachments.

(2) "RUS Supplemental General Conditions."

b. The contract documents must provide, as a minimum, the following insurance:

(1) Liability Insurance - Personal Liability - \$500,000; Property Damage - \$200,000 - \$200,000. This coverage must include indemnification of the City and its engineer. RUS Bulletin 1780-13, Attachment 9, suggests certain limits of liability for insurance coverage. Those limits should be considered as minimum requirements only. It is recommended you consider increasing the given limits of liability after analyzing your specific needs.

(2) Builder's Risk Insurance - On all structures and mechanical and electrical equipment in place or stored on the site to the full insurable value thereof.

(3) Workers' Compensation - In accordance with applicable State laws.

c. The contract documents and final plans and specifications must be submitted to RUS for approval.

d. The project must be designed in compliance with Section 504 of the Rehabilitation Act of 1973.

13. Interim Financing - Interim financing will be used for the RUS loan if it is available at reasonable rates and terms. You must provide RUS with a copy of the tentative agreement reached in connection with interim financing. A copy of the proposed agreement should be provided for RUS review. A Sample Credit Agreement is attached for your use in meeting this requirement (Attachment No. 10).
14. Disbursement of Funds - The RUS funds will be advanced as they are needed in the amount(s) necessary to cover the RUS proportionate share of any disbursements required of your City, over 30 day periods. Any funds not disbursed immediately upon receipt must be deposited in an interest bearing account in accordance with OMB Circular A-133. Interest earned on these funds must be remitted promptly, at least quarterly, to the Rural Utilities Service. The City must assure that all project funds are expended only for the eligible items included in the final project budget or as may be later approved by RUS.
15. At a properly called meeting, you must adopt and properly execute the following forms, and minutes showing the adoption must be provided:
- Form RD 442-7 - "Operating Budget"
  - Form RD 1940-1 - "Request for Obligation of Funds"
  - RUS Bulletin 1780-27 - "Loan Resolution (Public Bodies)"
  - Form RD 400-1 - "Equal Opportunity Agreement"
  - Form RD 400-4 - "Assurance Agreement"
  - Form AD 1047 - "Certification Regarding Debarment - Primary"
  - Form AD 1049 - "Certification Regarding Drug-Free Workplace"
  - Form RD 1910-11 - "Applicant Certification, Federal Collection Policies"
  - FmHA Instruction 1940-Q, Exhibit A-1, "Certification for Contracts, Grants and Loans"
  - Standard Form LLL - "Disclosure of Lobbying Activities" (If Applicable)
  - Certification of Compliance
  - Form RD 1942-46, "Letter of Intent to Meet Conditions"
16. The enclosed Water and Waste Processing Checklist (Attachment No. 2) outlines the items needed to complete the loan docket. All the items listed must be included in the loan docket when it is forwarded to the USDA - Rural Development State Office with a request for loan closing instructions to be issued.
17. Upon receipt of the loan docket, which contains all the items required above, RUS may authorize you to advertise the project for construction bids. Such advertisement must be in accordance with appropriate State statutes.. Immediately after bid opening you must provide RUS with (a) a bid tabulation, (b) recommendations from you and your engineer as to the acceptability of the bids received, and (c) your recommendations for contract awards. If all parties then agree the construction bids

received are acceptable, it is determined that adequate funds are available to cover the total facility costs, and that all the administrative conditions of loan approval have been satisfied, loan closing instructions will be issued. The closing instructions, a copy of which will be forwarded to you, will set forth any further requirements that must be met before the loan can be closed.

When all parties agree that the closing requirements can be met, a mutually acceptable date for the loan closing will be scheduled.

Any applicant contribution shall be considered as the first funds expended. After providing for all authorized costs, any remaining RUS project funds will be considered to be RUS grant funds and refunded to RUS. If the amount of unused RUS project funds exceeds the RUS grant, that part would be RUS loan funds.

If the conditions set forth in this letter are not met within six (6) months from the date hereof, RUS reserves the right to discontinue processing of the application. In the event the project has not advanced to the point of loan closing within the six-month period and it is determined the authority still wishes to proceed, it will be necessary that the proposed budget be reviewed again in detail. If during that review, it is determined the budget is no longer current and/or adequate, RUS reserves the right to require that it be revised or replaced.

We believe the information herein clearly sets forth the actions which must be taken; however, if you have any questions, please do not hesitate to contact me.

Sincerely yours,



JENNY N. PHILLIPS  
State Director

Enclosures

cc: Rural Development Specialist  
Elkins, WV

Whitney Kines  
City of Philippi  
P.O. Box 460  
Philippi, WV 26416

Hunter Mullins, Attorney at Law  
P.O. Box 622  
Grafton, WV 26354

Potesta and Associates, Inc.  
2300 MacCorkle Ave., SE  
Charleston, WV 25304

Bond Counsel

Project Construction Budget

|                          |                     |                     |
|--------------------------|---------------------|---------------------|
| Construction             | 763,000             | 763,000             |
| Construction Contingency | 54,000              | 54,000              |
| Land and Rights          | 10,000              | 10,000              |
| Legal Fees               | 11,000              | 11,000              |
| Accounting               | 2,500               | 2,500               |
| Bond Counsel             | 10,000              | 10,000              |
| Engineering Fees         | 133,200             | 133,200             |
| Basic Fee - \$66,400     |                     |                     |
| Inspection - \$66,800    |                     |                     |
| Refinance 1978 Issue     | 480,000             | 480,000             |
| Refinance 1992 Issue     | 125,000             | 125,000             |
| Interest                 | 46,000              | 46,000              |
| Project Contingency      | 16,300              | 16,300              |
| <b>TOTALS</b>            | <b>\$ 1,651,000</b> | <b>\$ 1,651,000</b> |

Availability of Service – Available for general domestic, commercial and industrial services; to colleges; and to hospitals.

Rates - Available for general domestic, commercial and industrial service.

|          |                |                           |             |
|----------|----------------|---------------------------|-------------|
| First    | 2,000 gals. @  | \$4.68 net (\$5.15 gross) | per M gals. |
| Next     | 3,000 gals. @  | \$4.68 net (\$5.15 gross) | per M gals. |
| Next     | 20,000 gals. @ | \$2.61 net (\$2.87 gross) | per M gals. |
| All Over | 25,000 gals. @ | \$2.15 net (\$2.37 gross) | per M gals. |

Minimum Charge

No bill shall be rendered for less than the following amounts according to the size of meter installed, to-wit:

|                              |                     |
|------------------------------|---------------------|
| 5/8" x 3/4" meter, or less - | \$ 9.36 per month   |
| 3/4" meter -                 | \$ 14.05 per month  |
| 1" meter -                   | \$ 23.40 per month  |
| 1 1/4" meter -               | \$ 34.20 per month  |
| 1 1/2" meter -               | \$ 46.80 per month  |
| 2" meter -                   | \$ 74.90 per month  |
| 3" meter -                   | \$ 140.40 per month |
| 4" meter -                   | \$ 234.00 per month |
| 6" meter -                   | \$ 468.00 per month |

Resale Rates

Customer Charge - \$50.00 per month  
Usage Charge - \$1.80 per 1,000 gallons

Discounts

The difference between gross and nets above specified shall constitute a discount for the prompt payment if bill is paid in full on or before the 20<sup>th</sup> day after that on which the bill is rendered.

Customer Deposits

Deposits shall not exceed one-twelfth (1/12) of the estimated annual charge to the customer for service.

Reconnection Charge

When service is terminated to a customer for nonpayment of bills, ten dollars (\$10.00) shall be charged for reconnection.

Connection Charge

For each separate connection to the City of Philippi Water System a connection fee of three hundred dollars (\$300.00) shall be charged.

Delayed Payment Penalty

The above schedule is net. On all accounts not paid in full within twenty (20) days of date of bill, ten percent (10%) will be added to the net amount shown.

Leak Adjustment Increment

\$0.46 per 1,000 gallons to be used when the bill reflects unusual consumption which can be attributed to eligible leakage on the customer's side of the meter. This rate is used to calculate consumption above the customer's historical average usage.

Fire Protection ScheduleApplicability

Applicable in Philippi and vicinity, West Virginia.

Availability of Service

Available for private and public fire protection service.

RatePrivate Fire Protection

Hydrants: Eighty-seven dollars and fifty cents (\$87.50) per hydrant, per year, to be paid in twelve monthly installments.

Sprinkler System: Thirty dollars (\$30.00) for 250 sprinkler heads or less, per year, to be paid in twelve monthly installments. Each additional sprinkler head over 250 shall be twelve cents (\$0.12) per head per year.

Public Fire Protection – City of Philippi

Three Thousand Five Hundred Dollars (\$3,500.00) per annum, payable in twelve monthly installments. The City of Philippi is to be entitled to as many fire hydrants as it may deem necessary; the said city to furnish said hydrants and to pay for the installation thereof, and the water department to maintain said hydrants.

Income Analysis

Existing System User Revenues – proforma based upon PSC approved rate increase - \$630,388

CONSTRUCTION BUDGET

|                                    |    |         |                   |
|------------------------------------|----|---------|-------------------|
| OPERATING INCOME                   | \$ | 630,388 |                   |
| OTHER INCOME                       | \$ | 3,729   |                   |
| TOTAL (A)                          |    |         | \$ 634,117        |
| EXPENSES                           |    |         |                   |
| O&M                                | \$ | 400,117 |                   |
| Taxes                              | \$ | 12,126  |                   |
| TOTAL                              |    |         | \$ 412,243        |
| CASH AVAILABLE FOR D/S (A)         |    |         | \$ 221,874        |
| DEBT SERVICE REQUIREMENTS          |    |         |                   |
| Debt Service (B)                   | \$ | 192,498 |                   |
| Debt Service Reserve               | \$ | 6,271   |                   |
| Depreciation Reserve               | \$ | 6,271   |                   |
| TOTAL                              |    |         | <u>\$ 205,040</u> |
| BALANCE                            |    |         | 16,834            |
| DEBT COVERAGE                      |    |         | 1.15              |
| OPERATION AND MAINTENANCE EXPENSES |    |         |                   |
| Source of Supply                   | \$ | 9,349   |                   |
| Pumping Expense                    | \$ | 132,324 |                   |
| Water Treatment                    | \$ | 58,888  |                   |
| Transmission/Distribution          | \$ | 51,253  |                   |
| Customer Accounts                  | \$ | 31,916  |                   |
| Administrative/General             | \$ | 116,387 |                   |
| TOTAL                              |    |         | \$ 400,117        |
| Existing Debt Service              | \$ | 11,086  |                   |
| Interfund Debt Service             | \$ | 56,000  |                   |
| Proposed Debt Service              | \$ | 125,412 |                   |
| TOTAL                              |    |         | \$ 192,498        |
| Existing Debt Service Reserve      |    | 0       |                   |
| Proposed Debt Service Reserve      | \$ | 6,271   |                   |
| TOTAL                              |    |         | \$6,271           |
| Existing Depreciation Reserve      |    | 0       |                   |
| Proposed Depreciation Reserve      | \$ | 6,271   |                   |
| TOTAL                              |    |         | \$ 6,271          |

UNITED STATES DEPARTMENT OF AGRICULTURE  
 RURAL UTILITIES SERVICE  
 Water and Waste Processing Checklist

| <u>Form Number</u> | <u>Document or Action</u>                                       | <u>Number Needed</u> | <u>Procedure Reference</u> | <u>Provided By</u>       | <u>Target Date</u> | <u>Date Received</u> | <u>File Position</u> |
|--------------------|---|----------------------|----------------------------|--------------------------|--------------------|----------------------|----------------------|
| SF 424.2           | Application for Federal Assistance                              | 3                    | 1780.31(b)                 | Applicant                |                    | Have                 | 3                    |
|                    | Public Notice of Intent to File App./ Env. Notice               | 3                    | 1780.19(a)<br>1794         | Applicant                |                    | Have                 | 3                    |
|                    | Regional Planning & Development Council Review                  | 2                    | 1780.33(b)                 | Applicant                |                    | Have                 | 3                    |
|                    | State Clearinghouse Review or IJDC Review                       | 2                    | 1780.33(b)                 | Applicant                |                    | Have                 | 4                    |
| Bulletin 1780-22   | Applicant Eligibility Certification/ Other Credit Certification | 1                    | 1780.33(d)                 | Applicant                |                    |                      | 3                    |
|                    | Bond Ordn. or Resol. On Outstanding Debts                       | 1                    | 1780.33(e)                 | Applicant/<br>Attorney   |                    | Have                 | 5                    |
|                    | Bonds or Notes Outstanding Debt                                 | 1                    | 1780.33(e)                 | Applicant/<br>Attorney   |                    | Have                 | 5                    |
|                    | Audit for last year of operation                                | 1                    | 1780.33(e)                 | Applicant/<br>Accountant |                    |                      | 3                    |

| <u>Form Number</u>                         | <u>Document or Action</u>   | <u>Number Needed</u> | <u>Procedure Reference</u> | <u>Provided By</u>     | <u>Target Date</u> | <u>Date Received</u> | <u>File Position</u> |
|--|---|----------------------|----------------------------|------------------------|--------------------|----------------------|----------------------|
|  | Staff Review<br>Financial<br>Statements                                       | 1                    | S.I. 1780.2                | RUS                    |                    | Have                 | 1                    |
| RD 1942-19<br>or other<br>approved         | Agreement<br>between Owner<br>& Engineer                                      | 3                    | 1780.39(b)                 | Applicant/<br>Engineer |                    |                      | 6                    |
| Bulletin<br>1780-7 or<br>other<br>approved | Legal Services<br>Agreement<br>with Local<br>Attorney                         | 3                    | 1780.39<br>(b)(2)          | Applicant/<br>Attorney |                    |                      | 5                    |
|  | Site Visit  |                      | S.I. 1780-2                | RUS                    |                    | Have                 | 3                    |
|  | Processing<br>Conference  | 1                    | 1780.39(a)                 | RUS                    |                    | Have                 | 3                    |
|  | Statement from<br>Historical<br>Preservation<br>Office                        | 2                    | 1794                       | Applicant              |                    | Have                 | 3                    |
|  | Comments from<br>Dept. of Commerce,<br>Labor & Environ.<br>Resources<br>(DEP) | 2                    | 1794                       | Applicant              |                    | Have                 | 3                    |
|  | Comments from<br>U.S. Fish and<br>Wildlife Service<br>(Endangered<br>Species) | 2                    | 1794                       | Applicant              |                    | Have                 | 3                    |
|  | Comments from<br>U.S. Forest<br>Service (Wild<br>& Scenic<br>Rivers)          | 2                    | 1794                       | Applicant              |                    | Have                 | 3                    |
| AD-1006                                    | Farmland<br>Conversion<br>Impact<br>Rating                                    | 1                    | 1794                       | RUS/NRCS               |                    |                      | 3                    |

| <u>Form Number</u>            | <u>Document or Action</u>   | <u>Number Needed</u> | <u>Procedure Reference</u>       | <u>Provided By</u>     | <u>Target Date</u> | <u>Date Received</u> | <u>File Position</u> |
|-------------------------------|---|----------------------|----------------------------------|------------------------|--------------------|----------------------|----------------------|
|                               | FEMA Standard Flood Hazard Determination                              | 2                    | 426.2                            | RUS                    |                    | Have                 | 3                    |
|                               | Civil Rights Impact Analysis Certification                            | 2                    | 2006-P                           | RUS/<br>Engineer       |                    | Have                 | 3                    |
|                               | Environmental Report  | 2                    | 1794                             | Applicant              |                    | Have                 | 3                    |
|                               | Environmental Assessment  | 2                    | 1794                             | RUS/<br>Engineer       |                    | Have                 | 3                    |
|                               | FONSI/<br>Evidence of Publication                                     | 1                    | Exhibit 1<br>RUS 1794<br>News Ad | RUS/<br>Applicant      |                    |                      | 3                    |
| Bulletins<br>1780-2<br>1780-3 | Preliminary Engineering Report  | 2                    | 1780.33(c)                       | Engineer               |                    | Have                 | 6                    |
|                               | Staff Engineer PER Review   | 1                    | 1780.33(c)                       | RUS                    |                    | Have                 | 3                    |
|                               | Bill Analysis for existing system(s)                                  | 2                    | 1780.33(c)                       | Applicant/<br>Engineer |                    | Have                 | 8                    |
|                               | Projected Bill Analysis for New Users                                 | 2                    | 1780.33(c)                       | Applicant/<br>Engineer |                    | N/A                  | 8                    |
|                               | Statement reporting the <u>total</u> number of <u>potential</u> users |                      | 1780.33(c)                       | Applicant/<br>Engineer |                    |                      | 8                    |
|                               | Copy of Existing Rate Tariff  | 2                    | 1780.33                          | Applicant              |                    | Have                 | 8                    |
|                               | Applicant's IRS Tax Number(TIN)                                       | 1                    | 1780.33(g)                       | Applicant              |                    | Have                 | 3                    |

| <u>Form Number</u> | <u>Document or Action</u>   | <u>Number Needed</u> | <u>Procedure Reference</u> | <u>Provided By</u> | <u>Target Date</u> | <u>Date Received</u> | <u>File Position</u> |
|--------------------|---|----------------------|----------------------------|--------------------|--------------------|----------------------|----------------------|
|                    | Agency Determination on the Availability of "Other Credit" with Documentation | 1                    | 1780.7(d)                  | RUS                |                    | Have                 | 3                    |
|                    | Documentation on Service Area   | 1                    | 1780.11                    | RUS                |                    |                      | 3                    |
| Bulletin 1780-1    | Project Selection Criteria  | 2                    | 1780.17                    | RUS                |                    | Have                 | 3                    |
|                    | Letter of Conditions  | 7                    | 1780.41 (a)(5)             | RUS                |                    | Have                 | 3                    |
| AD 1049            | Certification Regarding Drug-Free Workplace                                   | 1                    | 1780.33(h)                 | Applicant          |                    |                      | 5                    |
|                    | Minutes Adopting Drug-Free Workplace Program                                  | 1                    | LOC                        | Applicant          |                    |                      | 5                    |
| Exhibit A / A-1    | Certifications Regarding Lobbying   | 2                    | 1780.33(h)                 | Applicant          |                    |                      | 2                    |
| RD 1942-45         | Project Summary   | 3                    | 1780.41(a)                 | RUS                |                    | Have                 | 1                    |
| RD 442-7           | Operating Budget  | 3                    | 1780.33(h)                 | Applicant          |                    |                      | 3                    |
| RD 1942-14         | Project Fund Analysis   | 3                    | 1780.41(a)                 | RUS                |                    | Have                 | 2                    |
| RD 1940-1          | Request for Obligation of Funds   | 4                    | 1780.41(a)                 | RUS/<br>Applicant  |                    |                      | 2                    |
| RD 1942-46         | Letter of Intent to Meet Conditions   | 2                    | 1780.41 (a)(6)             | Applicant          |                    |                      | 3                    |

| <u>Form Number</u> | <u>Document or Action</u>                            | <u>Number Needed</u> | <u>Procedure Reference</u> | <u>Provided By</u>         | <u>Target Date</u> | <u>Date Received</u> | <u>File Position</u> |
|--------------------|--|----------------------|----------------------------|----------------------------|--------------------|----------------------|----------------------|
| AD 1047            | Certification Regarding Debarment (Primary)          | 1                    | 1780.33(h)                 | Applicant                  |                    |                      | 5                    |
|                    | Relationships/Associations with Agency Employees     | 1                    | 1780.1(f)                  | RUS                        |                    |                      | 3                    |
| RD 1910-11         | Applicant Certification, Federal Collection Policies | 1                    | 1780.33(h)                 | Applicant                  |                    |                      | 3                    |
| Bulletin 1780-27   | Loan Resolution                                      | 1                    | 1780.45 (a)(2)             | Applicant                  |                    |                      | 5                    |
| RD 400-1           | Equal Opportunity Agreement                          | 1                    | 1901-E                     | Applicant                  |                    |                      | 6                    |
| RD 400-4           | Assurance Agreement                                  | 1                    | 1901-E                     | Applicant                  |                    |                      | 3                    |
|                    | Legal Services Agreement with Bond Counsel           | 1                    | 1780.39 (b)(3)             | Applicant/<br>Bond Counsel |                    |                      | 5                    |
|                    | Agreement for Accounting Services                    | 1                    | 1780.39 (b)(2)             | Applicant/<br>Accountant   |                    |                      | 5                    |
|                    | Verification of Users                                | 1                    | 1780.44(b)                 | RUS                        |                    |                      | 3                    |
|                    | Accountant's Certification                           | 1                    | LOC                        | Applicant/<br>Accountant   |                    |                      | 6                    |
|                    | RUS Review of Accounting Records                     | 1                    | S.I. 1780-4 (1)(ii)        | RUS                        |                    |                      | 3                    |
|                    | Copy of PSC Rule 42 Exhibit                          | 1                    | State                      | Attorney/<br>Accountant    |                    |                      | 3                    |

| <u>Form Number</u>                                    | <u>Document or Action</u>                                       | <u>Number Needed</u> | <u>Procedure Reference</u> | <u>Provided By</u>     | <u>Target Date</u> | <u>Date Received</u> | <u>File Position</u> |
|---|---|----------------------|----------------------------|------------------------|--------------------|----------------------|----------------------|
| Lender Agreement/<br>Bulletin<br>1780-10/<br>1780-10a | Interim Financing Documenta-<br>tion                            | 1                    | 1780.39(d)                 | Applicant/<br>RUS      |                    |                      | 1                    |
|   | DOH Permit  | 1                    | 1780.15(d)                 | Applicant              |                    |                      | 6                    |
|   | Railroad Permit   | 1                    | 1780.15(d)                 | Applicant              |                    |                      | 6                    |
|   | Public Land Corp. Permit  | 1                    | 1780.15(d)                 | Applicant              |                    |                      | 6                    |
|   | Dept. of Health Approval  | 1                    | 1780.15(d)                 | Engineer               |                    |                      | 6                    |
|   | Dept. of Environmental Protection Permit                        | 1                    | 1780.15(d)                 | Engineer               |                    |                      | 6                    |
|   | Contract Documents, Plans & Specifications                      | 2                    | 1780.61(a)                 | Engineer               |                    |                      | Separate File        |
|   | Agency Determination on Procurement                             | 1                    | 1780.70(d)                 | RUS                    |                    |                      | 6                    |
|   | Preliminary Bond Transcript Documents w/o Defeasance Provisions | 2                    | 1780.83                    | Bond Counsel           |                    |                      | 5                    |
|   | Right-of-Way Map  | 1                    | 1780.44(g)                 | Engineer               |                    |                      | Separate File        |
|   | Deeds and/or Options  |                      | 1780.44.(g)                | Applicant/<br>Attorney |                    |                      | 5                    |
| RD<br>1927-9  | Preliminary Title Opinion                                       | 1                    | 1780.44<br>(g)(2)          | Applicant/<br>Attorney |                    |                      | 5                    |

| <u>Form Number</u> | <u>Document or Action</u>                            | <u>Number Needed</u> | <u>Procedure Reference</u>      | <u>Provided By</u>                  | <u>Target Date</u> | <u>Date Received</u> | <u>File Position</u> |
|--------------------|--|----------------------|---------------------------------|-------------------------------------|--------------------|----------------------|----------------------|
|                    | Narrative Opinion from Attorney                      | 1                    | 1780.44(g)                      | Attorney                            |                    |                      | 5                    |
|                    | Waiver of Title Defects Letter                       | 1                    | 1780.44(g)                      | RUS                                 |                    |                      | 5                    |
| RD 442-22          | Opinion of Counsel Relative to R/Ways                |                      | 1780.44 (g)(1)                  | Attorney                            |                    |                      | 5                    |
|                    | Review of Outstanding Judgment                       | 1                    | 1780.7(g)                       | RUS/<br>Attorney                    |                    |                      | 3                    |
| SF 3881            | Electronic Funds Transfer Payment Enrollment Form    | 1                    | 31 CFR 208                      | Applicant/<br>Financial Institution |                    |                      | 2                    |
|                    | Documentation Relative to Health or Sanitary Hazards | 1                    | 1780.1 (c)(1)<br>1780.13 (b)(1) | RUS/State Health Department         |                    |                      | 2                    |
|                    | PSC Approval   | 1                    | 1780.15(b)                      | Applicant/<br>Attorney              |                    |                      | 5                    |
|                    | Bid Tabulation                                       | 1                    | 1780.61(b)                      | Engineer                            |                    |                      | 6                    |
|                    | OGC Closing Instructions                             | 1                    | 1780.44(h)                      | RUS                                 |                    |                      | 5                    |
|                    | S/O Closing Instructions                             | 1                    | 1780.44(h)                      | RUS                                 |                    |                      | 5                    |
| RD 1927-10         | Final Title Opinion                                  | 1                    | 1780.44 (g)(2)                  | Applicant/<br>Attorney              |                    |                      | 5                    |

| <u>Form Number</u> | <u>Document or Action</u>                           | <u>Number Needed</u> | <u>Procedure Reference</u> | <u>Provided By</u>            | <u>Target Date</u> | <u>Date Received</u> | <u>File Position</u> |
|--------------------|---|----------------------|----------------------------|-------------------------------|--------------------|----------------------|----------------------|
|                    | Bond Transcript Documents w/o Defeasance Provisions | 3                    | 1780.83                    | Bond Counsel                  |                    |                      | Separate File        |
| RD 400-8           | Compliance Review                                   | 1                    | 1780.44(c)                 | RUS                           |                    |                      | 5                    |
|                    | Liability Insurance                                 | 1                    | 1780.39(g)                 | Applicant                     |                    |                      | 7                    |
|                    | Workers' Compensation Certificate                   | 1                    | 1780.39(g)                 | Applicant                     |                    |                      | 7                    |
|                    | Flood Insurance Policy                              | 1                    | 1780.39(g)                 | Applicant                     |                    |                      | 7                    |
| 440-24             | Fidelity Bond                                       | 1                    | 1780.39(g)                 | Applicant                     |                    |                      | 7                    |
| 1924-16            | Record of Pre-Construction Conference               | 1                    | 1780.76(a)                 | RUS/<br>Engineer              |                    |                      | 6                    |
| AD 1048            | Certification Regarding Debarment (Contractor)      | 1 each               | 1780.33(h)                 | All<br>Appropriate<br>Vendors |                    |                      | 5                    |
|                    | OGC Final Opinion                                   | 1                    | 1780.45(g)                 | RUS                           |                    |                      | 5                    |



United States Department of Agriculture  
Rural Development  
Elkins Area Office

March 17, 2009

City of Philippi  
The Honorable David C. Mulneix, Mayor  
108 North Main Street  
PO Box 460  
Philippi, WV 26416

Dear Mayor Mulneix:

This letter is to confirm that the pre-closing meeting for the USDA Rural Development Rural Utilities Service (RUS) loan on the City of Philippi water system improvement project is scheduled for April 14, 2009, at 10:00 a.m. in the Philippi City Hall council chambers located at 108 North Main Street, Philippi, West Virginia. A pre-construction conference will follow at 11:00 a.m. The official loan closing date will be April 16, 2009. The project attorney should attend the pre-closing meeting, and the project accountant should be available for consultation if needed.

Reference is made to the RUS Letter of Conditions dated July 30, 2001. All of the requirements set forth in this letter must be met and the loan must be closed in accordance with RUS Instruction 1780. Many of the aforementioned items from the Letter of Conditions have already been addressed. Those items remaining to be satisfied prior to loan closing include:

1. The certification on the RUS Bulletin 1780-28, "Loan Resolution Security Agreement", must be completed at the pre-closing meeting.
2. The City's attorney will need to provide Form RD 442-22, "Opinion of Counsel Relative to Rights-of-Way", showing no exceptions. This form should be dated April 16, 2009.
3. The City's attorney must furnish a Form RD 1927-10, "Final Title Opinion", on all land(s) being acquired. In addition, the attorney must provide a separate final title opinion(s) covering all existing property owned by the City and used in association with the water system. The opinion(s) should be dated April 16, 2009, and they should include legal descriptions (and plats if they are available).
4. In accordance with Item 8(c) of the Letter of Conditions, the City's attorney must furnish a narrative opinion addressing all permits, certifications, and other items necessary to show that all legal requirements can be met and stating how they will be met. The narrative should also identify any condemnation proceedings that are anticipated and state how they will be

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Randolph Center Building • 1200 Harrison Avenue, Suite 150 • Elkins, West Virginia 26241  
Phone: (304) 636-2158 • Fax: (304) 636-5902 • TDD: (304) 284-4836 • Web: <http://www.rurdev.usda.gov/wv>

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Washington, DC 20250-9410 or call (800)795-3272(voice) or (202) 720-6382 (TDD).

handled. If the City was unable to obtain the necessary property rights for any tract or right-of-way, a "right of entry" must be obtained for all properties before the pre-closing.

5. In accordance with the Legal Services Agreement, the project attorney should be on hand during the pre-construction conference to review construction contracts, and contracting procedure, as well as surety and contractual bonds in connection with the project.
6. The construction contract books will include a certification for the City's attorney to sign in connection with the payment and performance bonds. The City's attorney will be responsible for recordation of the payment bond, and also the performance bond if it is deemed prudent to record it as well.
7. No later than the date of the pre-closing meeting, the City must provide written evidence that all required insurance coverage and fidelity bond coverage has been obtained in accordance with Item 11 of the Letter of Conditions.
8. In accordance with Item 7 of the Letter of Conditions, the project accountant must provide a certification stating that all accounts and records required by the bond ordinance have been established and are operational.
9. The City must provide RUS with a current copy of their Workers' Compensation Certificate or other proof of good standing with the State Workers' Compensation system.
10. The contractors involved in the construction of the project will need to complete Form AD 1048, "Certification Regarding Debarment – Lower Tier Covered Transactions".
11. The first requisition for Rural Development funds should be created and submitted for Rural Development review as soon as possible. Once it is approved, the bond counsel will need to know the amount so that the note can be completed.
12. Please be prepared to have a properly called meeting of the City Council during the pre-closing process. Also please bring any official seal that the City uses for authenticating documents.
13. No later than the date of the pre-closing meeting, the City must provide copies of all applicable Public Service Commission certificates and/or approvals. A copy of the certificate of convenience and necessity order that became final on January 7, 2003, is already in the RUS case file.

14. If a permit is required from the West Virginia Department of Highways it must be on hand at the closing.
15. Nancy Taylor, Rural Development Technician in the Elkins Area Office, is planning to complete a Civil Rights Compliance Review with the City at the pre-closing meeting. Completion of this review will require an informal interview to obtain information about the water system customers, employees and governing body.

Thank you for doing business with USDA Rural Development. If you have any questions regarding these or any other matters pertaining to your loan and grant, please contact our office at your earliest convenience.

Sincerely,

Joseph D. Crickenberger  
Rural Development Specialist

cc: State Director  
USDA- Rural Development

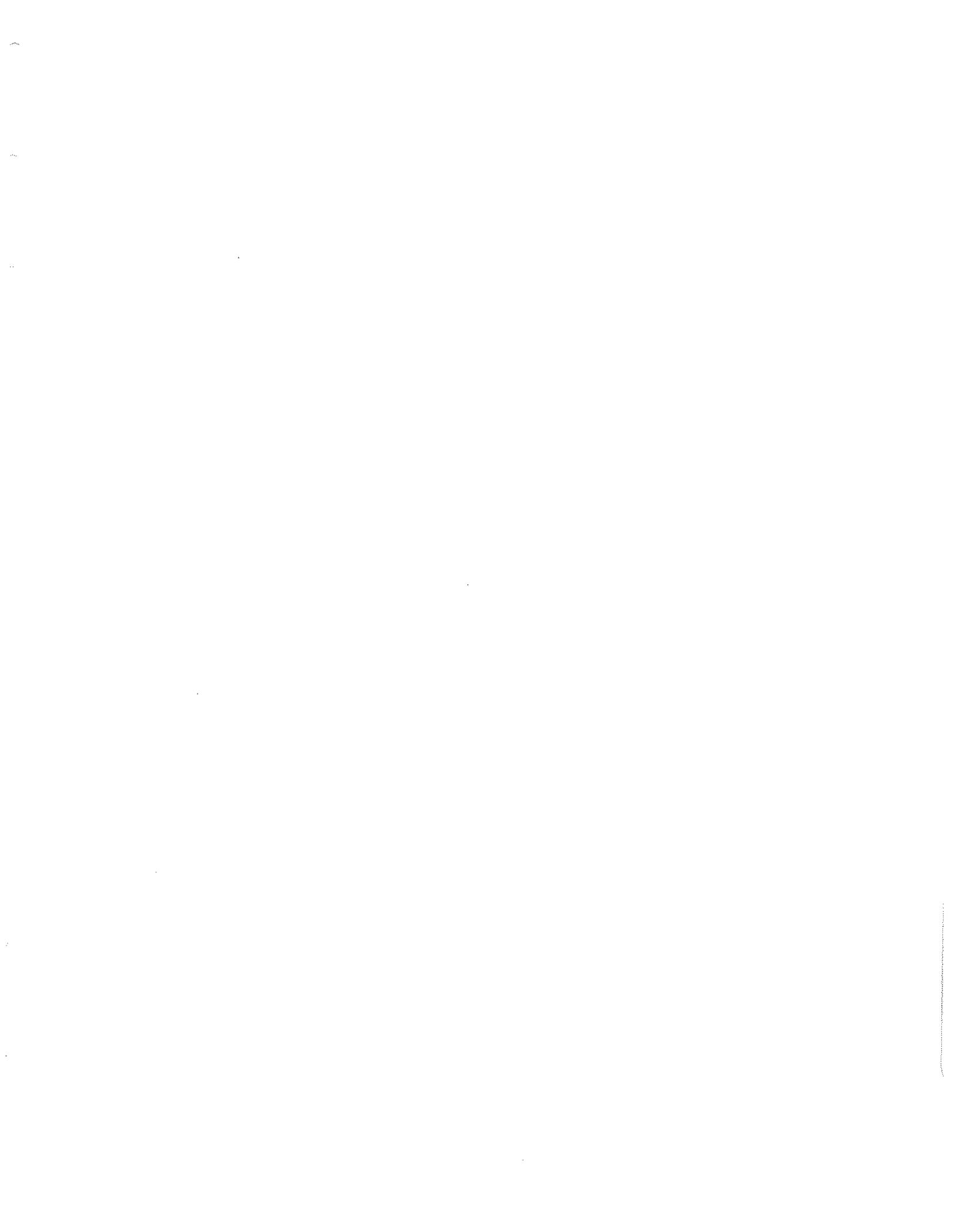
John C. Stump, Esquire  
Steptoe & Johnson, P.L.L.C.  
PO Box 1588  
Charleston, WV 25326-1588

Terrance Cato Moran, P.E.  
Potesta & Associates, Inc.  
7012 MacCorkle Avenue, SE  
Charleston, WV 25304

Michael D. Griffith, C.P.A.  
Griffith & Associates  
950 Little Coal River Road  
Alum Creek, WV 25003

Caton N. Hill, Jr., Esquire  
PO Box 10  
Philippi, WV 26416

Robert R. Rodecker, Esquire  
PO Box 3713  
Charleston, WV 25337



THE CITY OF PHILIPPI

Water Revenue Bonds, Series 2009 B  
(United States Department of Agriculture)

RECEIPT OF DEPOSITORY BANK

I, the undersigned duly authorized representative of First Central Bank, Philippi, West Virginia (the "Bank"), hereby certify that on April 16, 2009, the Bank received an automated clearinghouse transfer in the amount of \$170,700 for the Series 2009 B Bonds to the credit of the Project Construction Account (Account Number 501400253).

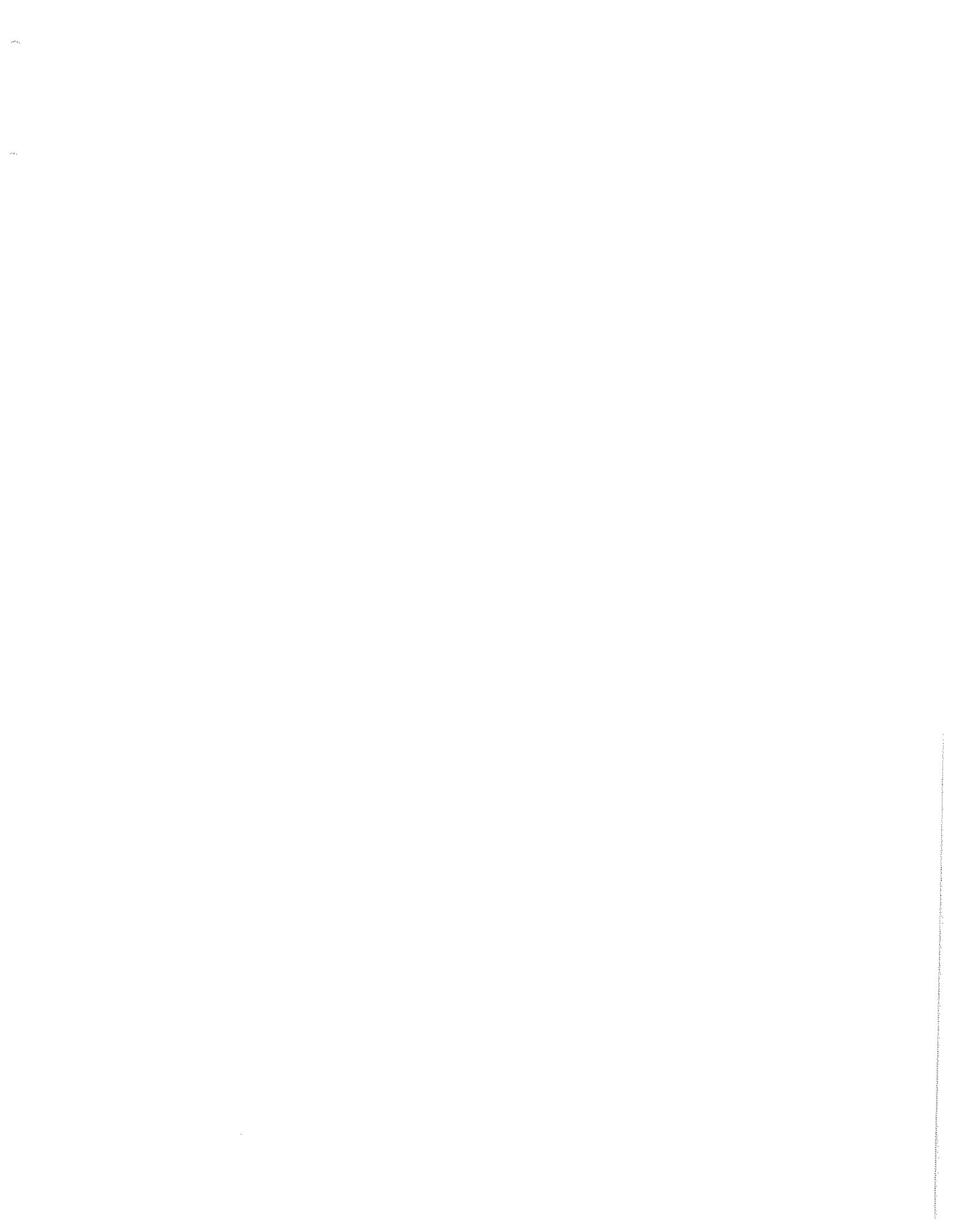
WITNESS my signature on this 16th day of April, 2009.

FIRST CENTRAL BANK

By:   
Its: Authorized Officer

04.02.09  
700470.00001

CH5062347.1



**THE CITY OF PHILIPPI**

**WATERWORKS SYSTEM DESIGN REVENUE BONDS,  
SERIES 2009 A (WEST VIRGINIA WATER DEVELOPMENT  
AUTHORITY)**

**BOND ORDINANCE**

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THE CITY OF PHILIPPI

BOND ORDINANCE

ORDINANCE AUTHORIZING THE DESIGN OF CERTAIN EXTENSIONS, ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING PUBLIC WATERWORKS FACILITIES OF THE CITY OF PHILIPPI AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN \$491,200 IN ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF WATERWORKS SYSTEM DESIGN REVENUE BONDS, SERIES 2009 A (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY); PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING A LOAN AGREEMENT RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

BE IT ORDAINED AND ENACTED BY THE COUNCIL OF THE CITY OF PHILIPPI:

ARTICLE I

STATUTORY AUTHORITY, FINDINGS AND DEFINITIONS

Section 1.01. Authority for this Ordinance. This Ordinance (together with any ordinance, order or resolution supplemental hereto or amendatory hereof, the "Bond Legislation") is enacted pursuant to the provisions of Chapter 8, Article 19, and Chapter 22C, Article 1 of the West Virginia Code of 1931, as amended (collectively, the "Act"), and other applicable provisions of law.

Section 1.02. Findings. It is hereby found, determined and declared that:

A. The City of Philippi (the "Issuer") is a municipal corporation and political subdivision of the State of West Virginia in Barbour County of said State.

B. The Issuer presently owns and operates a public waterworks system. However, it is deemed necessary and desirable for the health and welfare of the inhabitants of

the Issuer that there be acquired and constructed certain extensions, additions, betterments and improvements to the existing public waterworks facilities of the Issuer (the design of such herein known as the "Project") and at the costs estimated in Section 2.01 hereof.

C. In order to complete the Project, the Issuer has entered into a Contract with the Consulting Engineer for the engineering services. The Issuer intends to temporarily finance a portion of the costs of the Project through the issuance of its revenue bonds to the West Virginia Water Development Authority (the "Authority") pursuant to the Act.

D. It is deemed necessary for the Issuer to issue its Waterworks System Design Revenue Bonds in one single series, being the Waterworks System Design Revenue Bonds, Series 2009 A (West Virginia Water Development Authority), in the aggregate principal amount of not more than \$491,200 (the "Series 2009 A Bonds"); to temporarily finance a portion of the costs of the Project. Such costs shall be deemed to include the cost of all property rights, easements and franchises deemed necessary or convenient therefor; interest, if any, upon the Series 2009 A Bonds prior to and during a period not exceeding 6 months after completion of the Project; amounts which may be deposited in the Reserve Account (as hereinafter defined) for the Series 2009 A Bonds; engineering and legal expenses; expenses for estimates of costs and revenues; expenses for plans, specifications and surveys; other expenses necessary or incident to determining the feasibility or practicability of the enterprise; administrative expense; commitment fees; fees and expenses of the Authority; discount; initial fees for the services of registrars, paying agents, depositories or trustees or other costs in connection with the sale of the Series 2009 A Bonds and such other expenses as may be necessary or incidental to the financing herein authorized; the Project and the performance of the things herein required or permitted, in connection with any thereof, provided, that reimbursement to the Issuer for any amounts expended by it for allowable costs prior to the issuance of the Series 2009 A Bonds or the repayment of indebtedness incurred by the Issuer for such purposes shall be deemed Costs of the Project, as hereinafter defined.

E. The period of usefulness of the System after completion of the Project is not less than 40 years.

F. It is in the best interests of the Issuer that its Series 2009 A Bonds be sold to the Authority pursuant to the terms and provisions of a loan agreement by and between the Issuer and the Authority, in form satisfactory to the respective parties, to be approved hereby if not previously approved by resolution of the Issuer.

G. There are no outstanding obligations of the Issuer which will rank on a parity with the Series 2009 A Bonds as to liens, pledge and source of and security for payment or are secured by revenues or assets of the System.

H. The estimated revenues to be derived in each year after completion of the Project from the operation of the System will be sufficient to pay all costs of operation and maintenance of the System, the principal of and interest on the Series 2009 A Bonds and to make payments into all funds and accounts and other payments provided for herein.

I. The Issuer has complied with all requirements of West Virginia law, the Loan Agreement (hereinafter defined) relating to authorization of the Project and the System and issuance of the Series 2009 A Bonds, or will have so complied prior to issuance of any thereof, including, among other things, the approval of the Project and the financing thereof by the Authority.

J. The Project has been reviewed and determined to be technically and financially feasible by the West Virginia Infrastructure and Jobs Development Council as required under Chapter 31, Article 15A of the West Virginia Code of 1931, as amended.

Section 1.03. Bond Legislation Constitutes Contract. In consideration of the acceptance of the Series 2009 A Bonds by the Registered Owners of the same from time to time, this Bond Legislation shall be deemed to be and shall constitute a contract between the Issuer and such Bondholders, and the covenants and agreements herein set forth to be performed by the Issuer shall be for the equal benefit, protection and security of the Bondholders of any and all of such Series 2009 A Bonds, all which shall be of equal rank and without preference, priority or distinction between any one Bond and any other Bonds and by reason of priority of issuance or otherwise, except as expressly provided therein and herein.

Section 1.04. Definitions. The following terms shall have the following meanings herein unless the context expressly requires otherwise:

"Act" means, collectively, Chapter 8, Article 19 and Chapter 22C, Article 1 of the West Virginia Code of 1931, as amended and in effect on the date of enactment hereof.

"Authority" means the West Virginia Water Development Authority, which is expected to be the original purchaser and Registered Owner of the Series 2009 A Bonds, or any other agency, board or department of the State that succeeds to the functions of the Authority.

"Authorized Officer" means the Mayor of the Issuer, or any other officer of the Issuer specifically designated by resolution of the Governing Body.

"Bondholder", "Holder of the Bonds", "Holder", "Registered Owner" or any similar term whenever used herein with respect to an outstanding Bond or Bonds, means the person in whose name such Bond is registered.

"Bond Legislation", "Ordinance", "Bond Ordinance" or "Local Act" means this Bond Ordinance and all ordinances, orders and resolutions supplemental hereto or amendatory hereof.

"Bond Registrar" means the bank or other entity to be designated as such in the Supplemental Resolution and its successors and assigns.

"Bonds" means collectively, the Series 2009 A Bonds and, where appropriate, any bonds on a parity therewith subsequently authorized to be issued hereunder or by another ordinance of the Issuer.

"Bond Year" means the 12-month period beginning on the anniversary of the Closing Date in each year and ending on the day prior to the anniversary date of the Closing Date in the following year, except that the first Bond Year shall begin on the Closing Date.

"Clerk" means the Clerk of the Issuer.

"Closing Date" means the date upon which there is an exchange of the Series 2009 A Bonds for all or a portion of the proceeds of the Series 2009 A Bonds from the Authority.

"Code" means the Internal Revenue Code of 1986, as amended, and the Regulations.

"Commission" means the West Virginia Municipal Bond Commission or any other agency of the State of West Virginia that succeeds to the functions of the Commission.

"Consulting Engineers" means Burgess & Niple, Inc., Parkersburg, West Virginia, or any qualified engineer or firm of engineers, licensed by the State, that shall at any time hereafter be procured by the Issuer as Consulting Engineers for the System, or portion thereof, in accordance with Chapter 5G, Article 1 of the West Virginia Code of 1931, as amended; provided however, that the Consulting Engineers shall not be a regular, full-time employee of the State or any of its agencies, commissions, or political subdivisions.

"Contract" means the Contract for preconstruction engineering services for the Project by and between the Issuer and the Consulting Engineer.

"Costs" or "Costs of the Project" means those costs described in Section 1.02D hereof to be a part of the costs of the Project.

"Depository Bank" means the bank designated as such in the Supplemental Resolution, and its successors and assigns, which shall be a member of FDIC.

"FDIC" means the Federal Deposit Insurance Corporation and any successor to the functions of the FDIC.

"Fiscal Year" means each 12-month period beginning on July 1 and ending on the succeeding June 30.

"Governing Body" means the City Council of the Issuer, as it may now or hereafter be constituted.

"Government Obligations" means direct obligations of, or obligations the timely payment of the principal of and interest on which is guaranteed by, the United States of America.

"Gross Revenues" means the aggregate gross operating and non-operating revenues of the System, as hereinafter defined, determined in accordance with generally accepted accounting principles, after deduction of prompt payment discounts, if any, and reasonable provision for uncollectible accounts; provided, that "Gross Revenues" does not include any gains from the sale or other disposition of, or from any increase in the value of, capital assets (including Qualified Investments, as hereinafter defined, purchased pursuant to Article 8.01 hereof) or any Tap Fees, as hereinafter defined.

"Herein", "hereto" and similar words shall refer to this entire Bond Legislation.

"Independent Certified Public Accountants" means any certified public accountant or firm of certified public accountants that shall at any time hereafter be retained by the Issuer to prepare an independent annual or special audit of the accounts of the System or for any other purpose except keeping the accounts of the System in the normal operation of its business and affairs.

"Issuer" means The City of Philippi, a municipal corporation and political subdivision of the State of West Virginia, in Barbour County, West Virginia.

"Loan Agreement" means the Loan Agreement heretofore entered, or to be entered into, by and between the Issuer and the Authority providing for the purchase of the Series 2009 A Bonds from the Issuer by the Authority, the form of which shall be approved and the execution and delivery by the Issuer authorized and directed or ratified by the Supplemental Resolution.

"Mayor" means the Mayor of the Issuer.

"Net Proceeds" means the face amount of the Series 2009 A Bonds, plus accrued interest and premium, if any, less original issue discount, if any, and less proceeds, if any, deposited in the Series 2009 A Bonds Reserve Account.

"Net Revenues" means the balance of the Gross Revenues, remaining after deduction of Operating Expenses, as hereinafter defined.

"Operating Expenses" means the reasonable, proper and necessary costs of repair, operation and maintenance of the System, and includes, without limiting the generality of the foregoing, administrative, engineering, legal, auditing and insurance expenses (other than those capitalized as part of the Costs), fees and expenses of the Authority, fiscal agents, the Depository Bank, Registrar and Paying Agent or Paying Agents, payments to pension or retirement funds, taxes and such other reasonable operating costs and expenses as should normally and regularly be included under generally accepted accounting principles; provided,

that "Operating Expenses" does not include payments on account of the principal of or redemption premium, if any, or interest on the Bonds, charges for depreciation, losses from the sale or other disposition of or any decrease in the value of capital assets, amortization of debt discount or such miscellaneous deductions as are applicable to prior accounting periods.

"Outstanding" when used with reference to Bonds and as of any particular date, describes all Bonds theretofore and thereupon being authenticated and delivered except (i) any Bond cancelled by the Bond Registrar, at or prior to said date; (ii) any Bond, for the payment of which monies, equal to its principal amount and redemption premium, if applicable, with interest to the date of maturity or redemption shall be in trust hereunder, and set aside for such payment (whether upon or prior to maturity); (iii) any Bond deemed to have been paid as provided in Article X hereof; and (iv) for purposes of consents or other action by a specified percentage of Bondholders, any Bonds registered to the Issuer.

"Parity Bonds" means additional Parity Bonds issued under the provisions and within the limitations prescribed by Section 7.07 hereof.

"Paying Agent" means the Commission or such other entity or authority as may be designated as a Paying Agent by the Issuer in the Supplemental Resolution with the written consent of the Authority.

"Project" means the Project as described in Section 1.02B hereof.

"Qualified Investments" means and includes the following:

- (a) Government Obligations;
- (b) Government Obligations which have been stripped of their unmatured interest coupons, interest coupons stripped from Government Obligations, and receipts or certificates evidencing payments from Government Obligations or interest coupons stripped from Government Obligations;
- (c) Bonds, debentures, notes or other evidences of indebtedness issued by any of the following agencies: Banks for Cooperatives; Federal Intermediate Credit Banks; Federal Home Loan Bank System; Export-Import Bank of the United States; Federal Land Banks; Government National Mortgage Association; Tennessee Valley Authority; or Washington Metropolitan Area Transit Authority;
- (d) Any bond, debenture, note, participation certificate or other similar obligations issued by the Federal National Mortgage Association to the extent such obligation is guaranteed by the Government National Mortgage Association or issued by any other federal agency and backed by the full faith and credit of the United States of America;

(e) Time accounts (including accounts evidenced by time certificates of deposit, time deposits or other similar banking arrangements) which, to the extent not insured by the FDIC or Federal Savings and Loan Insurance Corporation, shall be secured by a pledge of Government Obligations, provided, that said Government Obligations pledged either must mature as nearly as practicable coincident with the maturity of said time accounts or must be replaced or increased so that the market value thereof is always at least equal to the principal amount of said time accounts;

(f) Money market funds or similar funds whose only assets are investments of the type described in paragraphs (a) through (e) above;

(g) Repurchase agreements or similar banking arrangements, fully secured by investments of the types described in paragraphs (a) through (e) above or fully insured by the FDIC, with member banks of the Federal Reserve system or banks or national banking associations which are members of FDIC or with government bond dealers recognized as primary dealers by the Federal Reserve Bank of New York, provided, that said investments securing said repurchase agreements either must mature as nearly as practicable coincident with the maturity of said repurchase agreements or must be replaced or increased so that the market value thereof is always at least equal to the principal amount of said repurchase agreements, and provided further that the holder of such repurchase agreement shall have a prior perfected security interest in the collateral therefor; must have (or its agent must have) possession of such collateral; and such collateral must be free of all claims by third parties;

(h) The West Virginia "consolidated fund" managed by the West Virginia Board of Treasury Investments pursuant to Chapter 12, Article 6C of the West Virginia Code of 1931, as amended, including, without limitation, authorized pools of investments operated by such State Board of Investments; and

(i) Obligations of states or political subdivisions or agencies thereof, the interest on which is excluded from gross income for federal income tax purposes, and which are rated at least "A" by Moody's Investors Service, Inc. or Standard & Poor's Corporation.

"Registered Owner," "Bondholder," "Holder" or any similar term means whenever used herein with respect to an outstanding Bond or Bonds, the person in whose name such Bond is registered.

"Registrar" means the Bond Registrar.

"Regulations" means temporary and permanent regulations promulgated under the Code, or any predecessor thereto.

"Renewal and Replacement Fund" means the Renewal and Replacement Fund established by this Ordinance.

"Reserve Accounts" means the reserve accounts established for the Series 2009 A Bonds.

"Reserve Requirement" means the amounts required to be on deposit in any Reserve Account.

"Revenue Fund" means the Revenue Fund established by Section 5.01 hereof.

"Series 2009 A Bonds" means the Waterworks System Design Revenue Bonds, Series 2009 A (West Virginia Water Development Authority), of the Issuer, authorized by this Ordinance.

"Series 2009 A Bonds Project Trust Fund" means the Series 2009 A Bonds Project Trust Fund established by Section 5.01 hereof.

"Series 2009 A Bonds Reserve Account" means the Series 2009 A Bonds Reserve Account established by Section 5.02 hereof.

"Series 2009 A Bonds Reserve Requirement" means, as of any date of calculation, the maximum amount of principal and interest which will become due on the Series 2009 A Bonds in the then current or any succeeding year.

"Series 2009 A Bonds Sinking Fund" means the Series 2009 A Bonds Sinking Fund established by Section 5.02 hereof.

"Sinking Funds" means the sinking funds established for the Series 2009 A Bonds.

"State" means the State of West Virginia.

"Supplemental Resolution" means any resolution, ordinance or order of the Issuer supplementing or amending this Ordinance and, when preceded by the article "the," refers specifically to the supplemental resolution authorizing the sale of the Series 2009 A Bonds; provided, that any matter intended by this Ordinance to be included in the Supplemental Resolution with respect to the Series 2009 A Bonds, and not so included may be included in another Supplemental Resolution.

"Surplus Revenues" means the Net Revenues not required by the Bond Legislation to be set aside and held for the payment of or security for the Bonds or any other obligations of the Issuer, including, without limitation, the Sinking Funds, the Reserve Accounts and the Renewal and Replacement Fund.

"System" means the complete existing public waterworks system of the Issuer, as presently existing in its entirety or any integral part thereof, and shall include the Project and any further extensions, additions, betterments and improvements thereto hereafter acquired or constructed for the System from any sources whatsoever.

"Tap Fees" means the fees, if any, paid by prospective customers of the System in order to connect thereto.

Words importing singular number shall include the plural number in each case and vice versa; words importing persons shall include firms and corporations; and words importing the masculine, feminine or neutral gender shall include any other gender.

## ARTICLE II

### AUTHORIZATION OF THE PROJECT

Section 2.01. Authorization of the Project. There is hereby authorized and ordered the Project at an estimated cost of not to exceed \$761,200, of which approximately \$491,200 will be paid from proceeds of the Series 2009 A Bonds. The proceeds of the Series 2009 A Bonds hereby authorized shall be applied as provided in Article VI hereof.

The cost of the Project is estimated not to exceed \$761,200, of which approximately \$491,200 will be obtained from the proceeds of the Series 2009 A Bonds and \$275,000 will be obtained from a U.S. Special Appropriations Grant.

### ARTICLE III

#### AUTHORIZATION, TERMS, EXECUTION, REGISTRATION AND SALE OF BONDS; AUTHORIZATION AND EXECUTION OF LOAN AGREEMENT

Section 3.01. Authorization of Bonds. For the purposes of capitalizing interest on the Series 2009 A Bonds, funding the reserve account for the Series 2009 A Bonds, paying Costs of the Project not otherwise provided for and paying certain costs of issuance of the Series 2009 A Bonds and related costs, or any or all of such purposes, as determined by the Supplemental Resolution, there shall be and hereby are authorized to be issued the negotiable Series 2009 A Bonds of the Issuer. The Series 2009 A Bonds shall be issued in one series, as a single bond, designated as "Waterworks System Design Revenue Bonds, Series 2009 A (West Virginia Water Development Authority)", in the principal amount of not more than \$491,200, which shall have such terms as set forth hereinafter and in the Supplemental Resolution. The proceeds of the Series 2009 A Bonds remaining after funding of the Series 2009 A Bonds Reserve Account (if funded from Bond proceeds) and capitalization of interest, if any, shall be deposited in or credited to the Series 2009 A Bonds Project Trust Fund established by Section 5.01 hereof.

Section 3.02. Terms of Bonds. The Series 2009 A Bonds shall be issued in such principal amounts; shall bear interest, if any, at such rate or rates, not exceeding the then legal maximum, payable on such dates; shall mature on such dates and in such amounts; and shall be redeemable, in whole or in part, all as the Issuer shall prescribe in a Supplemental Resolution or as specifically provided in the Loan Agreement. The Series 2009 A Bonds shall be payable as to principal at the office of the Paying Agent, in any coin or currency which, on the dates of payment of principal is legal tender for the payment of public or private debts under the laws of the United States of America. Interest, if any, on the Series 2009 A Bonds shall be paid by check or draft of the Paying Agent or its agent, mailed to the Registered Owner thereof at the address as it appears on the books of the Bond Registrar, or by such other method as shall be mutually agreeable so long as the Authority is the Registered Owner thereof.

Unless otherwise provided by the Supplemental Resolution, the Series 2009 A Bonds shall initially be issued in the form of a single bond, fully registered to the Authority, with a debt service schedule attached, and shall mature in principal installments, all as provided in the Supplemental Resolution. The Series 2009 A Bonds shall be exchangeable at the option and expense of the Registered Owner for another fully registered Bond or Bonds of the same series in aggregate principal amount equal to the amount of said Bonds then Outstanding and being exchanged, with principal installments or maturities, as applicable, corresponding to the dates of payment of principal installments of said Bonds; provided, that the Authority shall not be obligated to pay any expenses of such exchange.

Subsequent series of Bonds, if any, shall be issued in fully registered form and in denominations as determined by a Supplemental Resolution. Such Bonds shall be dated and shall bear interest as specified in a Supplemental Resolution.

Section 3.03. Execution of Bonds. The Series 2009 A Bonds shall be executed in the name of the Issuer by the Mayor, and the seal of the Issuer shall be affixed thereto or imprinted thereon and attested by the Clerk. In case any one or more of the officers who shall have signed or sealed the Series 2009 A Bonds shall cease to be such officer of the Issuer before the Series 2009 A Bonds so signed and sealed have been actually sold and delivered, such Bonds may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Bonds had not ceased to hold such office. The Series 2009 A Bonds may be signed and sealed on behalf of the Issuer by such person as at the actual time of the execution of such Bonds shall hold the proper office in the Issuer, although at the date of such Bonds such person may not have held such office or may not have been so authorized.

Section 3.04. Authentication and Registration. No Series 2009 A Bonds shall be valid or obligatory for any purpose or entitled to any security or benefit under this Bond Legislation unless and until the Certificate of Authentication and Registration on such Bond, substantially in the form set forth in Section 3.10 hereof shall have been manually executed by the Bond Registrar. Any such executed Certificate of Authentication and Registration upon any such Bond shall be conclusive evidence that such Bond has been authenticated, registered and delivered under this Bond Legislation. The Certificate of Authentication and Registration on the Series 2009 A Bonds shall be deemed to have been executed by the Bond Registrar if manually signed by an authorized officer of the Bond Registrar, but it shall not be necessary that the same officer sign the Certificate of Authentication and Registration on all of the Bonds issued hereunder.

Section 3.05. Negotiability, Transfer and Registration. Subject to the provisions for transfer of registration set forth below, the Series 2009 A Bonds shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and each successive Holder, in accepting the Series 2009 A Bonds shall be conclusively deemed to have agreed that such Bonds shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and each successive Holder shall further be conclusively deemed to have agreed that said Bonds shall be incontestable in the hands of a bona fide holder for value.

So long as the Series 2009 A Bonds remain outstanding, the Issuer, through the Bond Registrar or its agent, shall keep and maintain books for the registration and transfer of such Bonds.

The registered Series 2009 A Bonds shall be transferable only upon the books of the Bond Registrar, by the registered owner thereof in person or by his attorney duly authorized in writing, upon surrender thereto together with a written instrument of transfer

satisfactory to the Bond Registrar duly executed by the registered owner or his duly authorized attorney.

In all cases in which the privilege of exchanging or transferring the registered Series 2009 A Bonds are exercised, Series 2009 A Bonds shall be delivered in accordance with the provisions of this Bond Legislation. All Series 2009 A Bonds surrendered in any such exchanges or transfers shall forthwith be cancelled by the Bond Registrar. For every such exchange or transfer of Series 2009 A Bonds, the Bond Registrar may make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer and the cost of preparing each new Bond upon each exchange or transfer, and any other expenses of the Bond Registrar incurred in connection therewith, which sum or sums shall be paid by the Issuer. The Bond Registrar shall not be obliged to make any such exchange or transfer of any Series 2009 A Bonds during the period commencing on the 15th day of the month next preceding an interest payment date on the Series 2009 A Bonds or, in the case of any proposed redemption of such Bonds, next preceding the date of the selection of Bonds to be redeemed, and ending on such interest payment date or redemption date.

Section 3.06. Bonds Mutilated, Destroyed, Stolen or Lost. In case the Series 2009 A Bonds shall become mutilated or be destroyed, stolen or lost, the Issuer may, in its discretion, issue, and the Bond Registrar shall, if so advised by the Issuer, authenticate and deliver, a new Bond of the same series and of like tenor as the Bonds so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Bond, upon surrender and cancellation of such mutilated Bond, or in lieu of and substitution for the Bond destroyed, stolen or lost, and upon the Holder's furnishing satisfactory indemnity and complying with such other reasonable regulations and conditions as the Issuer may prescribe and paying such expenses as the Issuer and the Bond Registrar may incur. All Bonds so surrendered shall be cancelled by the Bond Registrar and held for the account of the Issuer. If any such Bond shall have matured or be about to mature, instead of issuing a substitute Bond, the Issuer may pay the same, upon being indemnified as aforesaid, and if such Bond be lost, stolen or destroyed, without surrender thereof.

Section 3.07. Bonds not to be Indebtedness of the Issuer. The Series 2009 A Bonds shall not, in any event, be or constitute a corporate indebtedness of the Issuer within the meaning of any constitutional or statutory provision or limitation, but shall be payable solely from the Gross Revenues derived from the operation of the System as herein provided. No holder or holders of the Series 2009 A Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Series 2009 A Bonds or the interest thereon.

Section 3.08. Bonds Secured by Pledge of Gross Revenues. The payment of the debt service on the Series 2009 A Bonds shall be secured by a first lien on the Gross Revenues derived from the System. The Gross Revenues in an amount sufficient to pay the principal of and interest on and other payments for the Bonds, and to make all other payments hereinafter set forth, are hereby irrevocably pledged to such payments as they become due.

Section 3.09. Delivery of Bonds. The Issuer shall execute and deliver the Series 2009 A Bonds to the Bond Registrar, and the Bond Registrar shall authenticate, register and deliver the Series 2009 A Bonds to the original purchasers upon receipt of the documents set forth below:

- A. If other than the Authority, a list of the names in which the Series 2009 A Bonds are to be registered upon original issuance, together with such taxpayer identification and other information as the Bond Registrar may reasonably require;
- B. A request and authorization to the Bond Registrar on behalf of the Issuer, signed by an Authorized Officer, to authenticate and deliver the Series 2009 A Bonds to the original purchaser;
- C. An executed and certified copy of the Bond Legislation;
- D. An executed copy of the Loan Agreement; and
- E. The unqualified approving opinion of bond counsel on the Series 2009 A Bonds.

Section 3.10. Form of Bonds. The text of the Series 2009 A Bonds shall be in substantially the following forms, with such omissions, insertions and variations as may be necessary and desirable and authorized or permitted hereby, or by any Supplemental Resolution adopted prior to the issuance thereof:

(FORM OF SERIES 2009 A BOND)

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
THE CITY OF PHILIPPI  
WATERWORKS SYSTEM DESIGN REVENUE BONDS, SERIES 2009 A  
(WEST VIRGINIA WATER DEVELOPMENT AUTHORITY)

No. AR-1

\$491,200

KNOW ALL MEN BY THESE PRESENTS: That on this the \_\_\_\_ day of \_\_\_\_\_, 2009, THE CITY OF PHILIPPI, a municipal corporation and political subdivision of the State of West Virginia in Barbour County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to the WEST VIRGINIA WATER DEVELOPMENT AUTHORITY (the "Authority") or registered assigns the sum of \_\_\_\_\_ DOLLARS (\$491,200), or such lesser amount as shall have been advanced to the Issuer hereunder and not previously repaid, as set forth in the "Record of Advances" attached as EXHIBIT A hereto and incorporated herein by reference. Interest only shall commence on the date hereof on the amounts advanced and outstanding, payable in quarterly installments on January 1, April 1, July 1 and October 1 of each year in arrears at the rate of 3% per annum, with the first payment due on \_\_\_\_\_ 1, 20\_\_\_. Interest accrues at 5% per annum and interest and principal payments are payable in quarterly installments on January 1, April 1, July 1 and October 1 of each year commencing on \_\_\_\_\_ 1, 20\_\_ to and including \_\_\_\_\_ 1, 20\_\_\_, as set forth on the "Debt Service Schedule" attached as EXHIBIT B hereto and incorporated herein by reference.

Principal installments of this Bond are payable in any coin or currency which, on the dates of payment of such installments, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the West Virginia Municipal Bond Commission, Charleston, West Virginia (the "Paying Agent"). The interest on this Bond is payable by check or draft of the Paying Agent mailed to the registered owner hereof at the address as it appears on the books of The Huntington National Bank, Charleston, West Virginia, as registrar (the "Registrar"), on the 15th day of the month next preceding an interest payment date, or by such other method as shall be mutually agreeable so long as the Authority is the registered owner hereof.

This Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority, and upon the terms and conditions prescribed by, and otherwise in compliance with, the Loan Agreement by and between the Issuer and the Authority dated \_\_\_\_\_, 2009.

This Bond is issued (i) to temporarily pay the costs of design related to the acquisition and construction of certain extensions, additions, betterments and improvements to the public waterworks system of the Issuer (the "Project"); and (ii) to pay certain costs of issuance hereof and related costs. The existing public waterworks system of the Issuer, the Project, and any further extensions, additions, betterments or improvements thereto are herein called the "System." This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 8, Article 19 and Chapter 22C, Article 1 of the West Virginia Code of 1931, as amended (collectively, the "Act"), and a Bond Ordinance duly enacted by the Issuer on \_\_\_\_\_, 2009, and a Supplemental Resolution duly adopted by the Issuer on \_\_\_\_\_, 2009 (collectively, the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Bond Legislation.

THE ISSUER HAS NO BONDS OR OBLIGATIONS OTHER THAN THIS BOND WHICH IS SECURED BY GROSS REVENUES OF THE SYSTEM.

This Bond is payable only from and secured by a pledge of the Gross Revenues (as defined in the Bond Legislation) to be derived from the operation of the System, and from monies in the reserve account created under the Bond Legislation for the Series 2009 A Bonds (the "Series 2009 A Bonds Reserve Account"), and unexpended proceeds of the Series 2009 A Bonds. Such Gross Revenues shall be sufficient to pay all operating expenses of the System and the principal of and interest on all bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute a corporate indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same or the interest hereon, except from said special fund provided from the Gross Revenues, the monies in the Series 2009 A Bonds Reserve Account and unexpended proceeds of the Bonds. Pursuant to the Bond Legislation, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, together with other revenues of the System, to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the maximum amount payable in any year for principal of and interest on the Bonds and all other obligations secured by a lien on or payable from such revenue on a parity with the Series 2009 A Bonds; provided however, that, so long as there exists in the Series 2009 A Bonds Reserve Account an amount at least equal to the maximum amount of principal and interest which will become due on the Series 2009 A Bonds in the then current or any succeeding year, and in the respective reserve accounts established for any other obligations outstanding on a parity with or junior and subordinate to the Series 2009 A Bonds, an amount at least equal to the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the registered owners of the Bonds for the terms of which reference is made to the Bond Legislation. Remedies provided the registered owners

of the Bonds are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

Subject to the registration requirements set forth herein, this Bond is transferable, as provided in the Bond Legislation, only upon the books of the Registrar by the registered owner, or by its attorney duly authorized in writing, upon the surrender of this Bond, together with a written instrument of transfer satisfactory to the Registrar, duly executed by the registered owner or its attorney duly authorized in writing.

Subject to the registration requirements set forth herein, this Bond, under the provision of the Act is, and has all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia.

All money received from the sale of this Bond, after reimbursement and repayment of all amounts advanced for preliminary expenses as provided by law and the Bond Legislation, shall be applied solely to payment of the costs of the Project and costs of issuance described in the Bond Legislation, and there shall be and hereby is created and granted a lien upon such monies, until so applied, in favor of the registered owner of this Bond.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Bond do exist, have happened, and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of the Issuer, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia and that a sufficient amount of the Gross Revenues of the System has been pledged to and will be set aside into said special fund by the Issuer for the prompt payment of the principal of and interest on this Bond.

All provisions of the Bond Legislation, resolutions and statutes under which this Bond is issued shall be deemed to be a part of the contract evidenced by this Bond to the same extent as if written fully herein.

IN WITNESS WHEREOF, THE CITY OF PHILIPPI has caused this Bond to be signed by its Mayor and its corporate seal to be hereunto affixed and attested by its Clerk, and has caused this Bond to be dated the day and year first written above.

[SEAL]

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Clerk

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 2009 A Bonds described in the within-mentioned Bond Legislation and has been duly registered in the name of the registered owner set forth above, as of the date set forth below.

Date: \_\_\_\_\_, 2009.

THE HUNTINGTON NATIONAL BANK,  
as Registrar

By: \_\_\_\_\_  
Its: Authorized Officer

EXHIBIT A

RECORD OF ADVANCES

| <u>AMOUNT</u> | <u>DATE</u> | <u>AMOUNT</u> | <u>DATE</u> |
|---------------|-------------|---------------|-------------|
| (1) \$        |             | (19)          |             |
| (2)           |             | (20)          |             |
| (3)           |             | (21)          |             |
| (4)           |             | (22)          |             |
| (5)           |             | (23)          |             |
| (6)           |             | (24)          |             |
| (7)           |             | (25)          |             |
| (8)           |             | (26)          |             |
| (9)           |             | (27)          |             |
| (10)          |             | (28)          |             |
| (11)          |             | (29)          |             |
| (12)          |             | (30)          |             |
| (13)          |             | (31)          |             |
| (14)          |             | (32)          |             |
| (15)          |             | (33)          |             |
| (16)          |             | (34)          |             |
| (17)          |             | (35)          |             |
| (18)          |             | (36)          |             |

TOTAL \$ \_\_\_\_\_

EXHIBIT B  
DEBT SERVICE SCHEDULE

(Form of)

ASSIGNMENT

FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto the within Bond and does hereby irrevocably constitute and appoint \_\_\_\_\_, Attorney to transfer the said Bond on the books kept for registration of the within Bond of the said Issuer with full power of substitution in the premises.

Dated: \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

In the presence of:

\_\_\_\_\_

Section 3.11. Sale of Bonds; Approval and Ratification of Execution of Loan Agreement. The Series 2009 A Bonds shall be sold to the Authority, pursuant to the terms and conditions of the Loan Agreement. If not so authorized by previous ordinance or resolution, the Mayor is specifically authorized and directed to execute the Loan Agreement in the form attached hereto as "EXHIBIT A" and made a part hereof, and the Clerk is directed to affix the seal of the Issuer, attest the same and deliver it to the Authority, and any such prior execution and delivery is hereby authorized, approved, ratified and confirmed. The Loan Agreement, including all schedules and exhibits attached thereto, is hereby approved and incorporated in this Bond Legislation.

Section 3.12. Filing of Amended Schedule. Upon completion of the Project, the Issuer will file with the Authority a schedule of the Series 2009 A Bonds, the form of which will be provided by the Authority, setting forth the actual costs of the Project and sources of funds therefor.

ARTICLE IV

[RESERVED]

## ARTICLE V

### FUNDS AND ACCOUNTS; SYSTEM REVENUES AND APPLICATION THEREOF

#### Section 5.01. Establishment of Funds and Accounts with Depository Bank.

The following special funds or accounts are hereby created with and shall be held by the Depository Bank, separate and apart from all other funds or accounts of the Depository Bank or the Issuer and from each other:

- (1) Revenue Fund;
- (2) Renewal and Replacement Fund; and
- (3) Series 2009 A Bonds Project Trust Fund.

Section 5.02. Establishment of Funds and Accounts with Commission. The following special funds or accounts are hereby created with and shall be held by the Commission, separate and apart from all other funds or accounts of the Commission or the Issuer and from each other:

- (1) Series 2009 A Bonds Sinking Fund; and
- (2) Series 2009 A Bonds Reserve Account.

Section 5.03. System Revenues; Flow of Funds. A. The entire Gross Revenues derived from the operation of the System and all parts thereof shall be deposited upon receipt in the Revenue Fund. The Revenue Fund shall constitute a trust fund for the purposes provided in this Bond Legislation and shall be kept separate and distinct from all other funds of the Issuer and the Depository Bank and used only for the purposes and in the manner provided in this Bond Legislation. All monies in the Revenue Fund shall be disposed of only in the following manner and order of priority:

- (1) The Issuer shall first, on the first day of each month, transfer from the Revenue Fund and remit to the Commission commencing 3 months prior to the first date of payment of interest on the Series 2009 A Bonds for which interest has not been capitalized or as required in the Loan Agreement, for deposit in the Series 2009 A Bonds Sinking Fund, an amount equal to 1/3rd of the amount of interest which will become due on the Series 2009 A Bonds on the next ensuing quarterly interest payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 2009 A Bonds Sinking Fund and the next quarterly interest payment date is less than 3 months, then such monthly payments shall be increased proportionately to provide, 1 month prior to the next quarterly interest payment date, the required amount of interest coming due on such date.

(2) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and remit to the Commission commencing 3 months prior to the first date of payment of principal on the Series 2009 A Bonds for deposit in the Series 2009 A Bonds Sinking Fund, an amount equal to 1/3rd of the amount of principal which will become due on the Series 2009 A Bonds on the next ensuing quarterly principal payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 2009 A Bonds Sinking Fund and the next quarterly principal payment date is less than 3 months, then such monthly payments shall be increased proportionately to provide, 1 month prior to the next quarterly principal payment date, the required amount of principal coming due on such date.

(3) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and remit to the Commission (commencing 3 months prior to the first date of payment of principal of the Series 2009 A Bonds, if not fully funded upon issuance of the Series 2009 A Bonds, for deposit in the Series 2009 A Bonds Reserve Account, an amount equal to 1/120th of the Series 2009 A Bonds Reserve Requirement; provided that, no further payments shall be made into the Series 2009 A Bonds Reserve Account when there shall have been deposited therein, and as long as there shall remain on deposit therein, an amount equal to the Series 2009 A Bonds Reserve Requirement. Monies in the Series 2009 A Bonds Reserve Account shall be used only for the purpose of paying principal of and interest on the Series 2009 A Bonds as the same shall come due, when other monies in the Sinking Fund are insufficient therefor, and for no other purpose.

(4) The Issuer shall next, each month, transfer from the Revenue Fund to the Operation and Maintenance Fund an amount sufficient to pay current Operating Expenses of the System.

(5) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and remit to the Depository Bank for deposit in the Renewal and Replacement Fund, a sum equal to 2 1/2% of the Gross Revenues each month, exclusive of any payments for account of any Reserve Account. All funds in the Renewal and Replacement Fund shall be kept apart from all other funds of the Issuer or of the Depository Bank and shall be invested and reinvested in accordance with Article VIII hereof. Withdrawals and disbursements may be made from the Renewal and Replacement Fund for replacements, repairs, improvements or extensions to the System; provided, that any deficiencies in any Reserve Account (except to the extent such deficiency exists because the required payments into such account have not, as of the date of determination of a deficiency, funded such account to the maximum extent required hereof) shall be promptly eliminated with monies from the Renewal and Replacement Fund.

Monies in the Series 2009 A Bonds Sinking Fund shall be used only for the purposes of paying principal of and interest on the Series 2009 A Bonds as the same shall become due. Monies in the Series 2009 A Bonds Reserve Account shall be used only for the purpose of paying principal of and interest on the Series 2009 A Bonds as the same shall come due, when other monies in the Sinking Fund are insufficient therefor, and for no other purpose.

All investment earnings on monies in the Series 2009 A Bonds Sinking Fund shall be returned, not less than once each year, by the Commission to the Issuer, and such amounts shall, during the Project, as applicable, be deposited in the Series 2009 A Bonds Project Trust Fund, and following completion thereof, shall be deposited in the Revenue Fund and applied in full, first to the next ensuing interest payment due on the Series 2009 A Bonds.

Any withdrawals from the Series 2009 A Bonds Reserve Account, which result in a reduction in the balance of such account to below the Reserve Requirement thereof, shall be restored from the first Gross Revenues available after all required payments have been made in full in the order set forth above.

As and when additional Bonds ranking on a parity with the Series 2009 A Bonds are issued, provision shall be made for additional payments into the respective sinking funds sufficient to pay the interest on such additional parity Bonds and accomplish retirement thereof at maturity and to accumulate a balance in the respective Reserve Accounts in an amount equal to the requirement thereof.

The Issuer shall not be required to make any further payments into the Series 2009 A Bonds Sinking Fund, or the Series 2009 A Bonds Reserve Account when the aggregate amount of funds therein are at least equal to the aggregate principal amount of the Series 2009 A Bonds issued pursuant to this Bond Legislation then Outstanding and all interest to accrue until the maturity thereof.

The Commission is hereby designated as the fiscal agent for the administration of the Series 2009 A Bonds Sinking Fund, and the Series 2009 A Bonds Reserve Account created hereunder, and all amounts required for said accounts shall be remitted to the Commission from the Revenue Fund by the Issuer at the times provided herein. All remittances made by the Issuer to the Commission shall clearly identify the fund or account into which each amount is to be deposited. If required by the Authority at anytime, the Issuer shall make the necessary arrangements whereby required payments into said accounts shall be automatically debited from the Revenue Fund and electronically transferred to the Commission on the dates required hereunder.

Monies in the Series 2009 A Bonds Sinking Fund and the Series 2009 A Bonds Reserve Account shall be invested and reinvested by the Commission in accordance with Section 8.01 hereof.

The Series 2009 A Bonds Sinking Fund and the Series 2009 A Bonds Reserve Account shall be used solely and only for, and are hereby pledged for, the purpose of servicing the Series 2009 A Bonds, under the conditions and restrictions set forth herein.

B. Whenever all of the required and provided transfers and payments from the Revenue Fund into the several special funds, as hereinbefore provided, are current and there remains in the Revenue Fund a balance in excess of the estimated amounts required to be so transferred and paid into such funds during the following month or such other period as required by law, such excess shall be considered Surplus Revenues. Surplus Revenues may be used for any lawful purpose of the System.

C. The Issuer shall on the first day of each month (if the first day is not a business day, then the first business day of each month) deposit with the Commission the required principal, interest and reserve payments with respect to the Series 2009 A Bonds and all such payments shall be remitted to the Commission with appropriate instructions as to the custody, use and application thereof consistent with the provisions of this Bond Legislation.

D. The Issuer shall complete the "Monthly Payment Form," a form of which is attached to the Loan Agreement and submit a copy of said form along with a copy of its payment check to the Authority by the 5th day of such calendar month.

E. The Issuer shall remit from the Revenue Fund to the Commission, the Registrar, the Paying Agent or the Depository Bank, on such dates as the Commission, the Registrar, the Paying Agent or the Depository Bank, as the case may be, shall require, such additional sums as shall be necessary to pay their respective charges and fees then due. In the case of payments to the Commission under this paragraph, the Issuer shall, if required by the Authority at anytime, make the necessary arrangements whereby such required payments shall be automatically debited from the Revenue Fund and electronically transferred to the Commission on the dates required.

F. The monies in excess of the maximum amounts insured by FDIC in all funds and accounts shall at all times be secured, to the full extent thereof in excess of such insured sum, by Government Obligations or by other Qualified Investments as shall be eligible as security for deposits of state and municipal funds under the laws of the State.

G. If on any monthly payment date the revenues are insufficient to place the required amount in any of the funds and accounts as herein above provided, the deficiency shall be made up in the subsequent payments in addition to the payments which would otherwise be required to be made into the funds and accounts on the subsequent payment dates; provided, however, that the priority of curing deficiencies in the funds and accounts herein shall be in the same order as payments are to be made pursuant to this Section 5.03, and the Gross Revenues shall be applied to such deficiencies before being applied to any other payments hereunder.

H. The Gross Revenues of the System shall only be used for purposes of the System.



## ARTICLE VI

### APPLICATION OF BOND PROCEEDS

Section 6.01. Application of Bond Proceeds; Pledge of Unexpended Bond Proceeds. From the monies received from the sale of the Series 2009 A Bonds, the following amounts shall be first deducted and deposited in the order set forth below:

A. From the proceeds of the Series 2009 A Bonds, there shall first be deposited with the Commission in the Series 2009 A Bonds Sinking Fund, the amount, if any, set forth in the Supplemental Resolution as capitalized interest; provided, that such amount may not exceed the amount necessary to pay interest on the Series 2009 A Bonds for the period commencing on the date of issuance of the Series 2009 A Bonds and ending 6 months after the estimated date of completion of the Project.

B. Next, from the proceeds of the Series 2009 A Bonds, there shall be deposited with the Commission in the Series 2009 A Bonds Reserve Account, the amount, if any, set forth in the Supplemental Resolution for funding of the Series 2009 A Bonds Reserve Account.

C. As the Issuer receives advances of the remaining monies derived from the sale of the Series 2009 A Bonds, such monies shall be deposited with the Depository Bank in the Series 2009 A Bonds Project Trust Fund and applied solely to payment of the costs of the Project in the manner set forth in Section 6.02 hereof and, until so expended, are hereby pledged as additional security for the Series 2009 A Bonds.

D. After completion of the Project, as certified by the Consulting Engineers, and all costs have been paid, any remaining proceeds of the Series 2009 A Bonds shall be expended as approved by the Authority.

### Section 6.02. Disbursements of Bond Proceeds.

The Issuer shall each month provide the Authority with a requisition for the costs incurred for the Project, together with such documentation as the Authority shall require. Payments for Costs of the Project shall be made monthly.

Except as provided in Section 6.01 hereof, disbursements of the proceeds of the Series 2009 A Bonds from the Series 2009 A Bonds Project Trust Fund shall be made only after submission to, and approval from, the Authority of a certificate, signed by an Authorized Officer stating that:

- (1) None of the items for which the payment is proposed to be made has formed the basis for any disbursement theretofore made;

- (2) Each item for which the payment is proposed to be made is or was necessary in connection with the Project and constitutes a Cost of the Project;
- (3) Each of such costs has been otherwise properly incurred; and
- (4) Payment for each of the items proposed is then due and owing.

Pending such application, monies in the Series 2009 A Bonds Project Trust Fund shall be invested and reinvested in Qualified Investments at the written direction of the Issuer.

## ARTICLE VII

### ADDITIONAL COVENANTS OF THE ISSUER

Section 7.01. General Covenants of the Issuer. All the covenants, agreements and provisions of this Bond Legislation shall be and constitute valid and legally binding covenants of the Issuer and shall be enforceable in any court of competent jurisdiction by any Holder or Holders of the Series 2009 A Bonds. In addition to the other covenants, agreements and provisions of this Bond Legislation, the Issuer hereby covenants and agrees with the Holders of the Series 2009 A Bonds as hereinafter provided in this Article VII. All such covenants, agreements and provisions shall be irrevocable, except as provided herein, as long as any of the Series 2009 A Bonds or the interest thereon is Outstanding and unpaid.

Section 7.02. Bonds not to be Indebtedness of the Issuer. The Series 2009 A Bonds shall not be nor constitute a corporate indebtedness of the Issuer within the meaning of any constitutional, statutory or charter limitation of indebtedness, but shall be payable solely from the funds pledged for such payment by this Bond Legislation. No Holder or Holders of the Series 2009 A Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Series 2009 A Bonds or the interest thereon.

Section 7.03. Bonds Secured by Pledge of Gross Revenues. The payment of the debt service on the Series 2009 A Bonds shall be secured by a first lien on the Gross Revenues derived from the System. The Gross Revenues in an amount sufficient to pay the principal of and interest on and other payments for the Bonds, and to make all other payments hereinafter set forth, are hereby irrevocably pledged to such payments as they become due.

Section 7.04. Rates and Charges. The Issuer has obtained any and all approvals of rates and charges required by State law and has taken any other action required to establish and impose such rates and charges, with all requisite appeal periods having expired without successful appeal. Such rates and charges shall be sufficient to comply with the requirements of the Loan Agreement and the Issuer shall supply a certificate of certified public accountant to such effect. The initial schedule of rates and charges for the services and facilities of the System shall be as set forth in the water rate ordinance of the Issuer enacted June 21, 2000, as amended by Recommended Decision dated October 19, 2000 and Corrective Order entered October 20, 2000 by the Public Service of West Virginia in Case number 00-0989-W-MA which rates are incorporated herein by reference as a part hereof.

So long as the Series 2009 A Bonds are outstanding, the Issuer covenants and agrees to fix and collect rates, fees and other charges for the use of the System and to take all such actions necessary to provide funds sufficient to produce the required sums set forth in the Bond Legislation and in compliance with the Loan Agreement. In the event the schedule of rate and charges initially established for the System in connection with the Series 2009 A Bonds shall prove to be insufficient to produce the amounts required by this Bond Legislation and the Loan Agreement, the Issuer hereby covenants and agrees that it will, to the extent or in the manner authorized by law, immediately adjust and increase such schedule

of rates and charges and take all such actions necessary to provide funds sufficient to produce the amounts required by this Bond Legislation and the Loan Agreement.

Section 7.05. Sale of the System. The Issuer shall not sell, lease, mortgage or in any manner dispose of or encumber the System, or any part thereof without the written consent of the Authority.

So long as the Series 2009 A Bonds are outstanding and except as otherwise required by law or with the written consent of the Authority, the System may not be sold, mortgaged, leased or otherwise disposed of except as a whole, or substantially as a whole, and only if the net proceeds to be realized shall be sufficient to fully pay all the Bonds Outstanding, in accordance with Article X hereof. The proceeds from any such sale, mortgage, lease or other disposition of the System shall immediately be remitted to the Commission for deposit in the Series 2009 A Bonds Sinking Fund, and, with the written permission of the Authority, or in the event the Authority is no longer a Bondholder, the Issuer shall direct the Commission to apply such proceeds to the payment of principal of and interest on the Series 2009 A Bonds in accordance with Article X hereof. Any balance remaining after the payment of the Series 2009 A Bonds and interest thereon shall be remitted to the Issuer by the Commission unless necessary for the payment of other obligations of the Issuer payable out of the revenues of the System.

The foregoing provision notwithstanding, the Issuer shall have and hereby reserves the right to sell, lease or otherwise dispose of any of the property comprising a part of the System hereinafter determined in the manner provided herein to be no longer necessary, useful or profitable in the operation thereof. Prior to any such sale, lease or other disposition of such property, if the amount to be received therefor is not in excess of \$10,000, the Issuer shall, in writing, determine that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof, and the Issuer may then provide for the sale of such property. The proceeds of any such sale shall be deposited in the Renewal and Replacement Fund. If the amount to be received from such sale, lease or other disposition of said property shall be in excess of \$10,000 but not in excess of \$50,000, the Issuer shall first, in writing, determine with the written approval of the Consulting Engineers that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof, and the Governing Body may then, if it be so advised, by resolution duly adopted, approve and concur in such finding and authorize such sale, lease or other disposition of such property in accordance with the laws of the State. The proceeds derived from any such sale, lease or other disposition of such property, in excess of \$10,000 and not in excess of \$50,000, shall be deposited by the Issuer into the Renewal and Replacement Fund. Such payments of such proceeds into the Renewal and Replacement Fund shall not reduce the amounts required to be paid into said fund by other provisions of this Bond Legislation.

No sale, lease or other disposition of the properties of the System shall be made by the Issuer if the proceeds to be derived therefrom, together with all other amounts received during the source fiscal year for such sales, leases or other dispositions of such properties, shall be in excess of \$50,000 and insufficient to pay all Bonds then Outstanding

without the prior approval and consent in writing of the Holders, or their duly authorized representatives, of the Bonds then Outstanding. The Issuer shall prepare the form of such approval and consent for execution by the then Holders of the Bonds for the disposition of the proceeds of the sale, lease or other disposition of such properties of the System.

Section 7.06. Issuance of Other Obligations Payable Out of Revenues and General Covenant Against Encumbrances. Except as provided for in Section 7.07 hereof, the Issuer shall not issue any other obligations whatsoever payable from the revenues of the System which rank prior to, or equally, as to lien on and source of and security for payment from such revenues with the Series 2009 A Bonds. All obligations issued by the Issuer after the issuance of the Series 2009 A Bonds and payable from the revenues of the System, except such additional parity Bonds, shall contain an express statement that such obligations are junior and subordinate, as to lien on and source of and security for payment from such revenues and in all other respects, to the Series 2009 A Bonds; provided, that no such subordinate obligations shall be issued unless all payments required to be made into all funds and accounts set forth herein have been made and are current at the time of the issuance of such subordinate obligations.

Except as provided above, the Issuer shall not create, or cause or permit to be created, any debt, lien, pledge, assignment, encumbrance or any other charge having priority over or being on a parity with the lien of the Series 2009 A Bonds, and the interest thereon, upon any of the income and revenues of the System pledged for payment of the Series 2009 A Bonds and the interest thereon in this Bond Legislation, or upon the System or any part thereof.

The Issuer shall give the Authority prior written notice of its issuance of any other obligations to be used for the System, payable from the revenues of the System or from any grants for the Project, or any other obligations related to the Project or the System.

Section 7.07. Parity Bonds. No additional Parity Bonds, payable out of the revenues of the System, shall be issued after the issuance of the Series 2009 A Bonds pursuant to this Ordinance, without the prior written consent of the Authority and without complying with the conditions and requirements herein provided.

No such additional Parity Bonds shall be issued except for the purposes of financing the costs of, additions, betterments or improvements to the System, refunding all or a portion of one or more series of Bonds issued pursuant hereto, to pay claims which may exist against the revenues or facilities of the System or all of such purposes.

No Parity Bonds shall be issued at any time, however, unless and until there has been procured and filed with the Clerk a written statement by Independent Certified Public Accountants, reciting the conclusion that the Net Revenues actually derived, subject to the adjustment hereinafter provided for, from the System during any 12 consecutive months, within the 18 months immediately preceding the date of the actual issuance of such additional Parity Bonds, plus the estimated average increased annual Net Revenues to be received in each of the 3 succeeding years after the completion of the improvements to be financed by

such Parity Bonds, if any, shall not be less than 115%, of the largest aggregate amount that will mature and become due in any succeeding Fiscal Year for principal of and interest on the following:

- (1) The Bonds then Outstanding;
- (2) Any additional Parity Bonds theretofore issued pursuant to the provisions contained in this Bond Legislation then Outstanding; and
- (3) The additional Parity Bonds then proposed to be issued.

The "estimated average increased annual Net Revenues to be received in each of the 3 succeeding years," as that term is used in the computation provided in the above paragraph, shall refer only to the increased Net Revenues estimated to be derived from the improvements to be financed by such Parity Bonds and any increase in rates enacted by the Issuer, the time for appeal of which shall have expired (without successful appeal) prior to the date of issuance of such Parity Bonds, and shall not exceed the amount to be stated in a certificate of the Independent Certified Public Accountants, which shall be filed in the office of the Clerk prior to the issuance of such Parity Bonds.

The Net Revenues actually derived from the System during the 12 consecutive month period herein above referred to may be adjusted by adding to such Net Revenues such additional Net Revenues which would have been received, in the opinion of the Independent Certified Public Accountants, as stated in a certificate, on account of increased rates, rentals, fees and charges for the System enacted by the Issuer, the time for appeal of which has expired (without successful appeal) prior to the issuance of such Parity Bonds.

All covenants and other provisions of this Ordinance (except as to details of such Parity Bonds inconsistent herewith) shall be for the equal benefit, protection and security of the Holders of the Bonds and the Holders of any Parity Bonds theretofore or subsequently issued from time to time within the limitations of and in compliance with this section. Bonds issued on a parity, regardless of the time or times of their issuance, shall rank equally with respect to their lien on the revenues of the System and their source of and security for payment from said revenues, without preference of any Bond of one series over any other Bond of the same series. The Issuer shall comply fully with all the increased payments into the various funds and account created in this Ordinance required for and on account of such Parity Bonds, in addition to the payments required for the Bonds theretofore issued pursuant to this Ordinance.

Parity Bonds shall not be deemed to include bonds, notes, certificates or other obligations subsequently issued, the lien of which on the revenues of the System is subject to the prior and superior liens of the Bonds on such revenues. The Issuer shall not issue any obligations whatsoever payable from the revenues of the System, or any part thereof, which rank prior to or, except in the manner and under the conditions provided in this section,

equally, as to the lien on and source of and security for payment from such revenues, with the Bonds.

No Parity Bonds shall be issued at any time, however, unless all the payments into the respective funds and accounts provided for in this Ordinance with respect to the Bonds then Outstanding, and any other payments provided for in this Ordinance, shall have been made in full as required to the date of issuance of such Parity Bonds, and the Issuer shall then be in full compliance with all the covenants, agreements and terms of this Ordinance.

Section 7.08. Books; Records and Audit. The Issuer shall keep complete and accurate records of the cost of acquiring the Project site and the costs of acquiring, constructing and installing the Project. The Issuer shall permit the Authority, or their agents and representatives, to inspect all books, documents, papers and records relating to the Project and the System at all reasonable times for the purpose of audit and examination. The Issuer shall submit to the Authority such documents and information as they may reasonably require in connection with the Project; the operation and maintenance of the System and the administration of the loan or any grants or other sources of financing for the Project.

The Issuer shall permit the Authority, or their agents and representatives, to inspect all records pertaining to the operation and maintenance of the System at all reasonable times following completion of the Project and commencement of operation thereof, or, if the Project is an improvement to an existing system, at any reasonable time following commencement of the Project.

The Issuer will keep books and records of the System, which shall be separate and apart from all other books, records and accounts of the Issuer, in which complete and correct entries shall be made of all transactions relating to the System, and any Holder of a Bond or Bonds issued pursuant to this Bond Legislation shall have the right at all reasonable times to inspect the System and all parts thereof and all records, accounts and data of the Issuer relating thereto.

The accounting system for the System shall follow current generally accepted accounting principles and safeguards to the extent allowed and as prescribed by the Public Service Commission of West Virginia and the Act. Separate control accounting records shall be maintained by the Issuer. Subsidiary records as may be required shall be kept in the manner and on the forms, books and other bookkeeping records as prescribed by the Issuer. The Issuer shall prescribe and institute the manner by which subsidiary records of the accounting system which may be installed remote from the direct supervision of the Issuer shall be reported to such agent of the Issuer as the Governing Body shall direct.

The Issuer shall file with the Authority, or any other original purchaser of the Series 2009 A Bonds and shall mail in each year to any Holder or Holders of the Series 2009 A Bonds, requesting the same, an annual report containing the following:

- (A) A statement of Gross Revenues, Operating Expenses, Net Revenues and Surplus Revenues derived from and relating to the System.

(B) A balance sheet statement showing all deposits in all the funds and accounts provided for in this Bond Legislation and the status of all said funds and accounts.

(C) The amount of any Bonds, notes or other obligations outstanding.

The Issuer shall also, at least once a year, cause the books, records and accounts of the System to be audited by Independent Certified Public Accountants (and to the extent legally required in compliance with the applicable OMB Circular, or any successor thereof, and the Single Audit Act, or any successor thereof), and shall mail upon request, and make available generally, the report of the Independent Certified Public Accountants, or a summary thereof, to any Holder or Holders of the Series 2009 A Bonds and shall submit the report to the Authority, or any other original purchaser of the Series 2009 A Bonds. Such audit report submitted to the Authority shall include a statement that notes whether the results of test disclosed instances of noncompliance that are required to be reported under government auditing standards and, if they are, describes the instances of noncompliance and the audited financial statements shall include a statement that notes whether the revenues of the System are adequate to meet the Issuer's Operating Expenses and debt service and reserve requirements. The Issuer shall annually provide the Authority with financial information and such other information as the Authority requests to meet its ongoing disclosure requirements,

Prior to, during and after completion of the Project, the Issuer shall also provide the Authority, or its agents and representatives, with access to the System site and System facilities as may be reasonably necessary to accomplish all of the powers and rights of the Authority with respect to the System pursuant to the Act.

Section 7.09. Rates. Prior to the issuance of the Series 2009 A Bonds, rates or charges for the use of the services and facilities of the System will be fixed and established, all in the manner and form required by law, and a copy of such rates and charges so fixed and established shall at all times be kept on file in the office of the Clerk of the Issuer, which copy will be open to inspection by all interested parties. The schedule or schedules of rates and charges shall at all times be adequate to produce Gross Revenues from the System sufficient to pay Operating Expenses and to make the prescribed payments into the funds and accounts created hereunder. Such schedule or schedules of rates and charges shall be revised from time to time, whenever necessary, so that the aggregate of the rates and charges will be sufficient for such purposes. In order to assure full and continuous performance of this covenant with a margin for contingencies and temporary unanticipated reduction in income and revenues, the Issuer hereby covenants and agrees that the schedule or schedules of rates or charges from time to time in effect shall be sufficient, together with other revenues of the System, (i) to provide for all Operating Expenses of the System; and (ii) to leave a balance each year equal to at least 115% of the maximum amount required in any year for payment of principal of and interest on the Series 2009 A Bonds, and all other obligations secured by a lien on or payable from such revenues on a parity with the Series 2009 A Bonds; provided that, in the event that, an amount equal to or in excess of the Reserve Requirement is on deposit in the Reserve Accounts and any reserve accounts for

obligations on a parity with the Series 2009 A Bonds, if applicable, are funded at least at the requirement therefor, such sum need only equal 110% of the maximum amount required in any year for payment of principal of and interest on the Series 2009 A Bonds, and all other obligations secured by a lien on or payable from such revenues on a parity with the Series 2009 A Bonds. In any event, the Issuer shall not reduce the rates or charges for services set forth in the rate ordinance described in Section 7.04.

The Issuer hereby covenants to commence enactment of such ordinance or ordinances as shall be required to increase the rates and charges for the services and facilities of the System within 30 days following a determination of the Independent Certified Public Accountant that less than the above-required coverage exists or in the event that the annual audit report shows less than the above-required coverage, such increase to provide rates and charges sufficient to produce such required coverage.

Section 7.10. Operating Budget and Monthly Financial Report. The Issuer shall annually, at least 45 days preceding the beginning of each Fiscal Year, prepare and adopt by resolution a detailed, balanced budget of the estimated revenues and expenditures for operation and maintenance of the System during the succeeding Fiscal Year and shall submit a copy of such budget to the Authority within 30 days of adoption thereof. No expenditures for the operation and maintenance of the System shall be made in any Fiscal Year in excess of the amounts provided therefor in such budget without a written finding and recommendation by a registered professional engineer, which finding and recommendation shall state in detail the purpose of and necessity for such increased expenditures for the operation and maintenance of the System, and no such increased expenditures shall be made until the Issuer shall have approved such finding and recommendation by a resolution duly adopted. No increased expenditures in excess of 10% of the amount of such budget shall be made except upon the further certificate of a registered professional engineer that such increased expenditures are necessary for the continued operation of the System. The Issuer shall mail copies of such annual budget and all resolutions authorizing increased expenditures for operation and maintenance to the Authority, and to any Holder of any Bonds who shall file his or her address with the Issuer and request in writing that copies of all such budgets and resolutions be furnished him or her, within 30 days of adoption thereof and shall make available such budgets and all resolutions authorizing increased expenditures for operation and maintenance of the System at all reasonable times to any Holder of any Bonds or anyone acting for and in behalf of such Holder of any Bonds.

Commencing on the date contracts are executed for the Project and for 2 years following the completion of the Project, the Issuer shall each month complete a "Monthly Financial Report," a form of which is attached to the Loan Agreement, and forward a copy of such report to the Authority by the 10th day of each month.

Section 7.11. Engineering Services and Operating Personnel. The Issuer shall employ qualified operating personnel properly certified by the State to operate the System during the entire term of the Loan Agreement.

Section 7.12. No Competing Franchise. To the extent legally allowable, the Issuer will not grant or cause, consent to or allow the granting of, any franchise or permit to any person, firm, corporation, body, agency or instrumentality whatsoever for the providing of any services which would compete with services provided by the System.

Section 7.13. Enforcement of Collections. The Issuer will diligently enforce and collect all fees, rentals or other charges for the services and facilities of the System, and take all steps, actions and proceedings for the enforcement and collection of such fees, rentals or other charges which shall become delinquent to the full extent permitted or authorized by the Act, the rules and regulations of the Public Service Commission of West Virginia and other laws of the State of West Virginia.

Whenever any fees, rates, rentals or other charges for the services and facilities of the System shall remain unpaid for a period of 20 days after the same shall become due and payable, the property and the owner thereof, as well as the user of the services and facilities, shall be delinquent until such time as all such rates and charges are fully paid. To the extent authorized by the laws of the State and the rules and regulations of the Public Service Commission of West Virginia, rates, rentals and other charges, if not paid, when due, shall become a lien on the premises served by the System. The Issuer further covenants and agrees that, it will, to the full extent permitted by law and the rules and regulations promulgated by the Public Service Commission of West Virginia, discontinue and shut off the services of the System and any services and facilities of the water system, if so owned by the Issuer, to all users of the services of the System delinquent in payment of charges for the services of the System and will not restore such services of the System or the water system until all delinquent charges for the services of the System, plus reasonable interest and penalty charges for the restoration of service, have been fully paid and shall take all further actions to enforce collections to the maximum extent permitted by law. If the water system is not owned by the Issuer, the Issuer will, to the extent allowed by law, use diligent efforts to enter into a similar termination agreement with the provider of such water, subject to any required approval of such agreement by the Public Service Commission of West Virginia and all rules, regulations and orders thereof.

Section 7.14. No Free Services. The Issuer will not render or cause to be rendered any free services of any nature by the System, nor will any preferential rates be established for users of the same class; and in the event the Issuer, or any department, agency, instrumentality, officer or employee of either shall avail itself or themselves of the facilities or services provided by the System, or any part thereof, the same rates, fees or charges applicable to other customers receiving like services under similar circumstances shall be charged the Issuer and any such department, agency, instrumentality, officer or employee. The revenues so received shall be deemed to be revenues derived from the operation of the System, and shall be deposited and accounted for in the same manner as other revenues derived from such operation of the System.

Section 7.15. Insurance and Construction Bonds. The Issuer hereby covenants and agrees that so long as the Series 2009 A Bonds remain Outstanding, the Issuer will, as an Operating Expense, procure, carry and maintain insurance with a reputable

insurance carrier or carriers as is customarily covered with respect to works and properties similar to the System. Such insurance shall initially cover the following risks and be in the following amounts:

(1) FIRE, LIGHTNING, VANDALISM, MALICIOUS MISCHIEF AND EXTENDED COVERAGE INSURANCE, on all above-ground insurable portions of the System in an amount equal to the actual cost thereof. In time of war the Issuer will also carry and maintain insurance to the extent available against the risks and hazards of war. The proceeds of all such insurance policies shall be placed in the Renewal and Replacement Fund and used only for the repairs and restoration of the damaged or destroyed properties or for the other purposes provided herein for the Renewal and Replacement Fund.

(2) PUBLIC LIABILITY INSURANCE, with limits of not less than \$1,000,000 per occurrence to protect the Issuer from claims for bodily injury and/or death and not less than \$500,000 per occurrence from claims for damage to property of others which may arise from the operation of the System, and insurance with the same limits to protect the Issuer from claims arising out of operation or ownership of motor vehicles of or for the System.

(3) WORKER'S COMPENSATION COVERAGE FOR ALL EMPLOYEES OF OR FOR THE SYSTEM ELIGIBLE THEREFOR, such bonds to be in the amounts of not less than 100% of the amount of any construction contract and to be required of each contractor dealing directly with the Issuer and such payment bonds will be filed with the Clerk of the County Commission of the County in which such work is to be performed prior to commencement of construction of any additions, extensions or improvements for the System in compliance with West Virginia Code, Section 38-2-39.

(4) FIDELITY BONDS will be provided as to every officer and employee of the Issuer having custody of the revenues or of any other funds of the System, in an amount at least equal to the total funds in the custody of any such person at any one time.

(5) FLOOD INSURANCE, if the System facilities are or will be located in designated special flood or mudslide-prone areas and to the extent available at reasonable cost to the Issuer.

(6) BUSINESS INTERRUPTION INSURANCE, to the extent available at reasonable cost to the Issuer.

Section 7.16. Connections. To the extent permitted by the laws of the State and rules and regulations of the Public Service Commission of West Virginia, the Issuer shall require every owner, tenant or occupant of any house, dwelling, or building intended to be served by the System to connect thereto.

Section 7.17. Completion of Project; Permits and Orders. The Issuer will complete the Project as promptly as possible and operate and maintain the System as a revenue-producing utility in good condition and in compliance with all federal and state requirements and standards.

The Issuer will obtain all permits required by state and federal laws for the Project, all orders and approvals from the West Virginia Infrastructure and Jobs Development Council necessary for the Project and the operation of the System and all approvals of issuance of the Series 2009 A Bonds required by State law, with all requisite appeal periods having expired without successful appeal.

Section 7.18. Compliance with Loan Agreement and Law. The Issuer shall perform, satisfy and comply with all the terms and conditions of the Loan Agreement and the Act. The Issuer also agrees to comply with all applicable laws, rules and regulations issued by the Authority, or other state, federal or local bodies in regard to the Project and the operation, maintenance and use of the System.

Section 7.19. Reserved

Section 7.20. Securities Law Compliance. The Issuer will provide the Authority, in a timely manner, with any and all information that may be requested of it (including its annual audit report, financial statements, related information and notices of changes in usage and customer base) so that the Authority may comply with the provisions of SEC Rule 15c2-12 (17 CFR Part 240).

Section 7.21. Contracts; Public Releases. A. The Issuer has entered into a contract with the Consulting Engineer for the Project.

B. The Issuer shall list the funding provided by the Authority in any press release, publication, program bulletin, sign or other public communication that references the Project, including but not limited to any program document distributed in conjunction with any dedication of the Project.

## ARTICLE VIII

### INVESTMENT OF FUNDS; NON ARBITRAGE

Section 8.01. Investments. Any monies held as a part of the funds and accounts created by this Resolution, other than the Revenue Fund, shall be invested and reinvested by the Commission, the Depository Bank, or such other bank or national banking association holding such fund or account, as the case may be, at the written direction of the Issuer in any Qualified Investments to the fullest extent possible under applicable laws, this Resolution, the need for such monies for the purposes set forth herein and the specific restrictions and provisions set forth in this Section 8.01.

Any investment shall be held in and at all times deemed a part of the fund or account in which such monies were originally held, and the interest accruing thereon and any profit or loss realized from such investment shall be credited or charged to the appropriate fund or account. The investments held for any fund or account shall be valued at the lower of cost or then current market value, or at the redemption price thereof if then redeemable at the option of the holder, including the value of accrued interest and giving effect to the amortization of discount, or at par if such investment is held in the "Consolidated Fund." The Commission, the Depository Bank, or such other bank or national banking association, as the case may be, shall sell and reduce to cash a sufficient amount of such investments whenever the cash balance in any fund or account is insufficient to make the payments required from such fund or account, regardless of the loss on such liquidation. The Depository Bank or such other bank or national banking association, as the case may be, may make any and all investments permitted by this section through its own investment or trust department and shall not be responsible for any losses from such investments, other than for its own negligence or willful misconduct.

The Depository Bank shall keep complete and accurate records of all funds, accounts and investments, and shall distribute to the Issuer, at least once each year, or more often as reasonably requested by the Issuer, a summary of such funds, accounts and investment earnings. The Issuer shall retain all such records and any additional records with respect to such funds, accounts and investment earnings so long as any of the Series 2009 A Bonds are Outstanding and as long thereafter as necessary to comply with the Code and to assure the exclusion of interest, if any, on the Series 2009 A Bonds from gross income for federal income tax purposes.

Section 8.02. Certificate and Covenants as to Use of Proceeds. The Issuer shall deliver a certificate as to use of proceeds or other similar certificate to be prepared by nationally recognized bond counsel relating to restrictions on the use of proceeds of the Series 2009 A Bonds as a condition to issuance of the Series 2009 A Bonds. In addition, the Issuer covenants (i) to comply with the Code and all Regulations from time to time in effect and applicable to the Series 2009 A Bonds as may be necessary in order to maintain the status of the Series 2009 A Bonds as governmental bonds; (ii) that it shall not take, or permit or suffer to be taken, any action with respect to the Issuer's use of the proceeds of the Series 2009 A

Bonds which would cause any bonds, the interest, if any, on which is exempt from federal income taxation under Section 103(a) of the Code, issued by the Authority from which the proceeds of the Series 2009 A Bonds are derived, to lose their status as tax-exempt bonds; and (iii) to take such action, or refrain from taking such action, as shall be deemed necessary by the Issuer, or requested by the Authority, to ensure compliance with the covenants and agreements set forth in this Section, regardless of whether such actions may be contrary to any of the provisions of this Bond Legislation.

The Issuer shall annually furnish to the Authority information with respect to the Issuer's use of the proceeds of the Series 2009 A Bonds, including, if requested, bank statements and all investment information for the funds and accounts related to the proceeds, and any additional information requested by the Authority.

## ARTICLE IX

### DEFAULT AND REMEDIES

Section 9.01. Events of Default. Each of the following events shall constitute an "Event of Default" with respect to the Series 2009 A Bonds:

- (1) If default occurs in the due and punctual payment of the principal of or interest on any Series 2009 A Bonds; or
- (2) If default occurs in the Issuer's observance of any of the covenants, agreements or conditions on their respective parts relating to the Series 2009 A Bonds set forth in this Bond Legislation, any supplemental resolution or in the Series 2009 A Bonds, and such default shall have continued for a period of 30 days after the Issuer, as appropriate, shall have been given written notice of such default by the Commission, the Depository Bank, the Registrar, the Paying Agent or any other Paying Agent or a Holder of a Bond; or
- (3) If the Issuer files a petition seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law of the United States of America.

Section 9.02. Remedies. Upon the happening and continuance of any Event of Default, any Registered Owner or Bondholder of a Bond may exercise any available remedy and bring any appropriate action, suit or proceeding to enforce his or her rights and, in particular, (i) bring suit for any unpaid principal or interest then due, (ii) by mandamus or other appropriate proceeding enforce all rights of such Registered Owners or Bondholders including the right to require the Issuer to perform its duties under the Act and the Bond Legislation relating thereto, including but not limited to the making and collection of sufficient rates or charges for services rendered by the System, (iii) bring suit upon the Bonds; (iv) by action at law or bill in equity require the Issuer to account as if it were the trustee of an express trust for the Registered Owners or Bondholders of the Bonds, and (v) by action or bill in equity enjoin any acts in violation of the Bond Legislation with respect to the Bonds, or the rights of such Registered Owners.

Section 9.03. Appointment of Receiver. Any Registered Owner of a Bond may, by proper legal action, compel the performance of the duties of the Issuer under the Bond Legislation and the Act, including, the completion of the Project and after commencement of operation of the System, the making and collection of sufficient rates and charges for services rendered by the System and segregation of the revenues therefrom and the application thereof. If there be any Event of Default with respect to such Bonds, any Registered Owner of a Bond shall, in addition to all other remedies or rights, have the right by appropriate legal proceedings to obtain the appointment of a receiver to administer the System or to the Project on behalf of the Issuer, with power to charge rates, rentals, fees and other charges sufficient to provide for the payment of Operating Expenses of the System, the

payment of the Bonds and interest and the deposits into the funds and accounts hereby established, and to apply such rates, rentals, fees, charges or other revenues in conformity with the provisions of this Bond Legislation and the Act.

The receiver so appointed shall forthwith, directly or by his or her or its agents and attorneys, enter into and upon and take possession of all facilities of said System and shall hold, operate and maintain, manage and control such facilities, and each and every part thereof, and in the name of the Issuer exercise all the rights and powers of the Issuer with respect to said facilities as the Issuer itself might do.

Whenever all that is due upon the Bonds and interest thereon and under any covenants of this Bond Legislation for reserve, sinking or other funds and upon any other obligations and interest thereon having a charge, lien or encumbrance upon the revenues of the System shall have been paid and made good, and all defaults under the provisions of this Bond Legislation shall have been cured and made good, possession of the System shall be surrendered to the Issuer upon the entry of an order of the court to that effect. Upon any subsequent default, any Registered Owner of any Bonds shall have the same right to secure the further appointment of a receiver upon any such subsequent default.

Such receiver, in the performance of the powers herein above conferred upon him or her or it, shall be under the direction and supervision of the court making such appointment, shall at all times be subject to the orders and decrees of such court and may be removed thereby, and a successor receiver may be appointed in the discretion of such court. Nothing herein contained shall limit or restrict the jurisdiction of such court to enter such other and further orders and decrees as such court may deem necessary or appropriate for the exercise by the receiver of any function not specifically set forth herein.

Any receiver appointed as provided herein shall hold and operate the System in the name of the Issuer and for the joint protection and benefit of the Issuer and Registered Owners of the Bonds. Such receiver shall have no power to sell, assign, mortgage or otherwise dispose of any assets of any kind or character belonging or pertaining to the System, but the authority of such receiver shall be limited to the completion of the Project and the possession, operation and maintenance of the System for the sole purpose of the protection of both the Issuer and Registered Owners of such Bonds and the curing and making good of any Event of Default with respect thereto under the provisions of this Bond Legislation, and the title to and ownership of said System shall remain in the Issuer, and no court shall have any jurisdiction to enter any order or decree permitting or requiring such receiver to sell, assign, mortgage or otherwise dispose of any assets of the System.

## ARTICLE X

### PAYMENT OF BONDS AND DEFEASANCE

Section 10.01. Payment of Series 2009 A Bonds. If the Issuer shall pay or there shall otherwise be paid, to the Holders of the Series 2009 A Bonds, the principal of and interest due or to become due thereon at the times and in the manner stipulated therein and in this Bond Legislation, then the pledge of Gross Revenues and other monies and securities pledged under this Bond Legislation and all covenants, agreements and other obligations of the Issuer to the Registered Owners of the Series 2009 A Bonds shall thereupon cease, terminate and become void and be discharged and satisfied, except as may otherwise be necessary to assure the exclusion of interest on the Series 2009 A Bonds from gross income for federal income tax purposes.

Section 10.02. Defeasance of Series 2009 A Bonds. If the Issuer shall pay or cause to be paid, or there shall otherwise be paid, to the Holders of all of the Series 2009 A Bonds the principal of and interest due or to become due thereon, at the times and in the manner stipulated therein and in this Bond Legislation, then the pledge of Gross Revenues and other monies and securities pledged under this Bond Legislation and all covenants, agreements and other obligations of the Issuer to the Registered Owners of the Series 2009 A Bonds shall thereupon cease, terminate and become void and be discharged and satisfied, except as may otherwise be necessary to assure the exclusion of interest on the Series 2009 A Bonds from gross income for federal income tax purposes.

Series 2009 A Bonds for the payment of which either monies in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide monies which, together with the monies, if any, deposited with the Paying Agent at the same or earlier time, shall be sufficient, to pay as and when due either at maturity or at the next redemption date, the principal installments of and interest on such Series 2009 A Bonds shall be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this section. All Series 2009 A Bonds shall, prior to the maturity thereof, be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this section if there shall have been deposited with the Commission or its agent, either monies in an amount which shall be sufficient, or securities the principal of and the interest on which, when due, will provide monies which, together with other monies, if any, deposited with the Commission at the same time, shall be sufficient to pay when due the principal installments of and interest due and to become due on said Series 2009 A Bonds on and prior to the next redemption date or the maturity dates thereof. Neither securities nor monies deposited with the Commission pursuant to this section nor principal or interest payments on any such securities shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the principal installments of and interest on said Series 2009 A Bonds; provided, that any cash received from such principal or interest payments on such securities deposited with the Commission or its agent, if not then needed for such purpose, shall, to the extent practicable, be reinvested in securities maturing at times and in amounts sufficient to pay when due the principal installments of and interest to become

due on said Bonds on and prior to the next redemption date or the maturity dates thereof, and interest earned from such reinvestments shall be paid over to the Issuer as received by the Commission or its agent, free and clear of any trust, lien or pledge. For the purpose of this section, securities shall mean and include only Government Obligations.

## ARTICLE XI

### MISCELLANEOUS

Section 11.01. Amendment or Modification of Bond Legislation. Prior to issuance of the Series 2009 A Bonds, this Ordinance may be amended or supplemented in any way by the Supplemental Resolution. Following issuance of the Series 2009 A Bonds, no material modification or amendment of this Ordinance, or of any ordinance, resolution or order amendatory or supplemental hereto, that would materially and adversely affect the rights of Registered Owners of the Series 2009 A Bonds shall be made without the consent in writing of the Registered Owners of the Series 2009 A Bonds so affected and then Outstanding; provided, that no change shall be made in the maturity of the Series 2009 A Bonds or the rate of interest thereon, or in the principal amount thereof, or affecting the unconditional promise of the Issuer to pay such principal and interest out of the funds herein pledged therefor without the consent of the Registered Owner thereof. No amendment or modification shall be made that would reduce the percentage of the principal amount of the Series 2009 A Bonds required for consent to the above-permitted amendments or modifications. Notwithstanding the foregoing, this Bond Legislation may be amended with the consent of any Bondholder as may be necessary to assure compliance with Section 148(f) of the Code relating to rebate requirements or otherwise as may be necessary to assure the excludability of interest on the Series 2009 A Bonds from gross income of the holders thereof.

Section 11.02. Bond Legislation Constitutes Contract. The provisions of the Bond Legislation shall constitute a contract between the Issuer and the Registered Owners of the Bonds, and no change, variation or alteration of any kind of the provisions of the Bond Legislation shall be made in any manner, except as in this Bond Legislation provided.

Section 11.03. Severability of Invalid Provisions. If any section, paragraph, clause or provision of this Ordinance should be held invalid by any court of competent jurisdiction, the invalidity of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance, the Supplemental Resolution or the Series 2009 A Bonds.

Section 11.04. Headings, Etc. The headings and catchlines of the articles, sections and subsections hereof are for convenience of reference only, and shall not affect in any way the meaning or interpretation of any provision hereof.

Section 11.05. Conflicting Provisions Repealed. All ordinances, orders or resolutions and or parts thereof in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby repealed.

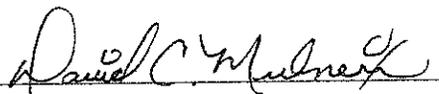
Section 11.06. Covenant of Due Procedure, Etc. The Issuer covenants that all acts, conditions, things and procedures required to exist, to happen, to be performed or to be taken precedent to and in the adoption of this Ordinance do exist, have happened, have been

performed and have been taken in regular and due time, form and manner as required by and in full compliance with the laws and Constitution of the State of West Virginia applicable thereto; and that the Mayor, the Clerk and members of the Governing Body were at all times when any actions in connection with this Ordinance occurred and are duly in office and duly qualified for such office.

Section 11.07. Effective Date. This Ordinance shall take effect immediately following public hearing hereon.

Section 11.08. Statutory Notice and Public Hearing. Upon adoption hereof, an abstract of this Ordinance determined by the Governing Body to contain sufficient information as to give notice of the contents hereof shall be published once a week for 2 successive weeks within a period of fourteen consecutive days, with at least 6 full days intervening between each publication, in *Barbour Democrat*, a qualified newspaper published and of general circulation in The City of Philippi, together with a notice stating that this Ordinance has been adopted and that the Issuer contemplates the issuance of the Series 2009 A Bonds, and that any person interested may appear before the Governing Body upon a date certain, not less than ten days subsequent to the date of the first publication of such abstract of this Ordinance and notice, and present protests, and that a certified copy of this Ordinance is on file with the Governing Body for review by interested persons during office hours of the Governing Body. At such hearing, all objections and suggestions shall be heard and the Governing Body shall take such action as it shall deem proper in the premises.

|   |                   |
|---|-------------------|
| Passed on First Reading:                                | January 20, 2009  |
| Passed on Second Reading:                               | February 3, 2009  |
| Passed on Final Reading<br>Following Public<br>Hearing: | February 17, 2009 |

  
\_\_\_\_\_  
Mayor

CERTIFICATION

Certified a true copy of an Ordinance duly enacted by the Governing Body of  
The City of Philippi on the 17th day of February, 2009.

Dated: February 24, 2009.

[SEAL]

Jammy R. Stemple  
Clerk

EXHIBIT A

Loan Agreement included in bond transcript as Document 3.

02.10.09  
700470.00011

THE CITY OF PHILIPPI

Waterworks System Design Revenue Bonds, Series 2009 A  
(West Virginia Water Development Authority)

SUPPLEMENTAL RESOLUTION

SUPPLEMENTAL RESOLUTION PROVIDING AS TO PRINCIPAL AMOUNT, DATE, MATURITY DATE, REDEMPTION PROVISION, INTEREST RATE, INTEREST AND PRINCIPAL PAYMENT DATES, SALE PRICE AND OTHER TERMS OF THE WATERWORKS SYSTEM DESIGN REVENUE BONDS, SERIES 2009 A (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY), OF THE CITY OF PHILIPPI; APPROVING AND RATIFYING THE LOAN AGREEMENT RELATING TO SUCH BONDS AND THE SALE AND DELIVERY OF SUCH BONDS TO THE WEST VIRGINIA WATER DEVELOPMENT AUTHORITY; DESIGNATING A REGISTRAR, PAYING AGENT AND DEPOSITORY BANK; AND MAKING OTHER PROVISIONS AS TO THE BONDS.

WHEREAS, the council (the "Governing Body") of The City of Philippi (the "Issuer") has duly and officially adopted and enacted a bond ordinance, effective February 17, 2009 (the "Bond Ordinance"), entitled:

ORDINANCE AUTHORIZING THE DESIGN OF CERTAIN EXTENSIONS, ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING PUBLIC WATERWORKS FACILITIES OF THE CITY OF PHILIPPI AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, THROUGH THE ISSUANCE BY THE CITY OF NOT MORE THAN \$491,200 IN ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF WATERWORKS SYSTEM DESIGN REVENUE BONDS, SERIES 2009 A (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY); PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING A LOAN AGREEMENT RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE

TERMS AND PROVISIONS OF SUCH BONDS AND  
ADOPTING OTHER PROVISIONS RELATING THERETO.

WHEREAS, capitalized terms used herein and not otherwise defined herein shall have the same meaning set forth in the Bond Ordinance when used herein;

WHEREAS, the Bond Ordinance provides for the issuance of Waterworks System Design Revenue Bonds, Series 2009 A (West Virginia Water Development Authority), of the Issuer (the "Bonds"), in an aggregate principal amount not to exceed \$491,200, and has authorized the execution and delivery of the loan agreement relating to the Bonds, including all schedules and exhibits attached thereto, by and between the Issuer and the West Virginia Water Development Authority (the "Authority") (the "Loan Agreement"), all in accordance with Chapter 8, Article 19 and Chapter 22C, Article 1 of the West Virginia Code of 1931, as amended (collectively, the "Act"), and in the Bond Ordinance it is provided that the form of the Loan Agreement and the exact principal amount, date, maturity date, redemption provision, interest rate, interest and principal payment dates, sale price and other terms of the Bonds should be established by a supplemental resolution pertaining to the Bonds; and that other matters relating to the Bonds be herein provided for;

WHEREAS, the Loan Agreement has been presented to the Issuer at this meeting;

WHEREAS, the Bonds are proposed to be purchased by the Authority pursuant to the Loan Agreement;

WHEREAS, the Governing Body deems it essential and desirable that this supplemental resolution (the "Supplemental Resolution") be adopted, that the Bonds be redesignated, that the Loan Agreement be approved and ratified by the Issuer, that the exact principal amount, the date, the maturity date, the redemption provision, the interest rate, the interest and principal payment dates and the sale price of the Bonds be fixed hereby in the manner stated herein, and that other matters relating to the Bonds be herein provided for;

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY  
OF THE CITY OF PHILIPPI:

Section 1. Pursuant to the Bond Ordinance and the Act, this Supplemental Resolution is adopted and there are hereby authorized and ordered to be issued the Waterworks System Design Revenue Bonds, Series 2009 A (West Virginia Water Development Authority), of the Issuer, originally represented by a single Bond, numbered AR-1, in the principal amount of \$491,200. The Series 2009 A Bonds shall be dated the date of delivery thereof, shall finally mature January 1, 2029. Interest shall commence on the date of closing on the amounts advanced and outstanding, and interest only payable quarterly on January 1, April 1, July 1, and October 1 of each year in arrears at the rate of 3% per annum, with the first payment due on July 1, 2009. Commencing January 1, 2011, interest accrues at the rate of 5% per annum, and interest and principal payments are payable quarterly January 1, April 1, July 1, and October 1 of each year commencing April 1, 2011 to and including January 1, 2029 and in the amounts as set forth in the "Schedule Y" attached to the Loan Agreement and incorporated in and made a part of the Series 2009 A Bonds. The Series 2009 A Bonds shall be subject to redemption upon the written consent of the Authority, and upon payment of the redemption premium, if any, and otherwise in compliance with the Loan Agreement, so long as the Authority shall be the registered owner of the Series 2009 A Bonds.

Section 2. All other provisions relating to the Bonds and the text of the Bonds shall be in substantially the form provided in the Bond Ordinance.

Section 3. The Issuer does hereby authorize, approve, ratify and accept the Loan Agreement, a copy of which is incorporated herein by reference, and the execution and delivery of the Loan Agreement by the Mayor, and the performance of the obligations contained therein, on behalf of the Issuer, are hereby authorized, directed, ratified and approved. The Issuer hereby affirms all covenants and representations made in the Loan Agreement and in the applications to the Authority. The price of the Bonds shall be 100% of par value, there being no interest accrued thereon, provided that the proceeds of the Bonds shall be advanced from time to time as requisitioned by the Issuer.

Section 4. The Issuer does hereby appoint and designate The Huntington National Bank, Charleston, West Virginia, to serve as Registrar (the "Registrar") for the Bonds under the Bond Ordinance and does approve and accept the Registrar's Agreement to be dated the date of delivery of the Bonds, by and between the Issuer and the Registrar, and the execution and delivery of the Registrar's Agreement by the Mayor, and the performance of the obligations contained therein, on behalf of the Issuer, are hereby authorized, approved and directed.

Section 5. The Issuer does hereby appoint and designate the West Virginia Municipal Bond Commission, Charleston, West Virginia, to serve as Paying Agent for the Bonds under the Bond Ordinance.

Section 6. The Issuer does hereby appoint and designate First Central Bank, Philippi, West Virginia, to serve as Depository Bank under the Bond Ordinance.

Section 7. Series 2009 A Bonds proceeds in the amount of \$-0- shall be deposited in the Series 2009 A Bonds Sinking Fund, as capitalized interest.

Section 8. Series 2009 A Bonds proceeds in the amount of \$-0- shall be deposited in the Series 2009 A Bonds Reserve Account.

Section 9. The balance of the proceeds of the Series 2009 A Bonds shall be deposited in or credited to the Series 2009 A Bonds Project Fund as received from the Authority from time to time for payment of the costs of the Project, including, without limitation, costs of issuance of the Bonds and related costs.

Section 10. The Mayor and the Clerk are hereby authorized and directed to execute and deliver such other documents and certificates required or desirable in connection with the Bonds hereby and by the Bond Ordinance approved and provided for, to the end that the Bonds may be delivered on or about February 24, 2009, to the Authority pursuant to the Loan Agreement.

Section 11. The Project and the financing thereof in part with proceeds of the Bonds are in the public interest, serve a public purpose of the Issuer and will promote the health, welfare and safety of the residents of the Issuer.

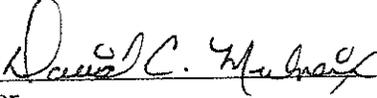
Section 12. The Issuer does hereby approve and authorize all contracts relating to the financing of the Project.

Section 13. The Issuer hereby determines to invest all monies in the funds and accounts established by the Bond Ordinance held by the Depository Bank until expended, in repurchase agreements or time accounts, secured by a pledge of Government Obligations, and therefore, the Issuer hereby directs the Depository Bank to take such actions as may be necessary to cause such monies to be invested in such repurchase agreements or time accounts until further directed in writing by the Issuer. Monies in the Series 2009 A Bonds Sinking Fund and the Series 2009 A Bonds Reserve Account shall be invested by the West Virginia Municipal Bond Commission in the West Virginia Board of Treasury Investments.

Section 14. The Issuer shall not permit at any time or times any of the proceeds of the Bonds or any other funds of the Issuer to be used directly or indirectly in a manner which would result in the exclusion of the Bonds from the treatment afforded by Section 103(a) of the Internal Revenue Code of 1986, as amended, and any regulations promulgated thereunder or under any predecessor thereto (the "Code"), by reason of the classification of the Bonds as "private activity bonds" within the meaning of the Code. The Issuer will take all actions necessary to comply with the Code and Treasury Regulations promulgated or to be promulgated thereunder.

Section 15. This Supplemental Resolution shall be effective immediately following adoption hereof.

Adopted this 17th day of February, 2009.

  
\_\_\_\_\_  
Mayor

CERTIFICATION

Certified a true copy of a Supplemental Resolution duly adopted by the Council of The City of Philippi on the 17th day of February, 2009.

Dated: February 24, 2009.

[SEAL]

Sammy R. Temple  
Clerk

02.10.09  
700470.00011

SPECIMEN

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
THE CITY OF PHILIPPI  
WATERWORKS SYSTEM DESIGN REVENUE BONDS, SERIES 2009 A  
(WEST VIRGINIA WATER DEVELOPMENT AUTHORITY)

No. AR-1

\$491,200

KNOW ALL MEN BY THESE PRESENTS: That on this the 24th day of February, 2009, THE CITY OF PHILIPPI, a municipal corporation and political subdivision of the State of West Virginia in Barbour County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to the WEST VIRGINIA WATER DEVELOPMENT AUTHORITY (the "Authority") or registered assigns the sum of FOUR HUNDRED NINETY-ONE THOUSAND TWO HUNDRED DOLLARS (\$491,200), or such lesser amount as shall have been advanced to the Issuer hereunder and not previously repaid, as set forth in the "Record of Advances" attached as EXHIBIT A hereto and incorporated herein by reference. Interest only shall commence on the date hereof on the amounts advanced and outstanding, payable in quarterly installments on January 1, April 1, July 1 and October 1 of each year in arrears at the rate of 3% per annum, with the first payment due on July 1, 2009. Commencing January 1, 2011 interest accrues at 5% per annum and interest and principal payments are payable in quarterly installments on January 1, April 1, July 1 and October 1 of each year commencing on April 1, 2011 to and including January 1, 2029, as set forth on the "Debt Service Schedule" attached as EXHIBIT B hereto and incorporated herein by reference.

Principal installments of this Bond are payable in any coin or currency which, on the dates of payment of such installments, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the West Virginia Municipal Bond Commission, Charleston, West Virginia (the "Paying Agent"). The interest on this Bond is payable by check or draft of the Paying Agent mailed to the registered owner hereof at the address as it appears on the books of The Huntington National Bank, Charleston, West Virginia, as registrar (the "Registrar"), on the 15th day of the month next preceding an interest payment date, or by such other method as shall be mutually agreeable so long as the Authority is the registered owner hereof.

This Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority, and upon the terms and conditions prescribed by, and otherwise in compliance with, the Loan Agreement by and between the Issuer and the Authority dated February 24, 2009.

This Bond is issued (i) to temporarily pay the costs of design related to the acquisition and construction of certain extensions, additions, betterments and improvements to the public waterworks system of the Issuer (the "Project"); and (ii) to pay certain costs of issuance hereof and related costs. The existing public waterworks system of the Issuer, the Project, and any further extensions, additions, betterments or improvements thereto are herein called the "System." This Bond is issued under the

authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 8, Article 19 and Chapter 22C, Article 1 of the West Virginia Code of 1931, as amended (collectively, the "Act"), and a Bond Ordinance duly enacted by the Issuer on February 17, 2009, and a Supplemental Resolution duly adopted by the Issuer on February 17, 2009 (collectively, the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Bond Legislation.

**THE ISSUER HAS NO BONDS OR OBLIGATIONS OTHER THAN THIS BOND WHICH IS SECURED BY GROSS REVENUES OF THE SYSTEM.**

This Bond is payable only from and secured by a pledge of the Gross Revenues (as defined in the Bond Legislation) to be derived from the operation of the System, and from monies in the reserve account created under the Bond Legislation for the Series 2009 A Bonds (the "Series 2009 A Bonds Reserve Account"), and unexpended proceeds of the Series 2009 A Bonds. Such Gross Revenues shall be sufficient to pay all operating expenses of the System and the principal of and interest on all bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute a corporate indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same or the interest hereon, except from said special fund provided from the Gross Revenues, the monies in the Series 2009 A Bonds Reserve Account and unexpended proceeds of the Bonds. Pursuant to the Bond Legislation, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, together with other revenues of the System, to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the maximum amount payable in any year for principal of and interest on the Bonds and all other obligations secured by a lien on or payable from such revenue on a parity with the Series 2009 A Bonds; provided however, that, so long as there exists in the Series 2009 A Bonds Reserve Account an amount at least equal to the maximum amount of principal and interest which will become due on the Series 2009 A Bonds in the then current or any succeeding year, and in the respective reserve accounts established for any other obligations outstanding on a parity with or junior and subordinate to the Series 2009 A Bonds, an amount at least equal to the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the registered owners of the Bonds for the terms of which reference is made to the Bond Legislation. Remedies provided the registered owners of the Bonds are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

Subject to the registration requirements set forth herein, this Bond is transferable, as provided in the Bond Legislation, only upon the books of the Registrar by the registered owner, or by its attorney duly authorized in writing, upon the surrender of this Bond, together with a written instrument of transfer satisfactory to the Registrar, duly executed by the registered owner or its attorney duly authorized in writing.

Subject to the registration requirements set forth herein, this Bond, under the provision of the Act is, and has all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia.

All money received from the sale of this Bond, after reimbursement and repayment of all amounts advanced for preliminary expenses as provided by law and the Bond Legislation, shall be applied solely to payment of the costs of the Project and costs of issuance described in the Bond Legislation, and there shall be and hereby is created and granted a lien upon such monies, until so applied, in favor of the registered owner of this Bond.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Bond do exist, have happened, and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of the Issuer, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia and that a sufficient amount of the Gross Revenues of the System has been pledged to and will be set aside into said special fund by the Issuer for the prompt payment of the principal of and interest on this Bond.

All provisions of the Bond Legislation, resolutions and statutes under which this Bond is issued shall be deemed to be a part of the contract evidenced by this Bond to the same extent as if written fully herein.

IN WITNESS WHEREOF, THE CITY OF PHILIPPI has caused this Bond to be signed by its Mayor and its corporate seal to be hereunto affixed and attested by its Clerk, and has caused this Bond to be dated the day and year first written above.

[SEAL]

*David J. [Signature]*  
\_\_\_\_\_  
Mayor

ATTEST

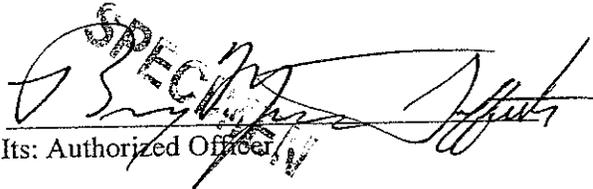
*Jammie R. Stensle*  
\_\_\_\_\_  
Clerk

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 2009 A Bonds described in the within-mentioned Bond Legislation and has been duly registered in the name of the registered owner set forth above, as of the date set forth below.

Date: February 24, 2009.

THE HUNTINGTON NATIONAL BANK,  
as Registrar

By: 

Its: Authorized Officer

EXHIBIT A

RECORD OF ADVANCES

| <u>AMOUNT</u> | <u>DATE</u>       | <u>AMOUNT</u> | <u>DATE</u> |
|---------------|-------------------|---------------|-------------|
| (1) \$38,962  | February 24, 2009 | (19)          |             |
| (2)           |                   | (20)          |             |
| (3)           |                   | (21)          |             |
| (4)           |                   | (22)          |             |
| (5)           |                   | (23)          |             |
| (6)           |                   | (24)          |             |
| (7)           |                   | (25)          |             |
| (8)           |                   | (26)          |             |
| (9)           |                   | (27)          |             |
| (10)          |                   | (28)          |             |
| (11)          |                   | (29)          |             |
| (12)          |                   | (30)          |             |
| (13)          |                   | (31)          |             |
| (14)          |                   | (32)          |             |
| (15)          |                   | (33)          |             |
| (16)          |                   | (34)          |             |
| (17)          |                   | (35)          |             |
| (18)          |                   | (36)          |             |

TOTAL \$ \_\_\_\_\_

EXHIBIT B  
DEBT SERVICE SCHEDULE

**BOND DEBT SERVICE**

City of Philippi

5% Interest Rate

Closing Date: February 24, 2009

| <u>Period</u><br><u>Ending</u> | <u>Principal</u> | <u>Coupon</u> | <u>Interest</u> | <u>Debt Service</u> |
|--------------------------------|------------------|---------------|-----------------|---------------------|
| 7/1/2009                       |                  | 3.000%        |                 |                     |
| 10/1/2009                      |                  | 3.000%        |                 |                     |
| 1/1/2010                       |                  | 3.000%        |                 |                     |
| 4/1/2010                       |                  | 3.000%        |                 |                     |
| 7/1/2010                       |                  | 3.000%        |                 |                     |
| 10/1/2010                      |                  | 3.000%        |                 |                     |
| 1/1/2011                       |                  | 3.000%        |                 |                     |
| 4/1/2011                       | 4,246.           | 5.000%        | 6,140.00        | 10,386.00           |
| 7/1/2011                       | 4,300.           | 5.000%        | 6,086.93        | 10,386.93           |
| 10/1/2011                      | 4,353.           | 5.000%        | 6,033.18        | 10,386.18           |
| 1/1/2012                       | 4,408.           | 5.000%        | 5,978.76        | 10,386.76           |
| 4/1/2012                       | 4,463.           | 5.000%        | 5,923.66        | 10,386.66           |
| 7/1/2012                       | 4,519.           | 5.000%        | 5,867.88        | 10,386.88           |
| 10/1/2012                      | 4,575.           | 5.000%        | 5,811.39        | 10,386.39           |
| 1/1/2013                       | 4,632.           | 5.000%        | 5,754.20        | 10,386.20           |
| 4/1/2013                       | 4,690.           | 5.000%        | 5,696.30        | 10,386.30           |
| 7/1/2013                       | 4,749.           | 5.000%        | 5,637.68        | 10,386.68           |
| 10/1/2013                      | 4,808.           | 5.000%        | 5,578.31        | 10,386.31           |
| 1/1/2014                       | 4,868.           | 5.000%        | 5,518.21        | 10,386.21           |
| 4/1/2014                       | 4,929.           | 5.000%        | 5,457.36        | 10,386.36           |
| 7/1/2014                       | 4,991.           | 5.000%        | 5,395.75        | 10,386.75           |
| 10/1/2014                      | 5,053.           | 5.000%        | 5,333.36        | 10,386.36           |
| 1/1/2015                       | 5,116.           | 5.000%        | 5,270.20        | 10,386.20           |
| 4/1/2015                       | 5,180.           | 5.000%        | 5,206.25        | 10,386.25           |
| 7/1/2015                       | 5,245.           | 5.000%        | 5,141.50        | 10,386.50           |
| 10/1/2015                      | 5,311.           | 5.000%        | 5,075.94        | 10,386.94           |
| 1/1/2016                       | 5,377.           | 5.000%        | 5,009.55        | 10,386.55           |
| 4/1/2016                       | 5,444.           | 5.000%        | 4,942.34        | 10,386.34           |
| 7/1/2016                       | 5,512.           | 5.000%        | 4,874.29        | 10,386.29           |
| 10/1/2016                      | 5,581.           | 5.000%        | 4,805.39        | 10,386.39           |
| 1/1/2017                       | 5,651.           | 5.000%        | 4,735.63        | 10,386.63           |
| 4/1/2017                       | 5,721.           | 5.000%        | 4,664.99        | 10,385.99           |
| 7/1/2017                       | 5,793.           | 5.000%        | 4,593.48        | 10,386.48           |
| 10/1/2017                      | 5,865.           | 5.000%        | 4,521.06        | 10,386.06           |
| 1/1/2018                       | 5,939.           | 5.000%        | 4,447.75        | 10,386.75           |
| 4/1/2018                       | 6,013.           | 5.000%        | 4,373.51        | 10,386.51           |
| 7/1/2018                       | 6,088.           | 5.000%        | 4,298.35        | 10,386.35           |
| 10/1/2018                      | 6,164.           | 5.000%        | 4,222.25        | 10,386.25           |
| 1/1/2019                       | 6,241.           | 5.000%        | 4,145.20        | 10,386.20           |
| 4/1/2019                       | 6,319.           | 5.000%        | 4,067.19        | 10,386.19           |
| 7/1/2019                       | 6,398.           | 5.000%        | 3,988.20        | 10,386.20           |
| 10/1/2019                      | 6,478.           | 5.000%        | 3,908.23        | 10,386.23           |
| 1/1/2020                       | 6,559.           | 5.000%        | 3,827.25        | 10,386.25           |
| 4/1/2020                       | 6,641.           | 5.000%        | 3,745.26        | 10,386.26           |
| 7/1/2020                       | 6,724.           | 5.000%        | 3,662.25        | 10,386.25           |
| 10/1/2020                      | 6,808.           | 5.000%        | 3,578.20        | 10,386.20           |
| 1/1/2021                       | 6,893.           | 5.000%        | 3,493.10        | 10,386.10           |
| 4/1/2021                       | 6,980.           | 5.000%        | 3,406.94        | 10,386.94           |
| 7/1/2021                       | 7,067.           | 5.000%        | 3,319.69        | 10,386.69           |

**BOND DEBT SERVICE**  
City of Philippi  
5% Interest Rate  
Closing Date: February 24, 2009

| Period<br>Ending | Principal | Coupon | Interest          | Debt Service      |
|------------------|-----------|--------|-------------------|-------------------|
| 10/1/2021        | 7,155.    | 5.000% | 3,231.35          | 10,386.35         |
| 1/1/2022         | 7,245.    | 5.000% | 3,141.91          | 10,386.91         |
| 4/1/2022         | 7,335.    | 5.000% | 3,051.35          | 10,386.35         |
| 7/1/2022         | 7,427.    | 5.000% | 2,959.66          | 10,386.66         |
| 10/1/2022        | 7,520.    | 5.000% | 2,866.83          | 10,386.83         |
| 1/1/2023         | 7,614.    | 5.000% | 2,772.83          | 10,386.83         |
| 4/1/2023         | 7,709.    | 5.000% | 2,677.65          | 10,386.65         |
| 7/1/2023         | 7,805.    | 5.000% | 2,581.29          | 10,386.29         |
| 10/1/2023        | 7,903.    | 5.000% | 2,483.73          | 10,386.73         |
| 1/1/2024         | 8,001.    | 5.000% | 2,384.94          | 10,385.94         |
| 4/1/2024         | 8,102.    | 5.000% | 2,284.93          | 10,386.93         |
| 7/1/2024         | 8,203.    | 5.000% | 2,183.65          | 10,386.65         |
| 10/1/2024        | 8,305.    | 5.000% | 2,081.11          | 10,386.11         |
| 1/1/2025         | 8,409.    | 5.000% | 1,977.30          | 10,386.30         |
| 4/1/2025         | 8,514.    | 5.000% | 1,872.19          | 10,386.19         |
| 7/1/2025         | 8,621.    | 5.000% | 1,765.76          | 10,386.76         |
| 10/1/2025        | 8,728.    | 5.000% | 1,658.00          | 10,386.00         |
| 1/1/2026         | 8,838.    | 5.000% | 1,548.90          | 10,386.90         |
| 4/1/2026         | 8,948.    | 5.000% | 1,438.43          | 10,386.43         |
| 7/1/2026         | 9,060.    | 5.000% | 1,326.58          | 10,386.58         |
| 10/1/2026        | 9,173.    | 5.000% | 1,213.33          | 10,386.33         |
| 1/1/2027         | 9,288.    | 5.000% | 1,098.66          | 10,386.66         |
| 4/1/2027         | 9,404.    | 5.000% | 982.56            | 10,386.56         |
| 7/1/2027         | 9,521.    | 5.000% | 865.01            | 10,386.01         |
| 10/1/2027        | 9,640.    | 5.000% | 746.00            | 10,386.00         |
| 1/1/2028         | 9,761.    | 5.000% | 625.50            | 10,386.50         |
| 4/1/2028         | 9,883.    | 5.000% | 503.49            | 10,386.49         |
| 7/1/2028         | 10,006.   | 5.000% | 379.95            | 10,385.95         |
| 10/1/2028        | 10,132.   | 5.000% | 254.88            | 10,386.88         |
| 1/1/2029         | 10,258.   | 5.000% | 128.23            | 10,386.23         |
| <b>491,200.</b>  |           |        | <b>256,622.96</b> | <b>747,822.96</b> |

(Form of)

ASSIGNMENT

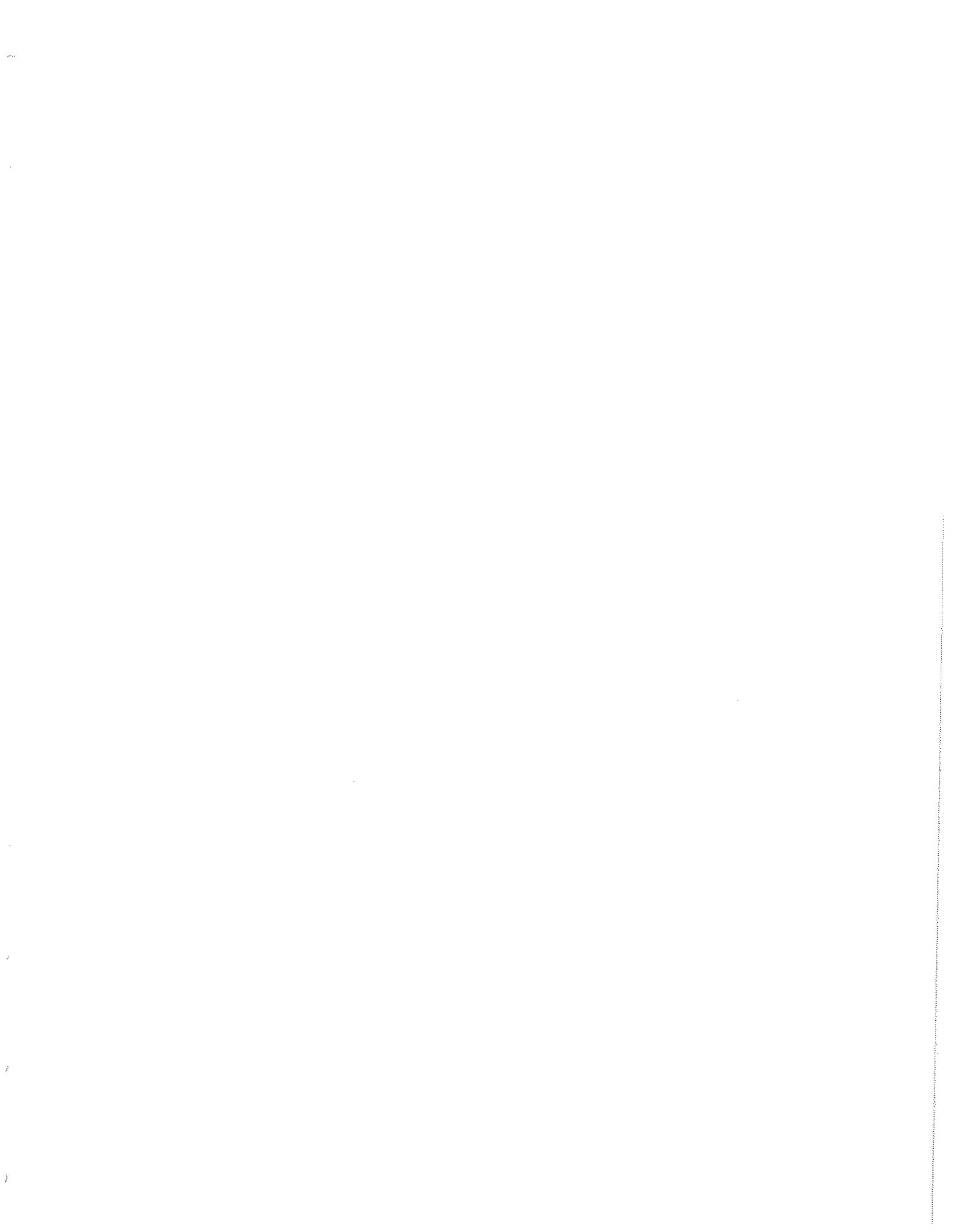
FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto the within  
Bond and does hereby irrevocably constitute and appoint  
\_\_\_\_\_, Attorney to transfer the said Bond on the books  
kept for registration of the within Bond of the said Issuer with full power of substitution in the premises.

Dated: \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

In the presence of:

\_\_\_\_\_



# State of West Virginia

## OFFICE OF ENVIRONMENTAL HEALTH SERVICES

CAPITOL AND WASHINGTON STREETS 1 DAVIS SQUARE, SUITE 200 CHARLESTON, WV 25301  
Telephone (304) 558-2981

### PERMIT

(Water)  
**PROJECT:** Water System Improvements, Revision 2 **PERMIT NO.:** 18,072  
**LOCATION:** Philippi **COUNTY:** Barbour **DATE:** 8-8-2008

THIS IS TO CERTIFY that after reviewing plans, specifications, application forms, and other essential information that

**City of Philippi**  
**P. O. Box 460**  
**Philippi, West Virginia 26146**

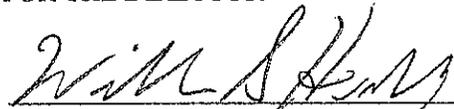
is hereby granted approval to: amend and modify Permit Nos. 15,467 and 16,156 for the City of Philippi water system improvements. Modifications will consist of updating components at the Mansfield booster station; adding conduit for electrical and communication cables to the Cherry Hill storage tank; adding a tee and valve at the Cherry Hill storage tank valve vault; updating components, changing the booster pumps and changing the valve vault to a ten (10) feet vault at the Cherry Hill booster station; and updating the storage tank, booster stations and telemetry specifications to reflect minor changes in the plans and specifications.

**NOTE:** This permit is contingent upon all unchanged conditions and requirements of Permit Nos. 15,467 and 16,156 remaining in effect.

The Environmental Engineering Division of the **OEHS-EED Philippi District Office, (304) 457-2296**, is to be notified when construction begins.

Validity of this permit is contingent upon conformity with plans, specifications, application forms, and other information submitted to the West Virginia Bureau for Public Health.

FOR THE DIRECTOR

  
\_\_\_\_\_  
William S. Herold, Jr., P.E., Assistant Manager  
Infrastructure and Capacity Development  
Environmental Engineering Division

WSH:cls

pc:  Potesta & Associates, Inc.  
James W. Ellars, P.E.  
Amy Swann, PSC  
Barbour County Health Department  
OEHS-EED Philippi District Office

TCM, P.L.



**THE CITY OF PHILIPPI**

**RESOLUTION OF THE CITY OF PHILIPPI APPROVING INVOICES RELATING TO CONSTRUCTION AND OTHER SERVICES FOR THE PROPOSED CHERRY HILL WATER PROJECT AND AUTHORIZING PAYMENT THEREOF,**

**WHEREAS,** The City of Philippi has reviewed the invoices attached hereto and incorporated herein by reference relation to the construction of the Water Construction Project funded by the Rural Utilities Service (RUS) and find as follows:

- a) That none of the items for which payment is proposed to be made has formed the basis for any disbursement theretofore made.
- b) That each item for which the payment is proposed to be paid is or was necessary in connection with the Project and constitutes a Cost of the project.
- c) That each of such costs has been otherwise properly incurred.
- d) That the payment for each of the items proposed is due and owing.

**NOW, THEREFOR, BE IT RESOLVED** The City of Philippi by as follows: There is hereby authorized and directed the payment of the attached invoices as follows:

| Vendor            | Total      | RUS        |
|-------------------|------------|------------|
| Potesta           | 151,660.00 | 151,660.00 |
| Steptoe & Johnson | 19,000.00  | 19,000.00  |
|                   |            |            |
|                   |            |            |
|                   |            |            |
| Total             | 170,000.00 | 170,000.00 |

**ADOPTED BY** The City of Philippi, at the meeting held on the 7th day of April, 2009.

By: David C. Whitbeck  
Its: Mayor

By: [Signature]  
United States Department of Agriculture

Date: 4/14/09



# Engineers and Environmental Consultants

7012 MacCorkle Avenue, SE, Charleston, WV 25304 • (304)342-1400 • FAX (304)343-9031; www.potesta.com

**Date:** February 6, 2009

**Invoice No.:** 30280

**Project No.:** 0101-98-0206-003

City of Philippi  
c/o Ms. Katy Mallory  
Steptoe & Johnson  
Chase Tower, Eighth Floor  
PO Box 1588  
Charleston, West Virginia 25326-1588

**RE:** Engineering Services Associated with Municipal Water System Upgrade Project

### Study and Report Phase

| Task / Description     | Proposal*<br>Lump Sum<br>Amount | Percent<br>Complete<br>This Invoice | Percent<br>Complete<br>To Date | Total This<br>Invoice |
|------------------------|---------------------------------|-------------------------------------|--------------------------------|-----------------------|
| Study and Report Phase | \$ 5,400.00                     | 0                                   | 100                            | N/A                   |
| <b>TOTAL:</b>          | <b>\$ 5,400.00</b>              |                                     |                                | N/A                   |

### Basic Services

| Task / Description   | Proposal*<br>Lump Sum<br>Amount | Percent<br>Complete<br>This Invoice | Percent<br>Complete<br>To Date | Total This<br>Invoice |
|--|---------------------------------|-------------------------------------|--------------------------------|-----------------------|
| Final Design Phase Documents Completed and Submitted to Owner Agency | \$ 72,800.00                    | 100                                 | 100                            | \$ 72,800.00          |
| Final Design Phase Complete  | \$ 31,200.00                    | 100                                 | 100                            | \$ 31,200.00          |
| Contracts Awarded  | \$ 14,560.00                    | 100                                 | 100                            | \$ 14,560.00          |
| Construction Phase Periodic Payments (Aggregate)                     | \$ 21,840.00                    | 0                                   | 0                              | \$ 0.00               |
| Construction Phase Complete  | \$ 7,280.00                     | 0                                   | 0                              | \$ 0.00               |
| <b>TOTAL:</b>  | <b>\$ 147,680.00</b>            |                                     |                                | <b>\$ 118,560.00</b>  |

### POTESTA & ASSOCIATES, INC.

Charleston, West Virginia • Morgantown, West Virginia • Winchester, Virginia

**Resident Project Representative (RPR)**

| Task / Description                    | Proposal*<br>Amount | Percent<br>Complete<br>This Invoice | Percent<br>Complete<br>To Date | Total This<br>Invoice |
|---------------------------------------|---------------------|-------------------------------------|--------------------------------|-----------------------|
| Resident Project Representative (RPR) | \$ 58,500.00        | 0                                   | 0                              | \$ 0.00               |
| <b>TOTAL:</b>                         | <b>\$ 58,500.00</b> |                                     |                                | <b>\$ 0.00</b>        |

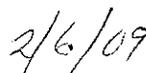
**Additional Services**

| Task / Description  | Proposal*<br>Lump Sum<br>Amount | Percent<br>Complete<br>This Invoice | Percent<br>Complete<br>To Date | Total This<br>Invoice |
|---------------------|---------------------------------|-------------------------------------|--------------------------------|-----------------------|
| Additional Services | \$ 33,100.00                    | 100                                 | 100                            | \$ 33,100.00          |
| <b>TOTAL:</b>       | <b>\$ 33,100.00</b>             |                                     |                                | <b>\$ 33,100.00</b>   |

\* See Potesta & Associates, Inc.'s February 13, 2004 and April 1, 2008 Letters.

|                            |                     |
|----------------------------|---------------------|
| <b>TOTAL THIS INVOICE:</b> | <b>\$151,660.00</b> |
|----------------------------|---------------------|

  
 \_\_\_\_\_  
 Dana L. Burns - Vice President

  
 \_\_\_\_\_  
 Date